

Paper 1

General and Commercial Laws

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Syllabus

Paper 1

General and Commercial Laws

(100 marks)

Level of knowledge: Working knowledge.

Objective: To provide to the students basic understanding of some of the general and business laws which have a bearing on the conduct of corporate affairs.

Detailed Contents :

1. Constitution of India

Broad framework of the Constitution of India: fundamental rights, direct principles of state policy; ordinance making powers of the President and Governors; legislative powers of the Union and the States; freedom of trade commerce and intercourse; constitutional provisions relating to State monopolistic judiciary; writ jurisdiction of High Courts and the Supreme Court; different type of writs-habeas corpus, mandamus, prohibition, quo warranto and certiorari; delegated legislation.

2. Interpretation of Statutes

Need for interpretation of a statute; general principles of interpretation internal and external aids to interpretation; primary and other rules.

3. An Overview of Law relating to Specific Relief; Arbitration and Conciliation; Torts; Limitation and Evidence.

4. Law relating to Transfer of Property

Important definitions; movable and immovable property; properties which cannot be transferred; rule against perpetuities; *lis pendens*; provisions relating to sale, mortgage, charge, lease gift and actionable claim.

5. Law relating to Stamps

Methods of stamping; consequences of non-stamping and understanding; impounding of instruments; construction of instruments for determination of stamp duty payable; adjudication; allowance and refund; penal provisions.

6. Law relating to Registration of Documents

Registrable documents - compulsory and optional; time and place of registration; consequences of non-registration; description of property; miscellaneous provisions.

7. Information Technology Law - An Overview

Important terms under Information technology legislation; digital signatures; electronic records; certifying authority: digital signature certificate; Cyber Regulation Appellate Tribunal; offences and penalties.

8. Code of Civil Procedure

Elementary knowledge of the structure of civil courts, their jurisdiction, basic understanding of certain terms-order, judgement and decree, stay of suits, resjudicata, suits by companies, minors, basic understanding of summary proceedings, appeals, reference, review and revision.

9. Criminal Procedure Code

Offences; mens rea, cognizable and non-cognizable offences, bail, continuing offences, searches, limitation for taking cognizance of certain offences.

10. Law relating to Right to Information

Salient features of the Right to Information (RTI) Act, 2005; Objective; Public Authorities & their obligations; Designation of Public Information Officers (PIO) and their Duties; Request for obtaining information; Exemption from disclosure; Who is excluded; Information Commissions (Central & State) and their powers; appellate authorities; penalties; jurisdiction of Courts; Role of Central/State Governments.

Bird's-Eye View

Paper 1 General and Commercial Laws

Question Paper Based Contents of Last Five Examinations

Years	Q. No.	Chapter		Page No.
		No.	Name	
2011 Dec.	1.	1	Constitution of India	28
	2. (i)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	101
	(ii)	2	Interpretation of Statutes	65
	(iii)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	101
	(iv)	3	" " "	101
	(v)	3	" " "	101
	3. (i)	8	The Code of Civil Procedure, 1908 (C.P.C.)	240
	(ii)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	91
	(iii)	4	Law Relating to Transfer of Property	155
	(iv)	4	" " "	155
	(v)	7	Law Relating to Information Technology	216
	4. (i)	5	Law Relating to Stamps	183
	(ii)	6	Law Relating to Registration of Documents	198
	(iii)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	103
	(iv)	3	" " "	103
	(v)	4	Law Relating to Transfer of Property	160
	5. (a)	11	Objective Questions	309
	(b)	11	" "	309
	6. (a)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	104
	(b)	10	Law Relating to Right to Information	288
	(c)	6	Law Relating to Registration of Documents	199
	7.	11	Objective Questions	311
	8. (a)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	116
	(b)	4	Law Relating to Transfer of Property	167
(c)	4	" " "	167	

2012 June	1.	(a)	1	Constitution of India	30
		(b)	1	" "	30
		(c)	2	Interpretation of Statutes	65
	2.	(a)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	105
		(b)	6	Law Relating to Registration of Documents	199
		(c)	5	Law Relating to Stamps	184
	3.	(a)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	105
		(b)	3	" " " "	105
		(c)	3	" " " "	105
	4.	(i)	8	The Code of Civil Procedure, 1908 (C.P.C.)	244
		(ii)	7	Law Relating to Information Technology	218
		(iii)	10	Law Relating to Right to Information	288
		(iv)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	107
		(v)	7	Law Relating to Information Technology	218
	5.	(i)	4	Law Relating to Transfer of Property	155
		(ii)	4	" " "	155
		(iii)	4	" " "	155
		(iv)	8	The Code of Civil Procedure, 1908 (C.P.C.)	241
		(v)	7	Law Relating to Information Technology	216
	6.	(a)	11	Objective Questions	313
		(b)	11	" "	314
		(c)	5	Law Relating to Stamps	188
	7.		11	Objective Questions	315
	8.	(a)	8	The Code of Civil Procedure, 1908 (C.P.C.)	250
	(b)	9	The Code of Criminal Procedure, 1973	273	
	(c)	6	Law Relating to Registration of Documents	201	
2012 Dec	1.		1	Constitution of India	32
	2.	(i)	2	Interpretation of Statutes	66
		(ii)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	107
		(iii)	3	" " " "	107
		(iv)	4	Law Relating to Transfer of Property	161
		(v)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	107
	3.	(i)	1	Constitution of India	18

	(ii)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	92
	(iii)	3	" "	92
	(iv)	3	" "	92
	(v)	4	Law Relating to Transfer of Property	156
	4.(i)	7	Law Relating to Information Technology	220
	(ii)	7	" "	220
	(iii)	8	The Code of Civil Procedure, 1908 (C.P.C.)	244
	(iv)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	109
	(v)	9	The Code of Criminal Procedure, 1973	271
5.		11	Objective Questions	316
6.		11	" "	318
7	(a)	4	Law Relating to Transfer of Property	168
	(b)	4	" "	169
	(c)	10	Law Relating to Right to Information	290
8	(a)	7	Law Relating to Information Technology	222
	(b)	6	Law Relating to Registration of Documents	200
	(c)	8	The Code of Civil Procedure, 1908 (C.P.C.)	251
2013 June	1. (a)	1	Constitution of India	34
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	(c)	2	Interpretation of Statutes	67
	2. (a)	5	Law Relating to Stamps	185
	(b)	8	The Code of Civil Procedure, 1908 (C.P.C.)	246
	(c)	1	Constitution of India	35
	3. (i)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	94
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	4. (a)	5	Law Relating to Stamps	186
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	(c)	4	Law Relating to Transfer of Property	161
	(d)	4	" "	161
5.		11	Objective Questions	319
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7	(a)	5	Law Relating to Stamps	186
	(b)	5	" "	186
	(c)	9	The Code of Criminal Procedure, 1973	274

	8	(a)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	116
		(b)	8	The Code of Civil Procedure, 1908 (C.P.C.)	251
		(c)	9	The Code of Criminal Procedure, 1973	274
2013 Dec.	1.	(a)	1	Constitution of India	36
		(b)	1	" "	36
		(c)	2	Interpretation of Statutes	68
	2.	(i)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	109
		(ii)	4	Law Relating to Transfer of Property	162
		(iii)	4	" "	162
		(iv)	8	The Code of Civil Procedure, 1908 (C.P.C.)	247
		(v)	7	Law Relating to Information Technology	221
	3.	(i)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	95
		(ii)	9	The Code of Criminal Procedure, 1973	270
		(iii)	8	The Code of Civil Procedure, 1908 (C.P.C.)	242
		(iv)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	95
		(v)	3	" " " "	95
	4.	(i)	9	The Code of Criminal Procedure, 1973	272
		(ii)	10	Law Relating to Right to Information	290
		(iii)	6	Law Relating to Registration of Documents	200
		(iv)	6	" "	200
		(v)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	109
	5.		11	Objective Questions	323
	6.		11	" "	324
	7.	(a)	10	Law Relating to Right to Information	291
		(b)	4	Law Relating to Transfer of Property	169
		(c)	9	The Code of Criminal Procedure, 1973	275
	8.	(a)	5	Law Relating to Stamps	188
		(b)	3	An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence	117
		(c)	5	Law Relating to Stamps	188

Line Chart Page

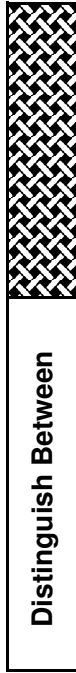
Table Showing Importance of Chapter on the Basis of Marks

Chap. No.	Chapter Name	Years		10		11		12		13		Total	Ave.
		09 June	09 Dec.	June	Dec.	June	Dec.	June	Dec.	June	Dec.		
1.	Constitution of India	19	25	14	14	20	20	14	24	20	14	184	18.4
2.	Interpretation of Statutes	6	8	6	6	8	4	6	4	6	6	60	6.0
3.	An Overview of Law Relating to...	28	24	38	32	31	40	26	28	13	25	285	28.5
4.	Law relating to Transfer of Property	23	36	13	26	10	22	12	19	8	13	182	18.2
5.	Law relating to Stamps	4	6	4	5	4	4	9		20	11	67	6.7
6.	Law relating to Registration of...	4	5	16		9	9	11	5		8	67	6.7
7.	Law Relating to Information...	20		8	9	8	4	12	14	4	4	83	8.3
8.	The Code of Civil Procedure, 1908...	4	19	11	9	11	4	13	9	18	8	106	10.6
9.	The Code of Criminal Procedure,...	4	5	8	11	4		5	4	15	13	69	6.9
10.	Law Relating to Right to Information	4				4	5	4	5		10	32	3.2
11.	Objective Questions	32	12	26	28	27	32	28	32	32	32	281	28.1

Table Showing Importance of Chapter on the Basis of Marks of Compulsory Questions

Chap. No.	Chapter Name	Years		09		10		11		12		13		Total	Ave.
		09 June	09 Dec.	10 June	10 Dec.	11 June	11 Dec.	12 June	12 Dec.	13 June	13 Dec.				
1.	Constitution of India	14	20	14	14	20	20	14	20	14	14	164	16.4		
2.	Interpretation of Statutes	6		6	6			6		6	6	36	3.6		
3.	An Overview of Law Relating to...														
4.	Law relating to Transfer of Property														
5.	Law relating to Stamps														
6.	Law relating to Registration of...														
7.	Law Relating to Information...														
8.	The Code of Civil Procedure, 1908...														
9.	The Code of Criminal Procedure,...														
10.	Law Relating to Right to Information														
11.	Objective Questions														

Legends for the Graphs



FOR NOTES

A large rectangular box designed for taking notes. It features a solid black border at the top and bottom, and a series of horizontal dashed lines in the middle, creating a ruled area for writing. The box is empty and occupies most of the page's width and height.

Star Rating

On the basis of Maximum marks from a chapter

☆☆☆☆

On the basis of Questions included every year from a chapter

☆☆☆☆

On the basis of Compulsory questions from a chapter

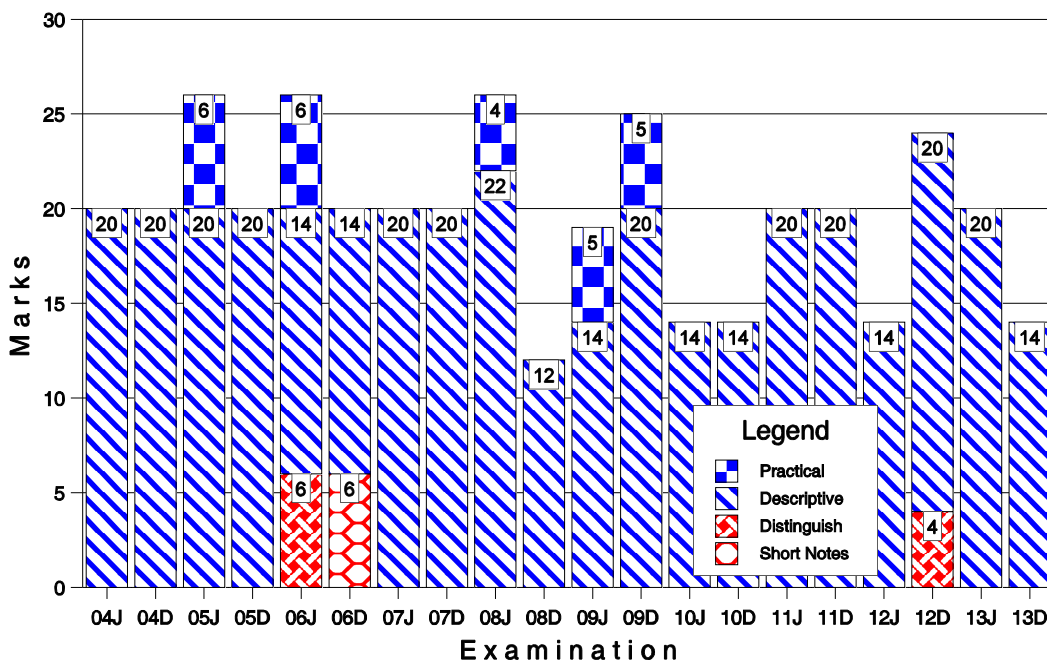
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1

Constitution of India

This Chapter Includes : Broad Framework of the Constitution of India: Fundamental rights, directive principles of State policy; ordinance making powers of the President and the Governors; Legislative powers of the Union and the States; Freedom of trade, commerce and intercourse; Constitutional provisions relating to State, monopoly; judiciary; Writ jurisdiction of High Courts and the Supreme Court; different type of writs-habeas corpus, mandamus, prohibition, quo warranto and certiorari; delegated legislation.

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



CS Executive Programme (Module I)

OBJECTIVE QUESTIONS

2008 - Dec [1] {C} (c) Re-write the following sentences after filling-up the blank spaces with appropriate word(s)/figure(s) :

- (viii) High Court issued an order to the holder of office to show to the court under what authority he holds the office. This writ is called _____ (1 mark)

Answer :

High Court issued an order to the holder of office to show to the court under what authority he holds the office. This writ is called **Quo Warranto**.

2008 - Dec [5] (b) Fill in the blank spaces with the appropriate nomenclature or terminology in the following :

- (i) A writ issued by the court to some person or body to compel it to perform a public duty is called _____ . (1 mark)

Answer :

A writ issued by the court to some person or body to compel it to perform a public duty is called **mandamus** .

2008 - Dec [6] (a) Choose the most appropriate answer from the given options in respect of the following :

- (i) Secularism means that the State should -
(a) Have its own religion
(b) Ignore all religions
(c) Have all religions of its own
(d) Have no religion of its own. (1 mark)

Answer :

(d) Have no religion of its own.

2009 - June [5] State, with reasons in brief, whether the following statements are correct or incorrect :

- (v) Article 53 of the Constitution of India lays down that the executive powers of the Union shall be vested in the President of India. (2 marks)

Answer :

Correct : These powers are vested in the President of India as per the Constitution of India, subject to the limitations prescribed therein.

2009 - June [6] (a) Choose the most appropriate answer from the given options in respect of the following :

- (i) The Constitution of India came into force on –
- (a) 26th November, 1949
 - (b) 15th August, 1947
 - (c) 26th January, 1947
 - (d) 26th January, 1950. (1 mark)

Answer :

- (d) 26th January, 1950.

2009 - Dec [5] (b) Choose the most appropriate answer from the given options in respect of the following :

- (i) In which of the following case, the Supreme Court made it clear that Parliament cannot alter the basic structure of the Constitution of India—
- (a) I.C. Golak Nath vs. State of Punjab
 - (b) Kesavananda Bharati vs. State of Kerala
 - (c) Shankari Prasad vs. Union of India.
 - (d) Indira Gandhi vs. Raj Narain. (1 mark)

Answer :

- (b) Kesavananda Bharati vs. State of Kerala

2010 - June [5] (b) Choose the most appropriate answer from the given options in respect of the following :

- (v) The definition of the 'State' as given under Article 12 of the Constitution of India includes—
- (a) The Central Government and Parliament of India
 - (b) The Government and the Legislature of each State
 - (c) All local or other authorities within India and under the control of the Government of India
 - (d) All of the above. (1 mark)

Answer :

- (d) All of the above.

2010 - June [6] State, with reasons in brief, whether the following statements are correct or incorrect :

- (i) The Constitution of India makes a few exceptions in which the Parliament is authorised to make the laws even on the subjects included in the State List.
- (ii) Article 174 of the Constitution of India empowers the Governor of the State to dissolve the State Legislature. (2 marks each)

Answer :

- (i) Correct. When the states refer the matter to the Union or when in a state of emergency.
- (ii) Correct. This happens when the state Assembly is unable to function properly.

2010 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (i) A writ of _____ is issued to an inferior court preventing the latter from usurping jurisdiction which is not legally vested in it. (1 mark)

Answer :

A writ of prohibition is issued to an inferior court preventing the latter from usurping jurisdiction which is not legally vested in it.

2010 - Dec [5] (b) Choose the most appropriate answer from the given options in respect of the following :

- (iii) The Parliament is empowered to make laws on the subjects enumerated in —
 - (a) List-I
 - (b) List-II
 - (c) Both List-I and List-II
 - (d) None of the above. (1 mark)

Answer :

- (c) Both List-I and List-II

2010 - Dec [6] State, with reasons in brief, whether the following statements are true or false :

- (ii) Article 174 of the Constitution of India empowers the Governor of a State to dissolve the State Legislature. (2 marks)

Answer :

True: Article 174(2) of the Constitution expressly vests in the Governor the power of dissolving State Legislature.

2011 - June [5] (b) Write the most appropriate answer from the given options in respect of the following :

- (i) The Constitution of India was enacted on -
 - (a) 26th November, 1949
 - (b) 26th January, 1950
 - (c) 28th January, 1950
 - (d) None of the above. (1 mark)
- (ii) The Preamble of the Constitution -
 - (a) Is a part of the Constitution
 - (b) Can be used for interpreting the Constitution
 - (c) Both (a) and (b)
 - (d) None of the above. (1 mark)

Answer :

- (i) (b) 26th January, 1950
- (ii) (c) Both (a) and (b)

2011 - June [6] State, with reasons in brief, whether the following statements are true or false :

- (vi) A writ of *certiorari* is issued to prevent a lower court from usurping jurisdiction which is not legally vested in it. (2 marks)

Answer :

False. A writ of *certiorari* is issued to question what right the person acquiring any powers have to acquire them. Where they exceed their legal authority, they can be questioned using this writ.

2011 - Dec [7] State, with reasons in brief, whether the following statements are true or false:

- (ii) The provisions relating to 'fundamental rights' given in the Constitution of India are subject to amendment. (2 marks)

Answer :

True: As per the case of *Kesavananda Bharti v. State of Kerala* (AIR 1973 SCC 225). It was decided that the 24th Constitutional Amendment is entirely valid and that the Parliament can amend any part of the Constitution including Fundamental Rights. However, the basic structure or framework of the Constitution cannot be changed.

2012 - June [7] State, with reasons in brief, whether the following statements are true or false :

- (ii) "Traffic" in human beings means to deal in men and women like goods, such as to sell or let out or otherwise dispose them off. (2 marks)
- (iii) The laws passed by Parliament in the national interest cease to have effect automatically after nine months. (2 marks)

Answer:

- (ii) **True:** This is as per Article 23 of The Constitution of India.
- (iii) **False:** The laws passed by Parliament in the national interest cease to have effect automatically after six months.

2012 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (i) The Constitution of India is a comprehensive document containing 395 Articles and _____ Schedules. (1 mark)
- (ii) One of the fundamental duties given in Article 51A of the Constitution of India is to uphold and protect the sovereignty, unity and _____ of India. (1 mark)

Answer:

- (i) 395 articles and 12 schedules
- (ii) integrity

2013 - June [6] State, with reasons in brief, whether the following statements are true or false:

- (i) The right to know, receive and impart information has been recognised within the right to freedom of speech and expression. (2 marks)

Answer:

True: Based on Article 21 of the Constitution of India, the Supreme Court decided in the case of S.P. Gupta v. Union of India that the right to information is within the constitutional right to know. Also, as per Article 19 (1) (a), right to freedom of speech and expression necessarily includes the right to be informed.

2013 - Dec [5](a) Re- write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (i) Article 21 of the Constitution of India confers on every person the fundamental right to life and _____ . (1 mark)

2013 - Dec [5](b) Write the most appropriate answer from the given options in respect of the following:

- (i) When the President of India makes a reference to the court on questions of fact and law, the advice is given by the -
 - (a) Civil Court
 - (b) Criminal Court
 - (c) High Court
 - (d) Supreme Court. (1 mark)

2013 - Dec [6] State, with reasons in brief, whether the following statements are true or false:

- (iii) The writ of *habeas corpus* is an effective bulwark of personal liberty. (2 marks)

DISTINGUISH BETWEEN

2012 - Dec [3] Distinguish between the following:

- (i) 'Writ of prohibition' and 'writ of mandamus.' (4 marks)

Answer:

The writ of prohibition is issued primarily to prevent an inferior court or tribunal from exceeding its jurisdiction. It is issued by a superior court to inferior courts from usurping a jurisdiction which is not legally vested in it, or in other words to compel inferior courts to keep within the limits of their jurisdiction. Thus the writ is issued in both cases where there is excess of jurisdiction and where there is absence of jurisdiction (*S. Govind Menon vs. Union of India, AIR 1967 SC 1274*) The writ can be issued only when the proceedings are pending in a court. It can be issued only against a judicial or legislative functionary, not administrative.

On the other hand, the writ of Mandamus, meaning “we command”, is a constitutional remedy provided by the Constitution of India, against holders of public offices or against those performing public duties, to order them to perform their duties. It can be issued to both individuals and organizations, and ensures judicial backing to the person who needs to get a public duty done. It ensures that a person who has the right to get some public duty performed in his favour can get a writ passed to get the work done. The High Courts and the Supreme Court have the powers to issue this writ. This writ remedy cannot be used in case the act required to be done is discretionary, and the authority responsible for it has the right to decide whether or not to do it.

When there is the option of another action through the normal route, then this writ is usually not used, hence it is termed as an extra ordinary constitutional remedy. Generally it covers acts of the lower courts, public officers and government corporations. Moreover, it can be used even before a case is decided.

DESCRIPTIVE QUESTIONS

2008 - Dec [1] {C} (a) “Article 14 of the Constitution of India forbids class legislation, but does not forbid classification.” Explain the rules with respect to permissible classification as evolved by the Supreme Court of India. (8 marks)

(b) What is writ of habeas corpus ? When can it be issued? (4 marks)

Answer :

(a) The Article 14 of the Constitution of India is about equality before law. This article envisages equality between equals, i.e., those equal in the eyes of law have to be treated equally. A direct corollary of this article is that it is not possible to have different rules for people belonging to the same class. Therefore, it is possible to have classification but not class legislation under the Constitution of India. Classification would be valid if it fulfils the following tests –

- There should be valid factors distinguishing one group from another, while making rules for one group and not for another.
- The differences should be created to achieve some objective enshrined in the act.
- There should be valid bases for classification.

Even if a class has a single person constituting it, it is not invalid. Moreover, the person who says that a classification is invalid has to prove so.

(b) The writ of Habeas Corpus is to ensure that a person who is confined without a legal cause being given gets justice. This writ orders the authority confining the person to give proper reasons for doing so. Articles 32 and 226 give the right to

approach the Supreme Court and the High Courts for obtaining this writ.

This writ is issued when a case outlining the need for such a writ is made. It ensures that no man is detained without the proper procedure being followed and without proper cause and it keeps the authorities away from arbitrary legal action. The person detained or his legal representative can move the court for this writ. This writ demands the restraining authority to present the detained person before the court with the proof that led to his arrest or detention. This allows the court to judge whether his detention was justified to begin with.

2009 - June [1] {C} (a) "A declaration of fundamental rights is meaningless unless there is an effective judicial remedy for their enforcement." Comment on this statement explaining the judicial remedies which the Constitution of India provides. (8 marks)

(b) When and under what circumstances can the Parliament legislate on matters enumerated in the State List? Discuss. (6 marks)

Answer :

(a) The judicial remedies which the Constitution of India provides are in the form of writ jurisdiction of the High Courts and the Supreme Court.

Under Article 226 of the Constitution, the High Court has the power to issue not only writs of certiorari, prohibition and mandamus, but also other writs, directions and orders. The Indian High Court has jurisdiction to issue necessary directions and orders to ensure justice and equity. Moreover, this right is not restricted, but spreads to administrative action and judicial or quasi-judicial action also.

When the Supreme Court issues writs under Article 32 of the Constitution, they are mainly for the enforcement of fundamental rights mentioned in the Constitution itself.

The Madras High Court held in *Aditanar Educational Institution v. Assistant Director of Income-tax* (297 I.T.R. 376) that the relief under Article 226 of the Constitution of India can be granted in spite of the availability of alternate remedy under the statute, only based on undisputed facts. When the High Court finds that factual disputes are involved, it would not be desirable to deal with them in a writ petition. Under Article 32, a writ is preferred in case there is no other recourse available.

(b) The Parliament can extend the legislative powers given to it by the Constitution to formulate laws under special situations to include certain subjects of the State List. Some of the conditions under which the Parliament may extend its powers include the situations explained below-

In the National Interest (Under Article 249)

Proclamation of Emergency (Article 250) in any state by the President.

If two states agree that the Parliament can legally make laws with respect to the two states, then the Parliament can make laws relating to any state or states (Under Article 252)

For the implementation of treaties in the international interest of the country (Under Article 253).

Failure of Constitutional Machinery in a State as a result of the inefficiency of a State Legislature, as declared by a proclamation issued by the President (Under Article 356 (1) (b))

Normally both the Union Government and the State Governments operate within the limitations of the powers given to them by the Constitution. They enjoy equal powers to make laws relating to the Concurrent list items, which are of general importance such as succession, transfer of property, preventive detention, education, etc. If there arises a conflict between a law passed by the Union and that passed by one or more State Legislatures, precedence would be given to the law made by the Union Parliament. However, problem arises when either the Union or a State illegally encroaches upon the powers of the other legislature, or they may arise because the two laws do not coordinate. Only where the legislation is on a matter in the Concurrent List, it becomes important to apply the test of repugnancy and judge which act will apply. Normally the Union law is given preference, unless the State has reserved a law for the approval of the President, in which case it will supersede the law made by the Union. However, the Union can at all times cause an alteration or amendment in the law.

2009 - Dec [1] {C} (a) "The right of freedom of speech and expression under Article 19(1) (a) of the Constitution of India is not an absolute right but subject to reasonable restrictions." Discuss. (8 marks)

(b) What do you mean by double jeopardy ? (4 marks)

(c) What do you mean by doctrine of waiver of rights under the Constitution of India? (4 marks)

(d) Discuss in brief the rule of colourable legislation. (4 marks)

Answer :

(a) **Article 19** of the Constitution of India guaranteed to the citizens the following six freedoms:

- (a) Freedom of speech and expression.
- (b) Freedom of assemble peaceably and without arms.
- (c) Freedom of associations and unions.
- (d) Freedom to move freely throughout the territory of India.
- (e) Freedom to reside and settle in any part of the territory of India.
- (f) Freedom to practice any profession, or to carry on any occupation, trade or business.

Restrictions:- These freedoms are not absolute and are subject to reasonable restrictions. The State has the power, to make laws imposing reasonable restrictions on the exercise of the above rights in the interest of the following:

- (a) The sovereignty and integrity of India.
 - (b) The security of the State.
 - (c) Friendly relations with foreign States.
 - (d) Public order.
 - (e) Decency or morality.
 - (f) Contempt of court.
 - (g) Defamation.
 - (h) Incitement to an offence.
 - (i) Prescribing professional and technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business.
 - (j) Carrying on by the State or by a corporation owned or controlled by the State of any trade, business, industry, service.
- (b)** Jeopardy means punishment. Article 20(2) of Constitution of India incorporates prohibition against double jeopardy. The object of this provision is to avoid the harassment which must be caused to a person for successive criminal proceedings where only one crime has been committed.
- (c) Doctrine of waiver :** A person can not waive any of his fundamental rights. A law would not be a nullity but merely unenforceable if it was repugnant to a fundamental right and that the affected individual could waive such an unconstitutionality, in which case the law would apply to him.

Fundamental Rights

Right of Equality

Right to freedom

Right against Exploitation

Right to freedom of Religion

Cultural and Education Rights

Saving of certain laws

Right to Constitutional Remedies

“Democracy without equality is meaningless”. How does Indian Constitution guarantee equality to its citizens ?

Right to equality is one of the basic fundamental human rights afforded by Constitutions of modern democratic states including India.

Article 14 of the Indian Constitution states the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Equality before the law means that no man is above the law of the land and every person whatever be his rank or status is subject to the ordinary law and amenable to the jurisdiction of the ordinary tribunals. It is a negative concept, implying the absence of any special privilege in favour of individual and equal subjection of all classes to the ordinary law. Among equals equal law should be provided but among unequals same should not be provided.

Public officers and judges are given some protection under article 362 of the Constitution. Under Article 361 of our Constitution President or Governor of a State shall not be answerable to any court for the exercise and performance of the powers and duties of his office for any act done by him in the exercise and performance of those powers and duties.

Equal protection of the laws means the right to equal treatment in equal circumstances. It is a more positive concept. The principle does not take away from the state the power of classifying persons for legitimate purposes. Any law making special provisions for women and children or conferring special advantages upon members of scheduled castes and scheduled tribes etc. cannot be challenged on the grounds of the violation of Article 14 of the Constitution. Article 14 forbids class legislation but does not forbid reasonable classification.

- (d) **Colourable legislation:** The doctrine of colourable legislation is relevant only in connection with the question of legislative competency. Objections based on colourable legislation have relevance only in situations when the power is restricted to particular topics, and an attempt is made to escape legal fetters imposed on its powers by resorting to forms of legislation calculated to mask the real subject-matter. Further, if a Legislature has, in fact, power to make the law its motives in making the law are irrelevant. Therefore the doctrine of colourable legislation does not touch ambit of the power or the motives behind exercise of the power, but only the manner of its exercise.

2010 - June [1] {C} (a) "Constitution of India is basically federal with strong unitary features." Discuss. (8 marks)

(b) Explain the writ jurisdictions of the Supreme Court and High Courts as provided in the Constitution of India. (6 marks)

Answer :

- (a) The Indian Constitution, though primarily federal in form, contains a strong unitary bias. Exercise of the numerous powers given to the centre by the Constitution gives it the unitary structure. Which features predominate depends upon circumstances and the prevailing situations. Ordinarily, it retains its federal features, but in times of emergencies like war or political instability, it converts into the unitary structure.

The Indian Constitution has proclaimed India as a Union of States, i.e. a federation. Let us examine both these features-

Federal features of the Constitution –

A federal system is one where the powers and duties are divided between a unified central authority and the different states of the nation. Items of national importance like defence, railways, post and telegraph, foreign affairs, citizenship etc. are included in the Union list and items of regional or local importance like agriculture,

law and order, health etc are placed in the State list. Both Union and State govern the items in the Concurrent list like succession, transfer of property, education etc. This division of powers is made concrete by inclusion in the Constitution (Seventh Schedule).

The features of a federal system as present in India are –

- Governance` at both state and centre level.
- Division of work into Union, State and Concurrent lists
- Allowing individual states to make their own internal laws
- Supremacy of the constitution, i.e. the Union and the State Governments function well within the limits defined in the Constitution.

The authority of the Court in matters of conflict between states and Union, or in matters of interpretation of the Constitution.

Unitary features of the Constitution –

A unitary system is one where the powers and functions are centralized. In India, this happens in times of emergencies, when the Union can make rules in relation to state matters too.

The features of a unitary system as present in India are –

- (a) To give directions to the States regarding how the matters in the State lists are to be concluded.
- (b) Power to legislate regarding some matters contained in the State List

Taking over powers of state governance in emergencies.

The States cannot secede from the Union

Single citizenship

Unified judiciary and public services

Union can create new states by altering boundaries of existing states

Hence, it can safely be termed that the Constitution of India is both unitary and federal. i.e. quasi-federal in nature. We could say that though federal in structure, the Indian Constitution is unitary at the core.

- (b)** The writ jurisdiction of the High Courts and the Supreme Court coincide at some points, but they are different in some key aspects.

Under Article 226 of the Constitution, the High Court has the power to issue not only writs of certiorari, prohibition and mandamus, but also other writs, directions and orders. The Indian High Court has jurisdiction to issue necessary directions and orders to ensure justice and equity. Moreover, this right is not restricted, but spreads to administrative action and judicial or quasi-judicial action also.

When the Supreme Court issues writs under Article 32 of the Constitution, they are mainly for the enforcement of fundamental rights mentioned in the Constitution itself.

The Madras High Court held in *Aditanar Educational Institution v. Assistant Director of Income-tax* (297 I.T.R. 376) that the relief under Article 226 of the Constitution of India can be granted in spite of the availability of alternate remedy under the statute, only based on undisputed facts. When the High Court finds that factual disputes are involved, it would not be desirable to deal with them in a writ petition. Under Article 32, a writ is preferred in case there is no other recourse available.

- 2010 - Dec [1] {C}** (a) Article 32 of the Constitution of India empowers the Supreme Court to enforce the fundamental rights guaranteed under Part III of the Constitution of India. Explain with the help of decided case law how the provisions of Article 32 of the Constitution of India, have helped in the enforcement of fundamental rights. (8 marks)
- (b) Discuss the ordinance making powers of the President of India and of the Governor of a State as provided in the Constitution of India. (6 marks)

Answer :

- (a) When the Supreme Court issues writs under Article 32 of the Constitution, they are mainly for the enforcement of fundamental rights mentioned in the Constitution itself. Remedies against violation of fundamental rights are available in the Constitution and under the ordinary laws both, but Article 32 makes it a fundamental right that a person whose fundamental right is violated has the right to move the Supreme Court by appropriate proceedings for the enforcement of his fundamental right. However, this right is purely remedial and not substantive. Moreover, a person need not first exhaust the other remedies and then go to the Supreme Court; he can directly raise the matter before the highest Court of the land and the Supreme Court is empowered to issue directions or orders or writs for the enforcement of the right which has been alleged.

The right available under this article can only be taken away or recalled when the Constitution itself is amended; there is no other way to abridge or remove it. It applies not only to the territory within the national bounds of the country but also to the area outside India which India controls, such as its consulates and embassies. Under this article, not only can any law be questioned, but it also extends to executive orders.

The Madras High Court held in *Aditanar Educational Institution v. Assistant Director of Income-tax* (297 I.T.R. 376) has held that the relief under Article 32 is preferred in case there is no other recourse available.

(RAMDAS ATHAWALE PETITIONER VERSUS UNION OF INDIA RESPONDENTS)

- (b) According to Article 53 of the Constitution of India, the President is the chief of the Executive and in this capacity he enjoys the power to make ordinances under Article 123 of the Constitution. This power comes into play when it is not possible

to make enactments through the normal constitutional machinery. Some important points related to this power are as follows –

- This power can be exercised for making any ordinance that is immediately needed.
- The President can make ordinances on any item on which the Parliament can legislate, but is currently unable to do so.
- Such ordinances will be temporary in effect, and they have to be placed before the Parliament when it is next in session.

Ordinance making power of the Governor of a state as provided in the Constitution of India

Under Article 213 the Governor has the power to make ordinances for a state when the house or houses of the state are not in session and it is essential to make a law. This is a part of the legislative powers given to the governor under the Constitution of India.

The following important points in this regard have to be kept in mind –

- This power can be utilized in cases of emergency.
- If there is a normal route to make the law available it must be followed.
- It can only be used to make laws that can be passed without the sanction of the President.
- The ordinance would only have temporary powers, and will have to be laid down before the houses when they are next in session.

This power will be used when both the houses or one house is not in session and it is not possible to make a law with the one house in session.

2011 - June [1] {C} (a) Explain powers of the Parliament to enact laws on subjects enumerated in the State List. (8 marks)

(b) Is it correct to say that Directive Principles of State Policy have to conform to and run as subsidiary to Fundamental Rights ? Discuss. (6 marks)

(c) Write in brief the importance of the writ of *habeas corpus*. (6 marks)

Answer :

(a) The Parliament can extend the legislative powers given to it by the Constitution to formulate laws under special situations to include certain subjects of the State List. Some of the conditions under which the Parliament may extend its powers include the situations explained below-

In the National Interest (Under Article 249)

Proclamation of Emergency (Article 250) in any state by the President.

If two states agree that the Parliament can legally make laws with respect to the two states, then the Parliament can make laws relating to any state or states (Under Article 252)

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Failure of Constitutional Machinery in a State as a result of the inefficiency of a State Legislature, as declared by a proclamation issued by the President (Under Article 356 (1) (b))

Normally both the Union Government and the State Governments operate within the limitations of the powers given to them by the Constitution. They enjoy equal powers to make laws relating to the Concurrent list items, which are of general importance such as succession, transfer of property, preventive detention, education, etc. If there arises a conflict between a law passed by the Union and that passed by one or more State Legislatures, precedence would be given to the law made by the Union Parliament. However, problem arises when either the Union or a State illegally encroaches upon the powers of the other legislature, or they may arise because the two laws do not coordinate. Only where the legislation is on a matter in the Concurrent List, it becomes important to apply the test of repugnancy and judge which act will apply. Normally the Union law is given precedence, unless the State has reserved a law for the approval of the President, in which case it will supersede the law made by the Union. However, the Union can at all times cause an alteration or amendment in the law.

- (b) The Supreme Court in the case of State of Madras v. Champakam Dorairajan (1951) SCR 525 has stated that, “the directive principles have to conform to and run subsidiary to the chapter on fundamental rights.” Later, in the case referred to above, the majority opinions reflected the view that what is fundamental in the governance of the country cannot be less significant than what is significant in the life of the individual. Another judge constituting the majority in that case said: “In building up a just social order it is sometimes imperative that the fundamental rights should be subordinated to directive principles.” This view says that the fundamental rights and DPSP are complementary, “neither part being superior to the other.”

The DPSP are seen as aids to interpret the Constitution, and more specifically to provide the basis, scope and extent of the content of a fundamental right.

- (c) The writ of Habeas Corpus – It is passed to ensure that a person who is confined without a legal cause being given gets justice. This writ orders the authority confining the person to give proper reasons for doing so. Articles 32 and 226 give the right to approach the Supreme Court and the High Courts for obtaining this writ. This writ is issued when a case outlining the need for such a writ is made. It ensures that no man is detained without the proper procedure being followed and without proper cause, and it keeps the authorities from arbitrary legal action. The person detained or his legal representative can move the court for this writ. This writ demands the restraining authority to present the detained person before the court with the proof that led to his arrest or detention. This allows the court to judge whether his detention was justified to begin with.

- 2011 - Dec [1] {C}** (a) "Article 21 of the Constitution of India has been so transformed by the judiciary that it now encompasses all conceivable rights within its ambit." Discuss. (8 marks)
- (b) What do you understand by the expression 'State' under Part-III of the Constitution of India? Explain with the help of decided case law on the point. (6 marks)
- (c) Explain 'delegated legislation'. State the circumstances in which delegated legislation is possible. (6 marks)

Answer :

- (a) The first decision given to interpret the scope and meaning of life and personal liberty under Article 21 of the Indian constitution was:

A.K.Gopalan VS. State Of Madras

The apex court interpreted that the words "procedure established by law" in article 21 refers only to state made statutes/laws. If any statutory law prescribes a procedure for depriving a person of his rights or personal liberty it should meet the requirements of article 21.

This was over ruled in the case of *R.C.Cooper VS. Union of India*; after this there were a series of decisions by the apex court including that of *Maneka Gandhi vs. Union of India* in which it was held that any law that deprives life and liberty must be just and fair. "Procedure" in Article 21 means fair, not formal procedure. Now it is settled that Article 21 confers positive rights to life and liberty The word life in Article 21 means a life of dignity and not just mere animal survival. In 1978, the 44th amendment of the constitution took place, Article 359 was amended, and it provided that Article 20 and 21 could not be suspended even during declaration of an emergency. In the case of P. Rathinam case it was held that right to live includes right not to live. Physical as well as mental health both are treated as integral part of right to live upholding that without good health, neither civil nor political rights cannot be reasonably enjoyed. Life in its expanded horizon includes everything that gives meaning to a person's life including culture, heritage and tradition with dignity of a person.

What can be included in the right to protection of life and personal liberty as guaranteed in Article 21 of the Constitution of India can be seen from the following cases -

Kartar Singh vs. State of Punjab {(1994) 3 sec 569}

Speedy trial is an essential part of the fundamental rights guaranteed by Article 21 of the Indian constitution.

Unni Krishnan vs. State of Andhra Pradesh the apex court has widened the scope of Article 21 and has provided with the rights Article 21 embraces within itself. They are

Right to go abroad
Right to privacy
Right against solitary confinement
Right against delayed execution
Right to shelter
Right against custodial death
Right against public hearing
Doctor's assistance

Along with all these above-mentioned rights, it was also observed that the right to education would also be included as apart of right to life.

Thus with the above brief preview of Article 21 it is clear that it has a multidimensional interpretation. Any arbitrary, whimsical and fanciful act of the part of any state depriving the life or personal liberty would be against Article 21 of the Indian constitution.

- (b) The definition of 'State' has been included in Article 12 of the Constitution of India. It includes not only entities termed as 'state' but also those termed as 'state instrumentalities'. It includes the government and the parliament of the nation and of every state, local and other authorities like the municipalities, district boards, and any other instrumentality of state, including corporations, government departments and state monopolies. The deciding factors would be the funding of the entity and the protection of the state. If an entity is funded and protected by the state, it too would be included in the definition of 'state' and be termed as a 'state instrumentality'.

The authorities and instrumentalities specified in Article 12 are –

The Government and Parliament of India;

The Government and the legislature of each of the states;

All local authorities; and

Other authorities within the territory of India or under the control of the government of India.

The first two categories include the legislative and executive wings of the union and the states. The expression "local authorities" refers to authorities like municipalities, district boards, panchayats, improvement trusts, port trusts, mining settlement boards, etc.

Other authorities are those within the territory of India or under the control of the government of India. In the *Electricity Board, Rajasthan v. Mohan Lal* case, the Supreme Court held that 'other authorities' would include all authorities created by the Constitution or statute on which powers are conferred by law. It was not necessary that the statutory authority should be engaged in performing government or sovereign functions. This decision effectively overruled some earlier decisions holding 'university' not to be "the State" within the meaning of Article 12. As per this case then, the universities have been included in the definition of "State".

- (c) Delegated legislation includes in its folds that part of the power of the legislatures that they could exercise, but which has been delegated because of paucity of time and overloading of work. This leads to better functionality and saving of time. However, while delegating its own powers to make laws, the legislature has to keep in mind that it can only delegate within the powers given by the Constitution of India, hence it cannot delegate that which the Constitution does not authorize it to. Further, there are two types of powers, supreme powers and subordinate ones. The supreme powers have to be exercised by the legislature; these cannot be delegated. However, the subordinate powers can be delegated. While doing so it needs to take care of the following –

There should be no delegation of supreme powers.

The legislature should guide the authority to which the powers are delegated to, so that the statute made fits the requirements in all respects.

Delegation is valid if within prescribed limits and as per directions given by the legislature. If there are no standards prescribed by the legislature, and only powers to make the law are delegated, it is not proper.

Whatever form of delegated legislation it is, they are all covered by the same principle. Delegated legislation can take the following forms-

Conditional legislation – That which is bound by the conditions prescribed, following which the statute comes into play.

Subordinate legislation – This type is subordinate to the supreme legislation.

Supplementary legislation – This is in addition to the main legislation; it only adds to the main one.

2012 - June [1] {C} (a) What is the scope of Article 14 of the Constitution of India? To what extent is it correct to say that Article 14 forbids class legislation, but does not forbid classification? (8 marks)

(b) Discuss the fundamental duties imposed on citizens of India. (6 marks)

Answer :

(a) This Article 14 of the Constitution of India is about equality before law. This article envisages equality between equals, i.e., those equal in the eyes of law have to be treated equally. A direct corollary of this article is that it is not possible to have different rules for people belonging to the same class. Therefore, it is possible to have classification but not class legislation under the Constitution of India. Classification would be valid if it fulfils the following tests –

- There should be valid factors distinguishing one group from another, while making rules for one group and not for another.
- The differences should be created to achieve some objective enshrined in the act.
- There should be valid bases for classification.

Even if a class has a single person constituting it, it is not invalid. Moreover, the person who says that a classification is invalid has to prove so.

This right is enshrined in Article 14 under Right of Equality as provided In the Constitution of India. The equality before law implies equal protection of the laws and that all persons are equal in the eyes of the law; if two persons are similar as far as their situation is concerned; they will be treated as equal in law. 'Equal protection of the laws' implies that all persons who are equal in the eyes of the law will receive same treatment.

This article involves the use of classification for the purpose of better providing equality. Classification means segregating people into groups according to a commonly identified feature, viz income, geographical location, gender, etc. so that their special needs can better be catered to and their legal rights ensured. By itself, classification is not against the Constitution. Rather, it helps in upholding the principle of equality. In doing so, even if the class has a single individual in it, it will still be a valid class.

For example, if the Constitution foresees the segregation of backward classes, the desire here is to better accommodate their needs; this is discrimination in favour, not discrimination against anyone. This in itself means that discrimination in order to make the conditions of a class better is allowed, because this in itself upholds the very foundations of the Constitution and is hence allowed.

- (b) The 42nd Amendment Act passed in 1976 added the Fundamental Duties of citizens to the Constitution. They are given in Article 51-A of the constitution. They include the addition made by the 86th constitutional amendment in 2002, which enjoins every citizen, "who is a parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years".

These are treated like moral obligations of the citizens of India. The important features of Fundamental Duties are –

They are non-justiciable.

They cover both citizens and the State.

They ensure equality of individuals.

They help in maintaining the environment and public property, to develop "scientific temper", to abjure violence, to strive towards excellence and to provide free and compulsory education.

They develop respect towards the nation and its symbols, and to cherish the heritage and secure the defence of India.

The basic Fundamental Duties are -

To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.

To cherish and follow the noble ideals which inspired our national struggle for freedom.

To uphold and protect the sovereignty, unity and integrity of India.

To defend the country and render national service when called upon to do so.

To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.

To value and preserve the rich heritage of our composite culture.

To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

To develop the scientific temper, humanism and the spirit of inquiry and reform.

To safeguard public property and to abjure violence.

To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.

It has to be kept in mind, however, that the Fundamental Duties are not enforceable by writs; their fulfilment can only be ensured by educating the citizens as to their necessity and importance.

2012 - Dec [1] {C} (a) Creation of monopoly rights in favour of a person or body of persons to carry on any business *prima facie* affects the freedom of trade. Can the State create a monopoly in favour of itself? Answer citing case law, if any. (8 marks)

(b) Describe in brief the powers of Parliament to make laws on the subjects enumerated in the State List. (6 marks)

(c) The true place of a preamble in a statute was at one time the subject of conflicting decisions. Is such an opinion still prevailing? Discuss, citing case law. (6 marks)

Answer:

(a) Freedom of trade and profession is provided under Article 19 (1) (g) of the Constitution of India. This gives the citizens the right to pursue any trade, profession, business or occupation in any place within India. This right is, however, not absolute. It can be restricted by the State in the following cases –

- When the State feels it is essential to do so in the public interest.
- When it is felt that there should be some basic qualifications for any occupation or profession, it can provide so.
- When the State feels that it needs to establish control in some area of trade, occupation or business, so that it can be better tended.

These restrictions shall be considered valid when the conditions of the trade or business restricted at that time justify them, for example, for keeping the price of essential services down. Hence, the State can take over these rights to any extent—from being one of the participants in that trade to being the only one, provided it is justified in doing so.

On behalf of the State it was argued that Article 19(6) of the Constitution indicated, as in its amended state, that the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business or industry or service, whether to the exclusion, complete or partial, of the citizens or otherwise, was a permissible restriction on an individual's right of trading. [*Sagir Ahmad and Ors. vs The Govt. of The State of Uttar ... on 17 November, 1953*]

- (b) The Parliament can extend the legislative powers given to it by the Constitution to formulate laws under special situations to include certain subjects of the State List. Some of the conditions under which the Parliament may extend its powers include the situations explained below-

In the National Interest (Under Article 249)

Proclamation of Emergency (Article 250) in any state by the President.

If two states agree that the Parliament can legally make laws with respect to the two states, then the Parliament can make laws relating to any state or states (Under Article 252)

For the implementation of treaties in the international interest of the country (Under Article 253).

Failure of Constitutional Machinery in a State as a result of the inefficiency of a State Legislature, as declared by a proclamation issued by the President (Under Article 356 (1) (b))

Normally both the Union Government and the State Governments operate within the limitations of the powers given to them by the Constitution. They enjoy equal powers to make laws relating to the concurrent list items, which are of general importance such as succession, transfer of property, preventive detention, education, etc. If there arises a conflict between a law passed by the Union and that passed by one or more State Legislatures, precedence would be given to the law made by the Union Parliament. However, problem arises when either the Union or a State illegally encroaches upon the powers of the other legislature, or they may arise because the two laws do not coordinate. Only where the legislation is on a matter in the Concurrent List, it becomes important to apply the test of repugnancy and judge which act will apply. Normally the Union law is given precedence, unless the State has reserved a law for the approval of the President, in which case it will supersede the law made by the Union. However, the Union can at all times cause an alteration or amendment in the law.

- (c) The preamble of an Act is the introduction or the key to the Act. Although not a part of the Act itself, and so does not perform any legal function, it is a valuable key for understanding the Act and resolving the ambiguities in drafting. The preamble provides the introduction to the Act and indicates its coverage. Both these views are taken together in comprehending the importance of preambles in interpretation

of statutes. If the statute is clear in itself, the preamble is not resorted to for gaining comprehension; if it is ambiguous or unclear, then the preamble can be used to give a direction to the interpretation. It thus prescribes an outline to the Act itself, letting the person reading it know what all it includes within its bounds. The preamble specifies the intention behind the making of the act, i.e. what is the mischief that the makers of the act sought to correct. It can be one of the key starting points when we begin to understand a statute. The next in line is the judgment of the Supreme Court (*Girdhari Lal & Sons v. Balbir Nath Mathur*) wherein, on the subject of interpretation of Statutes, the Supreme Court had laid down the law as hereunder:

Parliamentary intention may be gathered from several sources. First, of course, it must be gathered from the statute itself, next from the preamble to the statute, next from the Statement of Objects and Reasons, thereafter from parliamentary debates, reports of committees and commissions which preceded the legislation and finally from all legitimate and admissible sources from where there may be light. Regard must be had to legislative history too.

Also, **Novartis Ag Represented By It'S ... vs Union Of India (Uoi) Through The ... on 6 August, 2007.**

Hamdard Dawakhana (Wakf) Lal ... vs Union Of India And Others on 18 December, 1959.

2013 - June [1] {C} (a) Discuss in brief the doctrine of severability. (8 marks)

(b) Describe the right of minorities to establish and administer educational institutions as enshrined in the Constitution of India. (6 marks)

Answer:

(a) **The Doctrine of Severability:** This Doctrine is contained in Article 13 of the Constitution of India. According to this doctrine, the part of a statute which is not compatible with the fundamental rights provided for in the Constitution will be severed and declared invalid. This helps to maintain both constitutionality and saves the statutes from being struck down completely. The rest of the act that is allowed to exist can operate separately. The only thing to be considered here is whether the leftover portion is enough to still fulfill the objectives of the Act. This doctrine is a very useful one, used in both contract and common law, as it is useful in saving redundancy of contracts and acts. Under this, Courts construct the meaning of a contract or act by severing the troubling part, if it is severable and only if severability is not possible, the entire act is scrapped (Article 154). Similarly, the courts have the power to sever an unconstitutional provision in a statute and enforce the remainder of the statute if it can exist without the severed part (Article 155). This doctrine has been provided to increase the usability of statutory acts and legal contracts, so as to prevent redundancy and to make future use possible.

(b) Article 30 of the Constitution of India enshrines minority rights. As per the Constitution, minorities include both religious and linguistic minorities. This Article gives the following rights to minorities:

- Right to setup and run educational institutions.
- Right to be duly compensated in case of compulsory acquisition of property of such minority institutions.
- Right against discrimination by the State in giving aid to educational institutions, on the grounds of an institution being governed by a minority faction.

Case: *T.M.A. Pai Foundation v. State of Karnataka.*

2013 - June [2] (c) What is meant by 'preventive detention'? What are the safeguards available against preventive detention? (6 marks)

Answer:

Preventive detention and safeguards against it:

'Preventive detention' implies the detention of a person without trial in cases where the evidence before the authority is not enough to make out a fully drawn legal charge or to secure the conviction of the detenu (detained person) by legal proof, but is sufficient enough to justify his detention.

The aim of preventive detention is to check a person from doing something that the evidence implies that he might do. Hence, this measure operates simply on the basis of suspicion or belief or probability of something that might be done by the detained person. In order to prevent abuse of power by the authorities under this provision, the framers of the Constitution provided that if the proper process is not followed, the detention will be deemed to be invalid.

According to Article 22 of the Indian Constitution, no person shall be detained in custody without being informed, as early as possible, of the grounds for such arrest. He shall also be assured of the right to consult and to be defended by a legal practitioner of his choosing. Upon arrest, such a person is to be produced before the nearest magistrate within a period of twenty-four hours of such arrest. This time is exclusive of the time needed for such journey from the place of arrest to the court of magistrate. A person can be detained in custody beyond the said period only with the permission of the magistrate, and upon sufficient cause being shown.

It is not a punitive but a preventive measure. While the object of the punitive detention is to punish a person for what he has already done, the object of preventive detention is not to punish a man for having done something but intercept him/her before he/she does it and prevent him/her from doing it. No offence is proved nor any charges is formulated. The sole justification of such detention is suspicion or reasonable probability of the detenu committing some act likely to cause harm to society or endanger the security of the Government, and not criminal conviction which can only be warranted by legal evidence.

Constitutional Safeguards Against Preventive Detention Laws: Though the Constitution has recognised the necessity of laws as to preventive detention, it has also provided safeguards to mitigate their harshness by placing fetters on legislative power conferred on the Legislature. The power of preventive detention is acquiesced in by the Constitution as a necessary evil and therefore hedged in by diverse procedural safeguards to minimise as much as possible the danger of its misuse. It is for the reason that Article 22 has been given a place in the Chapter on "guaranteed rights". Clauses (4) to (7) guarantee the following safeguards to a person arrested under preventive detention law :

- (a) review by Advisory Board;
- (b) grounds of Detention and Representation; and
- (c) composition and Procedure of Advisory Board.

2013 - Dec [1] {C} (a) "Article 14 of the Constitution of India does not rule out classification for purposes of legislation; what it requires is a valid classification for the same." Explain. (8 marks)

(b) Describe the power of the President of India to promulgate ordinances. (6 marks)

PRACTICAL QUESTIONS

2009 - June [7] (b) In a case, Hamid was terminated from the police service. Hamid filed a writ petition against termination order on the ground that a reasonable opportunity of being heard was not given to him by the government. The writ petition was dismissed by the court as the government proved that reasonable opportunity of being heard had been given to the petitioner. Afterwards, Hamid filed another writ petition on the ground that as he was appointed by the Director General of Police, termination by the order of Deputy Inspector General of Police was in violation of Article 311 (1) of the Constitution of India. Decide the validity of the second writ petition. (5 marks)

Answer :

Once the court has dismissed a writ petition, the same may not be presented again to the same court. In this case, the court has dismissed the petition as the government proved that reasonable opportunity of being heard had been given to the petitioner. The second writ Hamid filed, on the ground that as he was appointed by the Director General of Police, and that the termination by the order of Deputy Inspector General of Police was in violation of Article 311(1) of the Constitution of India, hence, is not valid.

2009 - Dec [6] (b) Government of Madhya Pradesh passed a law prohibiting the manufacture of bidis in the villages during the agricultural season. No person residing in the village could employ any other person nor engage himself in the manufacture of

bidis during the agricultural season. The objective of the provision was to ensure adequate supply of labour for agricultural purposes. A bidi manufacturer could not even engage labour from outside the State, and so, had to suspend manufacture of bidis during the agricultural season. Even villagers incapable of engaging in agriculture, like old persons, women and children, *etc.*, who supplemented their income by engaging themselves in manufacturing bidis were prohibited without any reason. Decide whether law passed by Government of Madhya Pradesh is constitutionally valid. (5 marks)

Answer :

The facts of the problem are based on the leading Supreme Court case namely *Chintamana Rao v. State of M.P.*, AIR 1951 SC 118 where constitutionality of Madhya Pradesh Act which empowered the government to prohibit all persons residing in certain areas from engaging in manufacture of bidis was challenged. In this case the prohibition was held to be unreasonable because it was of excessive nature beyond what is required in the interest of public.

The prohibition infringed the fundamental right guaranteed under Article 19(1) (g) of the Constitution which provides that all citizens shall have the right to practice any profession or to carry any occupation, trade or business. At the same time, the freedom guaranteed under Article 19(1) (g) is not uncontrolled, for, clause (6) of the Article authorises legislation which (i) imposes reasonable restrictions on this freedom in the interests of the general public; (ii) prescribes professional or technical qualifications necessary for carrying on any profession, trade or business; and (iii) enables the State to carry on any trade or business to the exclusion of private citizens, wholly or partially. The emphasis of the courts has been on social control and social policy. The vital principle which has to be kept in mind is that the restrictive law should strike a proper balance between the freedom guaranteed under Article 19(1) (g) and the social control permitted by clause (6) of Article 19. The restriction must not be of an excessive nature beyond what is required in the interests of the public.

CS Inter Gr. I

SHORT NOTES

2006 - Dec [1] {C} (b) Write a note on 'preventive detention'. (6 marks)

Answer :

'Preventive detention' implies the detention of a person without trial in cases where the evidence before the authority is not enough to make out a fully drawn legal charge or to secure the conviction of the detainee by legal proof, but is sufficient enough to justify his detention.

The aim of preventive detention is to check a person from doing something that the evidence implies that he might do. Hence, this measure operates simply on the basis of suspicion or belief or probability of something that might be done by the detained person. In order to prevent abuse of power by the authorities under this provision, the framers of the Constitution provided that if the proper process is not followed, the detention will be deemed to be invalid.

According to Article 22 of the Indian Constitution, no person shall be detained in custody without being informed, as early as possible, of the grounds for such arrest. He shall also be assured of the right to consult and to be defended by a legal practitioner of his choosing. Upon arrest, such a person is to be produced before the nearest magistrate within a period of twenty-four hours of such arrest. This time is exclusive of the time needed for such journey from the place of arrest to the court of magistrate. A person can be detained in custody beyond the said period only with the permission of the magistrate, and upon sufficient cause being shown.

The exceptions to this article are enemy aliens and any person detained under a currently applicable law that provides for preventive detention. Even such a law cannot allow for a person to be detained beyond a period of three months unless it has been decided by a panel of qualified judges of High Court that such detention is justified and tenable, on grounds of sufficient cause. Then too, such detention cannot go beyond the period specified by any parliamentary law.

The authority passing such an order shall communicate to such person the grounds on which the order has been based. The detainee shall also be given the earliest opportunity of making a representation against the order.

DISTINGUISH BETWEEN

2006 - June [1] {C} (b) Differentiate between the 'powers of the Supreme Court under Article 32' and powers of High Courts under Article 226' of the Constitution of India.

(6 marks)

Answer :

The Constitution of India gives the citizens the right to protect their fundamental rights with the help of the courts. Both Articles 32 and 226 provide protection for fundamental rights. However, there exist very basic differences between the two-

- (a) Article 32 can be used to safeguard fundamental rights only, whereas Article 226 can be used to protect other rights also.
- (b) Article 32 requires a breach of a fundamental right to be activated and so is narrower in scope, whereas Article 226 can be used even when any other right is violated, and is wider in scope.

- (c) Another chief difference is that a petition under Article 32 has to be honoured by the Supreme Court, whereas under Article 226 the High Court has the right to refuse to address the case.

Moreover, the relief available under Article 32 is in itself in the nature of a fundamental right.

DESCRIPTIVE QUESTIONS

- 2004 - June [1] {C}** (a) "The Constitution of India is federal in nature with a strong centralising tendency". Discuss. (8 marks)
- (b) "No person shall be deprived of his life or personal liberty except according to procedure established by law." Discuss. (6 marks)
- (c) Explain the 'doctrine of severability'. (6 marks)

Answer :

- (a) Please refer 2007 - June [1] {C} (a) on Page no. [50](#)
- (b) The main aim of Article 21 is to ensure personal liberty except according to procedure established by law. This implies that if it is an action initiated by the State only then will the right be available. Hence, this right works to the exclusion of actions initiated by private individuals, in which case the aggrieved would have to take refuge under Article 226 of the constitution or under general law. However, where the act of a private individual supported by the state infringes the personal liberty or life of another person, the aggrieved will certainly receive the protection of Article 21.

'State' includes government departments, legislature, administration, and local authorities exercising statutory powers etc., but it does not include non-statutory or private bodies having no statutory powers. Therefore, the fundamental right guaranteed under Article 21 relates only to the acts of State or acts under the authority of the State that are not according to procedure established by law. 'Right to Life' relates to the dignity of life, and includes all things that add meaning and dignity to the life of an individual.

In the case of *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others* it was said that:

Article 21 requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful.

In another case of *Olga Tellis and others v. Bombay Municipal Corporation and others*, it was further observed : Just as a malafide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is

therefore essential that the procedure prescribed by law for depriving a person of his fundamental right must conform the norms of justice and fair play. Procedure, which is not just or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it.

The expanded scope of Article 21 has been explained by the Apex Court in the case of *Unni Krishnan v. State of A.P.* and the Apex Court itself provided the list of some of the rights covered under Article 21 on the basis of earlier pronouncements and some of them are listed below:

1. The right to go abroad.
2. The right to privacy.
3. The right against solitary confinement.
4. The right against hand cuffing.
5. The right against delayed execution.
6. The right to shelter.
7. The right against custodial death.
8. The right against public hanging.
9. Doctors assistance.

- (c) This Doctrine is contained in Article 13 of the Constitution of India. According to this doctrine, the part of a statute which is not compatible with the fundamental rights provided for in the Constitution will be severed and declared invalid. This helps to maintain both constitutionality and saves the statutes from being struck down completely. The rest of the act that is allowed to exist can operate separately. The only thing to be considered here is whether the leftover portion is enough to still fulfil the objectives of the act.

2004 - Dec [1] {C} (a) Discuss the legislative powers of the Parliament and State Assemblies with respect to different subjects of legislation as provided under the Constitution of India. (8 marks)

(b) Discuss the position of fundamental rights *vis-a-vis* directive principles of State policy. (6 marks)

(c) What is 'delegated legislation'? What are the limits under which powers of delegated legislation may be exercised? (6 marks)

Answer :

(a) The division of legislative powers between the Parliament and the State assemblies and the rules for this division are as under –

- There are three lists – Union, state and concurrent. According to this division, subjects are divided amongst the Parliament, the State assemblies and both of them respectively.

- The Union list presides over the other two, of that if by chance there is an item that is common to the Union and another list, the Union list shall prevail.
 - Matters that are in the State list will be dealt with by the states only, and even if the states have not provided for it, the Parliament cannot do so.
 - The third list is open for both, and both their laws shall prevail to the point they do not overlap.
 - In case both laws overlap, the Parliamentary law shall prevail.
 - In case of a subject in the Concurrent list, the state law shall be allowed to prevail till the Parliament makes a law in that regard, after which the Parliamentary law shall have force.
 - In case of matters not provided for anywhere, the Parliament shall have exclusive rights; these are the residuary legislative powers of the Parliament.
- (b) The Directive Principles of State Policy and the Fundamental Rights are two important parts of the Indian Constitution. Where the Rights provide safety to the basic freedom of the people, the Directives are guiding principles governing the actions of the states. They are meant for creating a social order by bringing about social, economic, and political equality, justice, liberty and fraternity.
- Wherever the Directive Principles nullify or hinder the Rights, the Rights are to be given precedence. However, The Forty-second Amendment (January 1977) brought in the view that it was not possible to declare a law made to put into operation any of the Directive Principles as unconstitutional on the grounds that it violated one or more of the Fundamental Rights, since the Fundamental Rights are sacrosanct.
- It was held by the Supreme Court that the Directive Principles could be resorted to as an aid to interpret the Fundamental Rights. Following the concept of Harmonious Construction, it was decided that interpretation could be taken which would render the Fundamental Rights most effective in usage.
- (c) Delegated or subordinate legislation may be defined as rules of law marking under the authority of an Act of Parliament. Although laws are to be made by legislature, the legislature by statute may delegate its powers to other body of persons. Such statute is known as the enabling Act and it lays down the broad principles and leaves the detailed rules to be provided by regulations made by a Minister or other body of persons. Delegated legislation exists in the form of rules, regulations, orders and bye laws.
- Limits of Delegated Legislation* — On the question whether delegation of powers should be within some limit, it was laid down by the Supreme Court In *Re. Delhi Laws Act, 1912* (AIR 1951 SC 332) that the legislature cannot delegate its essential legislative functions, which consists of declaring the legislative policy and

laying down the standard which is to be enacted into a rule of law with sufficient clarity and what can be delegated is the task of subordinate legislation which by very nature is ancillary to the statute which delegates the power to make it effective. The same had also been held in *Ajoy Kumar Banerjee v. Union of India* (1984) 5, SCC 127.

Following principles have been laid down by various decisions:

- (a) The legislature cannot delegate its primary legislative functions to an outside authority in any case;
- (b) The legislature must itself lay down the legislative policy and principles and must afford guidance to rule making body;
- (c) Act delegating law-making powers shall be invalid if it lays down no principles and standards for guidance.
- (d) If the legislature has performed its essential function of laying down the policy of the law providing guidance there is no constitutional bar against delegation of subsidiary or ancillary powers in that behalf to an outside authority.

2005 - June [1] {C} (a) Explain the *writ of mandamus* as an extra-ordinary constitutional remedy. (8 marks)

(b) Discuss the powers of the Governor relating to issuance of ordinances. (6 marks)

(c) Mention the provisions relating to freedom of trade, commerce and intercourse in the Constitution of India. (6 marks)

Answer :

- (a) Mandamus literally means a command. Hence, the writ of mandamus is, a command from a superior Court to any Government, inferior Court, corporation or public authority to do or to forbear from doing some specific act which that body is obliged under law to do or refrain from doing, as the case may be, and which is in the nature of a public duty and in certain cases of a statutory duty. In Halsbury's Laws of England, writ of mandamus has been defined as follows: The writ of mandamus is a writ of most extensive remedial nature and is, in form a command issuing from the High Court of Justice directed to any person, Corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy defects of Justice; and accordingly it will issue, to the end that Justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative remedy, yet that mode of redress is less convenient, beneficial and effectual.

The writ of mandamus will lie only where there is a statutory duty imposed upon the officer and failure on his part to discharge that statutory obligation. The chief function of this writ is to compel the performance of public duties prescribed

by the statute and ensure that subordinate tribunals and officials perform their public functions within the limits of their jurisdiction. Before a mandamus is issued to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has the legal right under the statute to enforce its performance.

A writ of mandamus will lie where the government or public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a statute or a rule or a policy decision or exercised such discretion mala fide or on irrelevant considerations or in such a manner as to frustrate the object of conferring such discretion. No mandamus will lie where the duty sought to be enforced is of a discretionary nature nor will it lie to compel performance of an act contrary to law.

Under the Constitution of India, such power of writ jurisdiction is vested with the Supreme Court under Article 32 and with the High Courts under Article 226. The writ of mandamus does not lie against the President of India, Governor of a State, private individual or private body except where the State is in collusion with such private party in the matter of contravention of any provision of the constitution of a statute. It is a discretionary remedy and the High Court may refuse to issue writ of mandamus if alternative remedy exists except in case of infringement of a fundamental right.

- (b)** As per Article 154 of the Constitution, the Governor of a State is the executive head of the State and all executive powers emanates from him. The constitutional position of the Governor in relation to the Legislature and administration is the same as that of the Union President. Like the President, the Governor possesses executive, legislative and judicial powers except that he has no diplomatic or military powers.

The Governor's power to make Ordinances has been stipulated under Article 213 of the Constitution of India having the force of an Act of the State Legislature. It is similar in scope to the Ordinance making power of the President of India. The slight difference is that Article 213 requires the Governor to get the assent of the President on certain matters. The Governor can make Ordinances only when the State Legislature and in the States having bicameral legislatures both the Houses, are not in session. He must be satisfied that the circumstances exist where he must take the action by issuing the Ordinance with the aid and advice of the Council of Ministers. But under the following circumstances the Governor cannot promulgate any Ordinance without prior instructions from the President if:

- (i) A Bill containing the same provisions requires previous sanction of President for its introduction into the Legislature; or
- (ii) the Governor would have deemed it necessary to reserve the Bill containing the same provisions for the consideration of the President; or

- (iii) an Act of the State legislature containing the same provisions would under this Constitution have been invalid unless having been reserved for the consideration of the President, it had received the assent of the President.

The Ordinance must be laid before both Houses of the State Legislature when they reassemble and shall automatically cease to have effect at the expiration of six weeks from the date of the re-assembly unless disapproved earlier by that legislature.

- (c) Under Article 301 of the Constitution, the freedom of trade commerce and inter-course has been guaranteed. It says trade, commerce and intercourse throughout the territory of India shall be free. The framers of the Constitution were conscious that free trade, commerce and intercourse throughout the territory of India is necessary. At the same time, such freedom may require to be curtailed or curbed in public interest and the Parliament and the State legislature have been given powers under Article 302,303 and 304.

While Article 301 imposes a general limitation on legislative power to secure that trade, commerce and intercourse shall be free throughout the territory of India, Article 302 empowers Parliament to impose reasonable general restrictions upon that freedom. The restrictions which will attract Article 301 must be those which directly and immediately restrict or impede the free flow or movement of trade. Only those taxes which directly and immediately restrict trade would fall within the purview of Article 301. Article 303(1) prohibits Parliament from giving preference from one State to another and a similar restriction is placed on the States. Article 304 (a) places imported goods from sister States on par with similar goods manufactured or produced within the State.

The object of Part XIII is not to make inter-state trade commerce and intercourse absolutely free. Reasonable restrictions in public interest are permissible. Regulator or compensatory measures cannot be regarded as violative of the freedom unless they are shown to be colourable measures to restrict the free flow of trade, commerce and intercourse.

Article 301 applies not only to inter-state trade but also to intra-state trade, commerce and intercourse. But it will not cover foreign trade or the trade beyond the territory of India. Article 301 is couched in terms of the widest amplitude. Trade, commerce and intercourse are thereby declared free and unhampered throughout the territory of India. All restrictions, which directly and immediately affect the movement of trade, are declared by Article 301 to be ineffective,

The object of the freedom declared by this Article is to ensure the economic unity of India which should not be hampered by internal barriers. In this regard, the Supreme Court laid down in *Atiabari Tea Co. Ltd. v. State of Orissa*, AIR 1951 S. 232 that the laws which "directly and immediately" restrict or impede the freedom of trade and commerce shall be unconstitutional. The word "intercourse" in this Article has been used in a very wider sense covering not only "trade and commerce but also movement and dealings even of a non-commercial nature.

2005 - Dec [1] {C} (a) "None of the fundamental rights to freedom is absolute." Comment and explain the reasonable restrictions which can be imposed on the freedom of speech and expression. (8 marks)

(b) On what grounds and against whom can the writ of certiorari be issued? (6 marks)

(c) Discuss in brief the rule of colourable legislation. (6 marks)

Answer :

(a) This statement is true to a large extent. The freedom of speech and of the expression does not bestow an absolute right to express without any responsibility. The restriction to this is placed by Article 19 (Clause (2)) of the Indian constitution that enables the legislature to impose reasonable restrictions on free speech to ensure the following:

Security of the State – actions intended to overthrow the government, waging of war and rebellion against the government, external aggression or war, etc., may be restrained. Friendly relations with foreign States – to stop the friendly relations of India with other States from being jeopardized. Public order – for general peace, safety and tranquility. Decency and morality - to stop obscenity and indecency from spreading. Prevention of contempt of court – includes both civil contempt or criminal contempt prevention against defamation - any statement that injures the reputation of another is to be stopped. Discouraging incitement to commit an offence, and maintaining sovereignty and integrity of India.

This can, however, be done by a duly enacted law and not by mere executive action. The Constitution, hence, allows reasonable restrictions to be placed on the rights of speech and expression. The Supreme Court in *A K Gopalan vs State of Madras 1950* has also held that Fundamental Rights are not absolute.

(b) This is one of the five writs allowed to be issued by the Supreme Court or the high courts for protection of Fundamental Rights. The writ of certiorari for nullifying the order already passed by an inferior court. Hence, this writ cannot be used when a case is pending, it can be used once a decision is passed by a court.

Essential conditions for the issue of the writ of certiorari are as under:

(a) It can be issued only against a court, tribunal or official giving decision regarding a matter which they do not have authority to decide upon.

(b) The decision is either faulty, or passed without or against the principle of natural justice.

The Writ of Certiorari is used to ask for a review of the decision by a lower court. Literally, it means "to be informed of, or to be made certain in regard to"; it means the higher court, makes sure that the decision of the lower court is correct, by reviewing the actions of the lower court. Normally this writ is used when the higher court feels that the lower court has made a mistake regarding the judgment

of the case, or when it has not been properly considered by the lower court, or it has acted beyond its powers or jurisdiction. Upon the filing of this writ, the case is removed to the High Court for further proceedings.

The party that loses the case normally files this writ. The writ includes the names and other details of all the parties involved in the case, the issue in question and its details, the points of law presented for review and reasons for filing the writ petition.

- (c) Where legislative powers are divided into two bodies which have to act within their respective specific legislative spheres, there questions do arise as to whether the legislation in a particular case has or has not in respect of subject matter of the statute, or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent or direct, but it may be disguised, covert and indirect. In the later class of legislation the expression 'colourable legislation' has been applied in certain judicial decisions.

Rule of colourable legislation conveys that although a legislature in passing a statute purports to act within the limits of its powers, yet in substance and in reality it transgresses those powers, the transgression being veiled by what appears on proper examination to be a mere practice or disguise. In other words, it is the substance of the Act that is material and not merely the form and if the subject matter in substance is something, which is beyond the powers of the legislature to legislate upon, the form in which the law is clothed would not save from declaring it as *ultravires*.

In *Shakammerayana v. State of Mysore* AIR 1966 SC 1571, the Supreme Court observed that the doctrine of colourable legislation is relevant only in connection with the question of legislative competence. Objections based on colourable legislation have relevance only in situation when the power is restricted to particular topics and an attempt is made to escape legal fetters imposed on its powers by resorting to forms of legislation calculated to mask the real subject matter.

2006 - June [1] {C} (a) "Article 14 of the Constitution of India forbids class legislation, but does not forbid classification." Discuss. (10 marks)

(c) When can a writ of *quo warranto* be issued? (4 marks)

Answer :

- (a) Article 14 of the Constitution says that "the States shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

As is evident, Article 14 guarantees to every person the right to equality before the law or the equal protection of the laws. Article 14 applies to all persons and is not limited to citizens.

A right conferred on persons that they shall not be denied equal protection of the laws does not mean the protection of the same laws for all. It is here that the doctrine of classification steps in and gives content and significance to the guarantee of the equal protection of the laws. To separate persons similarly situated from those who are not, legislative classification or distinction is made carefully between the persons who are and who are not similarly situated.

Test of valid classification

Since a distinction is to be made for the purpose of enacting a legislation, it must pass the classical test enunciated by the Supreme Court in *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75. Permissible classification must satisfy two conditions, namely; (i) it must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) the differentia must have a rational nexus with the object sought to be achieved by the statute in question.

The classification may be founded on different basis, such as geographical or according to objects or occupation or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. The rules with respect to permissible classification as evolved in the various decisions have been summarised by the Supreme Court in *Ram Kishan Dalmiya v. Justice Tendulkar*, AIR 1958 S.C. 638, as follows:

- (i) Article 14 forbids class legislation, but does not forbid classification.
- (ii) Permissible classification must satisfy two conditions, namely, (a) it must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (b) the differentia must have a relation to the object sought to be achieved by the statute in question.
- (iii) The classification may be founded on different basis, namely geographical, or according to objects or occupations or the like.
- (iv) In permissible classification, mathematical nicety and perfect equality are not required. Similarly, non identity or treatment is enough.
- (v) Even a single individual may be treated a class by himself on account of some special circumstances or reasons applicable to him and not applicable to others; a law may be constitutional even though it relates to a single individual who is in a class by himself.
- (vi) Article 14 condemns discrimination not only by substantive law but by a law of procedure.
- (vii) There is always a presumption favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.

- (c) Quo warranto means “by what warrant or authority”. It is a judicial order issued by the Supreme Court or a High Court by which any person who occupies or usurps on independent public office franchise or liberty is asked to show by what right he claims it, so that the title to the office, franchise or liberty may be settled and any unauthorized persons ousted.

Conditions for the grant of quo warranto: A writ of quo warranto is issued if the following conditions are proved.

- (i) The office in question is public office;
- (ii) The office is substantive in nature;
- (iii) The office is created by a statute or by the Constitution itself; and
- (iv) The office is being held without any authority and illegally by the occupant.

Quo warranto will also be issued when a person validly occupies office but acquires a disqualification later on. The fundamental basis of the proceeding of quo warranto is that the public has an interest to see that a lawful claimant does not usurp a public office. Public office is one which is created by the Constitution or a statute and the duties must be such in which public is interested. The office of the Speaker of the Legislative Assembly or Advocate General or of a High Court Judge have been held to be public offices in which public is interested.

Like any other extraordinary remedy, quo warranto is a discretionary remedy which the court may grant or refuse.

2006 - Dec [1] {C} (a) Preferential treatment to certain persons belonging to backward classes in the form of reservation in education and jobs as provided in Articles 15(4) and 16(4) of the Constitution of India is a mean of ensuring the canon of equality enshrined in the preamble of the Constitution of India. Evaluate the statement.

(8 marks)

- (c) What are the fundamental duties imposed on the citizens of India? (6 marks)

Answer :

- (a) Providing 27 per cent quota reservation in education and jobs as provided for certain persons belonging to the backward classes in Articles 15(4) and 16(4) of the Constitution of India has been deemed to be a constitutional necessity, not an abomination, to ensure equality not just on paper, but also in reality.

It has been a common view that it could not be attacked on the ground of violation of Article 15 (1) (prohibition of discrimination on grounds of religion, race, caste, etc). The main reason cited has been that even a particular caste is a class of people. If that group is understood to be socially, academically and economically backward, reservations are an acceptable method to ameliorate their lot.

Moreover, it is believed that the lot of such classes has been difficult since before the Constitution was made, and hence these steps are required to bring at par with the other classes.

Articles 15(4), 16(4) and other related clauses give their protection to SCs & STs and to classes which are socially backward in the case of Article 16(4) and to socially and educationally backward classes in Article 15(4).

The social backwardness as is used in the identification of backward classes can be said to be the result of decades of socio-cultural suppression, which the Constitution seeks to remove.

- (c) The 42nd Amendment Act passed in 1976 added the Fundamental Duties of citizens to the Constitution. They are given in Article 51-A of the constitution. They include the addition made by the 86th constitutional amendment in 2002, which enjoins every citizen, "who is a parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years".

These are treated like moral obligations of the citizens of India. The important features of Fundamental Duties are –

They are non-justiciable.

They cover both citizens and the State.

They ensure equality of individuals.

They help in maintaining the environment and public property, to develop "scientific temper", to abjure violence, to strive towards excellence and to provide free and compulsory education.

They develop respect towards the nation and its symbols, and to cherish the heritage and secure the defence of India.

The basic Fundamental Duties are -

- To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.
- To cherish and follow the noble ideals which inspired our national struggle for freedom.
- To uphold and protect the sovereignty, unity and integrity of India.
- To defend the country and render national service when called upon to do so.
- To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.
- To value and preserve the rich heritage of our composite culture.
- To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.
- To develop the scientific temper, humanism and the spirit of inquiry and reform.
- To safeguard public property and to abjure violence.
- To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.

2007 - June [1] {C} (a) "The Constitution of India is basically federal with certain unitary features". Discuss. (8 marks)

(b) Discuss briefly whether the law made by the Parliament with respect to a subject included in the State List and made applicable to the State is valid. (6 marks)

Answer :

(a) The Indian Constitution, though primarily federal in form, contains a strong unitary bias. Exercise of the numerous powers given to the Center by the Constitution gives it the unitary structure. Which features predominate depends upon circumstances and the prevailing situations. Ordinarily, it retains its federal features, but in times of emergencies like war or political instability, it converts into the unitary structure.

The Indian Constitution has proclaimed India as a Union of States, i.e. a federation. Let us examine both these features-

Federal features of the Constitution –

A federal system is one where the powers and duties are divided between a unified central authority and the different states of the nation. Items of national importance like defence, railways, post and telegraph, foreign affairs, citizenship etc. are included in the Union list and items of regional or local importance like agriculture, law and order, health etc are placed in the State list. Both Union and State govern the items in the Concurrent list like succession, transfer of property, education etc. This division of powers is made concrete by inclusion in the Constitution (Seventh Schedule).

The features of a federal system as present in India are –

- (a) Governance at both state and centre level.
- (b) Division of work into Union, State and Concurrent lists
- (c) Allowing individual states to make their own internal laws
- (d) Supremacy of the constitution, i.e. the Union and the State Governments function well within the limits defined in the Constitution.
- (e) The authority of the Court in matters of conflict between states and Union, or in matters of interpretation of the Constitution.

Unitary features of the Constitution –

A unitary system is one where the powers and functions are centralized. In India, this happens in times of emergencies, when the Union can make rules in relation to state matters also.

The features of a unitary system as present in India are –

- (a) To give directions to the States regarding how the matters in the State lists are to be concluded.
- (b) Power to legislate regarding some matters contained in the State List
- (c) Taking over powers of state governance in emergencies.
- (d) The States cannot secede from the Union

- (e) Single citizenship
 - (f) Unified judiciary and public services
 - (g) Union can create new states by altering boundaries of existing states
- Hence, it can safely be termed that the Constitution of India is both unitary and federal. i.e. quasi-federal in nature. We could say that though federal in structure, the Indian Constitution is unitary at the core.
- (b) The Parliament can extend the legislative powers given to it by the Constitution to formulate laws under special situations to include certain subjects of the State List. Some of the conditions under which the Parliament may extend its powers include the situations explained below-

In the National Interest (Under Article 249)

Proclamation of Emergency (Article 250) in any state by the President.

If two states agree that the Parliament can legally make laws with respect to the two states, then the Parliament can make laws relating to any state or states (Under Article 252)

For the implementation of treaties in the international interest of the country (Under Article 253).

Failure of Constitutional Machinery in a State as a result of the inefficiency of a State Legislature, as declared by a proclamation issued by the President (Under Article 356 (1) (b))

Normally both the Union Government and the State Governments operate within the limitations of the powers given to them by the Constitution. They enjoy equal powers to make laws relating to the Concurrent list items, which are of general importance such as succession, transfer of property, preventive detention, education, etc. If there arises a conflict between a law passed by the Union and that passed by one or more State Legislatures, precedence would be given to the law made by the Union Parliament. However, problem arises when either the Union or a State illegally encroaches upon the powers of the other legislature, or they may arise because the two laws do not coordinate. Only where the legislation is on a matter in the Concurrent List, it becomes important to apply the test of repugnancy and judge which act will apply. Normally the Union law is given preference, unless the State has reserved a law for the approval of the President, in which case it will supersede the law made by the Union. However, the Union can at all times cause an alteration or amendment in the law.

2007 - June [5] (a) Discuss the relationship between 'Fundamental Rights' and 'Directive Principles of the State Policy'. (6 marks)

Answer :

The Directive Principles of State Policy and the Fundamental Rights are two important parts of the Indian Constitution. Where the Rights provide safety to the basic freedom

of the people, the Directives are guiding principles governing the actions of the states. They are meant for creating a social order by bringing about social, economic, and political equality, justice, liberty and fraternity.

Wherever the Directive Principles nullify or hinder the Rights, the Rights are to be given precedence. However, The Forty-second Amendment (January 1977) brought in the view that it was not possible to declare a law made to put into operation any of the Directive Principles as unconstitutional on the grounds that it violated one or more of the Fundamental Rights, since the Fundamental Rights are sacrosanct.

It was held by the Supreme Court that the Directive Principles could be resorted to as an aid to interpret the Fundamental Rights. Following the concept of Harmonious Construction, it was decided that interpretation could be taken which would render the Fundamental Rights most effective in usage.

2007 - Dec [1] {C} Comment on the following :

- (i) The preamble to the Constitution of India sets out the aims and aspirations of the people of India. (4 marks)

Answer :

The Preamble to the Constitution of India begins with the words "We, the people of India, signifying that the following words include the aims and aspirations of not only those who formulated the constitution, but also of all the people of India. It expresses the collective promise of the people of the state to themselves and to the Nation. It is an indicator of the contents of the rest of the constitution, since it provides a gist of the provisions of the constitution. By describing the main features of the constitution, the preamble specifies the cornerstones of the Constitution of India.

2007 - Dec [2] (a) "Article 21 of the Constitution of India confers on every person the fundamental right to life and personal liberty." Explain it with the help of decided cases. (10 marks)

Answer :

Article 301. Freedom of trade, commerce and intercourse

The Constitution provides that subject to the other provisions of this part, every person has the right to carry on any trade, commerce or intercourse throughout the territory of India.

302. Power of Parliament to impose restrictions on trade, commerce and intercourse

The Parliament may by law impose such statutory restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in public interest, safety or integrity of the country.

303. Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce

The Union and the State can make any laws or restrict trade or business in any commodity in case there is a shortage or scarcity in any state or region, but other than this, there can be no discrimination between states.

304. Restrictions on trade, commerce and intercourse among States

The legislature of a state may impose any kind of tax on goods brought into that state from another state or union territory, in order to remove any extreme differences in the prices of commodities.

2007 - Dec [2] (b) Discuss the writ of habeas corpus. (6 marks)

Answer :

The writ of habeas corpus is a remedy available to a person who is confined without legal justification. The words "habeas corpus" literally mean "to have a body". This writ is used to secure release of a person who has been detained unlawfully or without legal justification. The great value of this writ is that it enables an immediate determination of a person's right to freedom. This writ is issued to the authority who has the aggrieved person in his custody. Under Article 32 of the Constitution, the Supreme Court can issue writ of habeas corpus against a person/authority who has detained a person without issue writ of habeas corpus in similar circumstances provided that the persons or authority against whom the writ is sought is within the territorial jurisdiction of the High Court on the date of filling the writ petition.

2008 - June [1] {C} (a) "Article 21 of the Constitution of India has been so transformed by the judiciary that it now encompasses all conceivable rights within its ambit." Discuss. (8 marks)

(b) On what grounds and against whom the writ of *mandamus* can be issued ? (6 marks)

Answer :

(a) Please refer 2007 - Dec. [2] (a) on page no. [52](#)

(b) The literal meaning of the word 'mandamus' means to command. Hence, the writ of mandamus is, a command issued to direct any person, corporation, inferior court or Government for observing the particular act or duty which ought to have been required under the law in its functioning. The writ is also used for securing judicial enforcement of public duties. It is issued when application has a legal right against any executive who is rather duty bound to perform any act in favour of an applicant. There should be relationship of legal right and legal duty between the applicant and the authority respectively. Under the Constitution of India, such power of writ jurisdiction is vested with the Supreme Court under Article 32 and with the High Courts under Article 226. The writ of mandamus does not lie against the President

of India, Governor of a State, private individual or private body except where the State is in collusion with such private party in the matter of contravention of any provision of the Constitution or a statute. It is a discretionary remedy and the High Court may refuse to issue writ of mandamus if alternative remedy exists except in case of infringement of fundamental right.

2008 - June [3] Explain of the following :

- (i) Doctrine of waiver of rights. (4 marks)

Answer :

The doctrine of waiver of rights is based on the premise that a person is his best judge and that he has the liberty to waive the enjoyment of such rights as are conferred on him by the State. However, the person must have the knowledge of his rights and that the waiver should be voluntary. The doctrine was discussed in *Bheshar Nath v. I.T. Commissioner*, A.I.R. 1959 S.C. 149, where the majority expressed its view against the waiver of fundamental rights. It was held that it was not open to citizens to waive any of fundamental rights. Any person aggrieved by the consequence of the exercise of any discriminatory power, could be heard to complain against it.

2008 - June [4] Attempt of the following :

- (v) What is 'delegated legislation' ? What purposes does it serve ? (4 marks)

Answer :

The increasing complexity to modern administration and the need for flexibility, capable of rapid readjustment to meet changing circumstances which cannot always be foreseen, in implementing our socio-economic policies pursuant to the establishment of welfare state as contemplated by our Constitution, have made it necessary for the legislatures to delegate its powers.

Delegated legislation may be defined as "rules of lawmaking under the authority of an Act of Parliament". Although laws are to be made by legislature, the legislature by statute may delegate its powers to other body or persons. Such statute is known as the enabling Act and lays down the broad principles and leaves the detailed rules to be provided by regulations made by a Minister or other body or persons. Delegated legislation exists in the form of rules, regulations, orders and bye laws.

The system of delegated legislation has become very popular because it has the advantage of flexibility, elasticity, expedition and opportunity for experimentation.

The three relevant justification for delegated legislation are:

- (i) The limits of the time of the legislation:
- (ii) The limits of the amplitude of the legislature, not merely its lack of competence but also its sheer inability to act in many situations, where direction is wanted; and
- (iii) The need of some weapon for coping with situations created by emergency.

PRACTICAL QUESTIONS

2005 - June [6] (a) An organisation of a business community staged processions, demonstrations and agitations before the secretariat of the State Government on busy roads to press for their demands. These caused traffic jams. The State Government imposed a ban on demonstrations and marches on busy roads on working days. The organisation alleged that the ban was an infringement of the fundamental right of freedom as guaranteed under the Constitution of India and filed a petition in the High Court. Decide. (6 marks)

Answer :

The imposition of ban on demonstrations and marches on busy roads on working days in public interest to protect the fundamental rights of majority citizens is perfectly valid. No fundamental right to others is violated by the reasonable ban. Apart from traffic jams the demonstrations are creating huge loss to the public.

2006 - June [7] (a) Ashish was dismissed from the service. He filed a writ petition in the High Court for quashing the order of dismissal on the ground that he was not given reasonable opportunity to refute the allegations made against him and that the action taken against him was *mala fide*. The petition was dismissed on merit. Thereafter, he instituted a suit in the Court of Civil Judge in which he challenged the order of dismissal on the grounds *inter alia* that he had been appointed by the Inspector General of Police and that the Deputy Inspector General of Police is not competent to dismiss him by virtue of Article 311(1) of the Constitution of India, Decide. (6 marks)

Answer :

The subsequent suit after dismissal of writ petition on merit cannot be allowed by the principle of constructive res-judicata. The argument given in this suit was an important plea which was within his knowledge and could well have been taken in the writ petition but he contended himself by raising other pleas that he was not afforded a reasonable opportunity to meet the case against him in the department enquiry and that the action taken against him was mala-fide. Therefore, in the subsequent suit he cannot be allowed to take plea that he was dismissed by subordinate authority.

2008 - June [7] (c) An organisation of some persons belonging to a particular community sat on a dharna near Jantar Mantar in New Delhi and later on moved towards Parliament House raising slogans against the Government to press for their demands. This led to traffic jam. The government had imposed a ban on demonstrations near and at the Parliament House. The organisation filed a petition in the High Court against the ban, pleading infringement of their fundamental right of freedom. Will the petition be admitted ? Give reasons. (4 marks)

Answer :

The right to congregate and to assemble peacefully is provided in the Constitution of India. (Article 19(1)). Such a right can be restricted by the State to safeguard the sovereignty, integrity and public order of India. Hence, the petition will be rejected if the ban is imposed because of the reasons aforementioned, and causing traffic jams is also against the public order. Hence, it will not be admitted.

Repeatedly Asked Questions		
No.	Question	Frequency
1	Discuss with reference to case law the right to protection of life and personal liberty as guaranteed by the Constitution of India. 07 - Dec [2] (a), 08 - June [1] (a), 11 - Dec [1] (a)	3 Times
2	Explain the 'doctrine of severability'. 04 - June [1] (c), 2013 - June [1] (a)	2 Times
3	"Article 14 of the Constitution of India forbids class legislation, but does not forbid classification." Discuss. 06 - June [1] (a), 08 - Dec [1] (a)	2 Times
4	"The Constitution of India is basically federal with certain unitary features". Discuss. 07 - June [1] (a), 10 - June [1] {C} (a)	2 Times
5	Discuss the relationship between 'Fundamental Rights' and 'Directive Principles of the State Policy'. 04 - Dec [1] (b), 07 - June [5] (a)	2 Times
6	What do you mean by doctrine of waiver of rights under the Constitution of India? 08 - June [3] (i), 09 - Dec [1] {C} (c)	2 Times
7	Discuss in brief the rule of colourable legislation 05 - Dec [1] {C} (c), 09 - Dec [1] (d)	2 Times
8	Explain powers of the Parliament to enact laws on subjects enumerated in the State List. 07 - June [1] (b), 11 - June [1] (a)	2 Times
9	Write in brief the importance of the writ of <i>habeas corpus</i> . 07 - Dec [2] (b), 08 - Dec [1] (b), 2011 - June [1] (c)	3 Times

10	What is the scope of Article 14 of the Constitution of India? To what extent is it correct to say that Article 14 forbids class legislation, but does not forbid classification? 08 - Dec [1] (a), 12 - June [1] (a), 13 - Dec [1] (a)	3 Times
11	Discuss the fundamental duties imposed on citizens of India. 06 - Dec [1] {C}(c), 12 - June [1] (b)	2 Times

Table Showing Marks of Compulsory Questions

Year	09 J	09 D	10 J	10 D	11 J	11 D	12 J	12 D	13 J	13 D
Descriptive	14	20	14	14	20	20	14	20	14	14
Total	14	20	14	14	20	20	14	20	14	14

Star Rating

On the basis of Maximum marks from a chapter

Nil

On the basis of Questions included every year from a chapter

☆☆☆☆☆

On the basis of Compulsory questions from a chapter

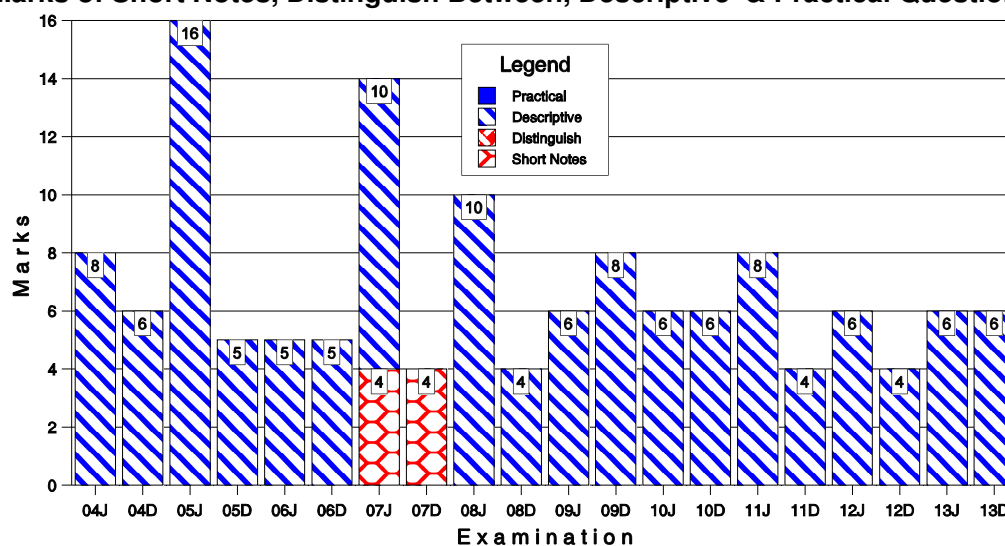
☆☆☆☆

2

Interpretation of Statutes

This Chapter Includes : Need for interpretation of a statute; general principles of interpretation, internal and external aids to interpretation; primary and other rules.

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



CS Executive Programme (Module I)

OBJECTIVE QUESTIONS

2008 - Dec [1] {C} (c) Re-write the following sentences after filling-up the blank spaces with appropriate word(s)/figure(s) :

- (v) Interpretation of a statute should not be given a meaning which would make other provisions _____ . (1 mark)

Answer :

Interpretation of a statute should not be given a meaning which would make other provisions **redundant**.

2008 - Dec [5] (b) Fill in the blank spaces with the appropriate nomenclature or terminology in the following :

- (ii) Where in an enactment, there are two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect may be given to both. This rule of interpretation is called _____ . (1 mark)

Answer :

Where in an enactment, there are two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect may be given to both. This rule of interpretation is called Harmonious **Construction**.

2009 - June [5] State, with reasons in brief, whether the following statements are correct or incorrect :

- (vi) The rule of 'harmonious construction' is the best rule of interpretation of any provision of any statute. (2 marks)

Answer :

Correct : This rule of interpretation allows the scope for applying all the provisions of a statute.

2009 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (vi) If there is any appearance of inconsistency between the Schedule and a specific provision in an enactment the _____ shall prevail. (1 mark)

Answer :

Provision.

2011 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (iv) In the interpretation of statutes, where the rule applies that the general words following the particular or specific words, such rule is called _____. (1 mark)

Answer :

In the interpretation of statutes, where the rule applies that the general words following the particular or specific words, such rule is called Rule of *ejusdem generis*.

2012 - June [6] (b) Write the most appropriate answer from the given options in respect of the following:

- (vi) Internal aids in interpretation of statutes include —
(a) Title
(b) Preamble
(c) Marginal notes
(d) All the above. (1 mark)

Answer:

- (d) All the above.

2013 - June [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (vii) _____ is at times appended to a section to explain the meaning of words contained in the section. (1 mark)

Answer:

An explanation

2013 - June [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (v) To avoid any inconsistency or repugnancy either in a section or between sections and other parts of the statutes, the rule applied is that of—
(a) Harmonious construction
(b) Literal construction
(c) Reasonable construction
(d) None of the above. (1 mark)

Answer:

- (a) Harmonious construction

2013 - Dec [5] (a) Re- write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (ii) *Ejusdem generis*, literally means 'of the same _____'. (1 mark)

2013 - Dec [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (iii) Where meaning of a word is known from its accompanying or associating words, the construction is known as -
(a) *Noscitur a sociis*
(b) Liberal construction
(c) Harmonious construction
(d) *Ejusdem generis*. (1 mark)

DESCRIPTIVE QUESTIONS

2008 - Dec [3] Explain the following :

- (i) Mischief rule. (4 marks)

Answer :

According to this rule, when we interpret statutes, we need to consider some facts –

- what was the rule pertaining to the subject matter before the current statute was made

- what was the mischief or wrong that the common law did not cover till then, so that need for a special law was felt
- the solution established by the new statute and the motive behind it.

These principles were established by Lord Coke in the famous case of Sir John Heydon. It was decided that when the literal meaning of the words of a statute is obscured, then seeking the mischief which the act seeks to correct or mitigate would help in its interpretation.

2009 - June [1] {C} (c) Briefly mention internal and external aids to interpretation of statute. (6 marks)

Answer :

The internal aids are mostly those elements that form a part of the act itself. Chief among them are –

- (i) **Title of the act** – There can be a long title and a short title. The long title can be used for understanding the context and brief description of the act, but the short title performs neither of these functions. For example, the Foreign Exchange Management Act gives us an idea that it contains rules about foreign earnings and currency, but FEMA does not give us any idea unless we already know what the acronym stands for.
- (ii) **Preamble** – The preamble specifies the intention behind the making of the act, i.e. what is the mischief that the makers of the act sought to correct. It can be one of the key starting points when we begin to understand a statute.
- (iii) **Chapter heads or separate headings separating the act into parts** – This helps dividing the act into smaller parts, which are logically and sequentially linked to enhance comprehension. Especially if we need to refer to a particular part, and not the whole of the act, these help us in getting to the right portion without losing valuable time.
- (iv) **Marginal notes** – These are generally not given much weightage if the meaning of the statute is clear in itself, but where there is an ambiguity, these can provide an idea as to the general meaning behind the statute.
- (v) **Interpretative clauses** – These may be portions where definitions or clarifications regarding the inclusions in sections or definitions of words have been given, as used in the statute. These can be inclusive or exhaustive definitions.
- (vi) **Proviso to a section** – This gives the treatment of exceptional cases; those which can be called as qualifications, as they are to be treated in a different manner. It is generally in a very language, and without any ambiguity. It has to be kept in mind though, that it provides the exception to that particular section and cannot be applied as a common rule.

- (vii) **Examples, illustrations or explanations** – If within the coverage of the provision of the section they relate to, they can be treated as valuable aids to interpretation, as they simplify the application of the section. They cannot, in any case, be seen as making any extra provisions not mentioned in the section itself.
- (viii) **Schedules** – These are there in relation to the act itself as they provide the information mentioned in some part of the act in greater detail, which aids application of the section. They help in making the main act concise and provide a well-organized way of presenting the statute. For example, the XIII Schedule of the Companies Act, 1956.

The external or peripheral aids to interpretation are generally used when the statute is vague or indistinct in meaning. Here, the inner means of interpretation would not serve the purpose and some external means, like the circumstances that prevailed at the time of making of the statute, committee reports, if any, links with other acts, dictionaries or even case histories from other countries, would have to be utilized. If there were other acts leading up to the current one, they could be looked into as well on the assumption that they would shed some light over the current statute.

These external aids, however, have to be used with due care and only in situations where the internal ones prove insufficient in giving an understanding of the statute or its part. This is because firstly, they are extraneous to the statute in question, and however close to the subject matter, they might not give an accurate picture. For example, if an act is made in year 1889 regarding a particular thing, and another is made in year 2008, the earlier act would not give a true picture if used as an aid for interpretation of the new act. This is because the conditions and situations of both acts were different; they were made against different social, political and economic backdrops. This does not mean that it cannot at all be used for shedding light on the subsequent act; it simply means that it should be used in moderation and with care, and the context and underlying situations too should be kept in mind, while doing so. Only then would the interpretation be a fair one.

2009 - Dec [2] Explain the following :

- (i) Rule of *harmonious construction*
(ii) Proviso

(4 marks each)

Answer :

- (i) This principle is applicable where more than one provisions of a statute are applicable in a given -situation, any of the applicable provisions is not subject to another and all such provisions cannot be reconciled with each other then all such provisions shall be so interpreted so as to give effect to all applicable provisions. This is known as the principle of harmonious construction.

In other words, a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has a merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute.

When there is doubt about the meaning of the words of a statute, these should be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature had in view. Their meaning is found not so much in a strictly grammatical property of language, nor even in its popular use, as in the subject or in the occasion on which they are used and the object to be attained

In order to invoke the applicability of the rule of harmonious construction, the conflict between the two provisions of an Act should be real and not merely apparent and one of them should not have been made subject to the other.

- (ii) Some times a section in a statute contains a proviso. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. The normal function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other (Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax). In other words, the proper function of a proviso is to qualify the generality of the main enactment by providing an exception and taking out as it were from the main enactment a portion which, but for the proviso, would fall within the main enactment. Ordinarily, Proviso does not provide something by way of an addendum or dealing to the subject which is foreign to the main enactment. The proviso cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that it is its necessary effect.

2010 - June [1] {C} (c) Explain the mischief rule in the interpretation of statutes.

(6 marks)

Answer :

The Mischief Rule or the Heydon's Rule –

According to this rule, when we interpret statutes, we need to consider some facts –

- What was the rule pertaining to the subject matter before the current statute was made
- What was the mischief or wrong that the common law did not cover till then, so that need for a special law was felt
- The solution established by the new statute and the motive behind it.

- (i) These principles were established by Lord Coke in the famous case of Sir John Heydon. It was decided that when the literal meaning of the words of a statute is obscured, then seeking the mischief which the act seeks to correct or mitigate would help in its interpretation. Hence, following the Mischief Rule, one can easily gain the intention of the statute, thus giving effect to its original objective.

2010 - Dec [1] {C} (c) "Rule of *ejusdem generis* is merely a rule of construction to aid the courts to find out the true intention of the legislature." Explain. (6 marks)

Answer :

Rule of Ejusdem Generis - It is one of the basic principles of interpretation. The term itself means 'of the same kind', and helps when the statute is not clear as to the implications and coverage. The rule says that when there is a specific class or classes of acts or things or persons defined in an Act, any word occurring subsequently will be bound by their coverage, i.e. a wider meaning than the one defined cannot be taken. For example, under the Central Excise Tariff Act, there are lists of items that come under the same head. If one of the lists say that it is to include textile articles, viz, clothing, sheets, bed covers, etc., it can in no way be inclusive of articles that cannot be termed strictly as being made of textile, like sheets made majorly of a synthetic fibre, though containing a small percentage of cotton fibre. Hence, if the list is an exhaustive or fairly indicative list, a wider meaning cannot be given to it.

If, however, there is no specific list, or the class is not that well defined, the application could cover a wider scope. The universal logic behind this principle is that if a statute had been intended for a general coverage, it would not have included specific words to define the scope of its usage. It is essential though, that this rule should be used with discretion, because there exists the practical risk of the act becoming too specific for actual use.

This rule is merely a rule of construction to help the Courts to find out the true intention of the Legislature (*Jage Ram v. State of Haryana*, AIR 1971 SC1033). In order to make the rule applicable, the following conditions must exist:

- (1) The statute contains an enumeration by specific words,
- (2) The members of the enumeration constitute a class,
- (3) The class is not exhausted by the enumeration,
- (4) A general term follows the enumeration,
- (5) There is a distinct genus which comprises more than one species, and
- (6) There is no clearly manifested intent that the general term be given a broader meaning than the doctrine requires.

Hence, we can safely conclude that "Rule of *ejusdem generis* is merely a rule of construction to aid the courts to find out the true intention of the legislature."

2011 - June [3] (c) Discuss the rule of harmonious construction in the interpretation of statutes. (8 marks)

Answer :

Rule of Harmonious Construction - Where two provisions of the same enactment cannot be reconciled with each other they should be so interpreted that, if possible, effect may be given to both. This is the rule of Harmonious Construction. It helps in maintaining a link between the parts of a statute or between parts within a particular section when there is any discrepancy between them. By doing so, it ensures that no part is rendered redundant. The meaning is so construed that both the parts play a role in it.

This rule of interpretation means that any section or part of a statute should be read with reference to the entire act, i.e. the meaning should be construed in entirety, not singularly. If while constructing the meaning of a section, it conflicts with the meaning given in another, in all probability there is an error in interpretation. Hence if two sections in the same statute seem to give different meanings or lead to opposite directions, the interpretation should be such as can accommodate both meanings.

When two statutes are complementary to each other. One statute cannot be allowed to overrule the other. Instead one statute should be interpreted in such a way to compromise with the other statute. This is called Harmonious construction of Statutes.

2011 - Dec [2] Comment on the following:

(ii) "Heydon's rule is not always operative in interpretation of statutes." (4 marks)

Answer :

Please refer 2010 - June [1] {C} (c) on page no. [63](#)

2012 - June [1] {C} (c) What are the presumptions in the interpretation of statutes when the intention of the legislature is not clear? (6 marks)

Answer :

Presumptions are used in the interpretation of statutes only when the intention of the legislature is not clear; when it is clear, they are to be avoided. Conjecture or suppositions are used when it becomes difficult to comprehend the statute in its own light. The basic presumptions used in the interpretation of statutes are as follows –

- (i) The words used in the statute have been used in the literal sense with precise meanings unless otherwise defined.
- (ii) There has been effected no change in the rights of the people unless the statute prescribe such a change expressly.
- (iii) Liability only attaches where there is mens rea (guilty mind).
- (iv) The state or governmental institutions, unless expressly covered, are deemed to be exempted.

- (v) The legislature, while passing the new statute was aware of the manner of functioning of the judiciary and the executive as well as the legal condition in the country and unless stated, has not caused any changes in it.
- (vi) No mistakes have been committed by the legislature in drafting the statute.
- (vii) No pointless activity would be enjoined on the people.
- (viii) The statute has been made with a view to exercise the powers given through it equitably and fairly.
- (ix) Where the statute creates a legal duty that is accompanied by a legal power, and cannot stand without it, it is assume both go together.

2012 - Dec [2] Comment the following:

- (i) Parliamentary history as an external aid in the interpretation of statutes.

(4 marks)

Answer:

The external aids of interpretation are generally used when the statute is vague or indistinct in meaning. Here, the inner means of interpretation would not serve the purpose and some external means, like the circumstances that prevailed at the time of making of the statute, committee reports, if any, links with other acts, dictionaries or even case histories from other countries, would have to be utilized. If there were other acts leading upto the current one, they could be looked into as well on the assumption that they would shed some light over the current statute.

These external aids, however, have to be used with due care and only in situations where the internal ones prove insufficient in giving an understanding of the statute or its part. This is because firstly, they are extraneous to the statute in question, and however close to the subject matter, they might not give an accurate picture. For example, if an act is made in year 1889 regarding a particular thing, and another is made in year 2008, the earlier act would not give a true picture if used as an aid for interpretation of the new act. This is because the conditions and situations of both acts were different; they were made against different social, political and economic backdrops. This does not mean that it cannot at all be use for shedding light on the subsequent act; it simply means that it should be used in moderation and with care, and the context and underlying situations too should be kept in mind, while doing so. Only then would the interpretation be a fair one.

Legislative or parliamentary history – This would help in giving a general direction to the interpretation. The parliamentary history helps in understanding the trend of the legislative thought of the country thus providing a background for the statute under study. This helps in providing an overview or a general context to the statute.

Parliamentary material

(a) Debates

Courts often take recourse to parliamentary material like debates in Constituent Assembly, speeches of the movers of the Bill, Reports of Committees or Commission, Statement of Objects and Reasons of the Bill, etc.

Fagu Shaw etc. v The State of West Bengal *"We may therefore legitimately refer to the Constituent Assembly debates for the purpose of ascertaining what was the object which the Constitution makers had in view and what was the purpose which they intended to achieve when they enacted the law in its present form."*

(b) Statement of Objects and Reasons

So far as Statement of Objects and Reasons, accompanying a legislative bill is concerned, it is permissible to refer to it for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute and the evil which the statute sought to remedy. But, it cannot be used to ascertain the true meaning and effect of the substantive provision of the statute. (Devadoss (dead) by L.**Rs. v. Veera Makali Amman Koil Athalur**[16].

(c) Reports of Parliamentary Committees and Commissions

Reports of Commissions including Law Commission or Committees including Parliamentary Committees preceding the introduction of a Bill can also be referred to in the Court as evidence of historical facts or of surrounding circumstances or of mischief or evil intended to be remedied. **[Mithilesh Kumari v Prem Behari Khare. Rosy and another v State of Kerala and others]**

2013 - June [1] {C} (c) Explain the rule of *ejusdem generis* with the help of any case decided by the Supreme Court of India. (6 marks)

Answer:

Rule of Ejusdem Generis: It is one of the basic principles of interpretation. The term itself means 'of the same kind' and helps when the statute is not clear as to the implications and coverage. The rule says that when there is a specific class or classes of acts or things or persons defined in an Act, any word occurring subsequently will be bound by their coverage, i.e. a wider meaning than the one defined cannot be taken. For example, under the Central Excise Tariff Act, there are lists of items that come under the same head. If one of the lists say that it is to include textile articles, viz, clothing, sheets, bed covers, etc., it can in no way be inclusive of articles that cannot be termed strictly as being made of textile, like sheets made majorly of a synthetic fibre, though containing a small percentage of cotton fibre. Hence, if the list is an exhaustive or fairly indicative list, a wider meaning cannot be given to it.

If, however, there is no specific list, or the class is not that well defined, the application could cover a wider scope. The universal logic behind this principle is that if a statute had been intended for a general coverage, it would not have included specific words to

define the scope of its usage. It is essential though, that this rule should be used with discretion, because there exists the practical risk of the act becoming too specific for actual use.

2013 - Dec [1] {C} (c) Discuss in brief the primary rule of literal construction in the interpretation of a statute. (6 marks)

CS Inter Gr. I

SHORT NOTES

2007 - June [4] (a) Write short notes on the following :

- (i) Rule of *ejusdem generis*. (4 marks)

Answer :

Rule of 'Ejusdem Generis' – It is one of the basic principles of interpretation. The term itself means 'of the same kind', and helps when the statute is not clear as to the implications and coverage. The rule says that when there is a specific class or classes of acts or things or persons defined in an Act, any word occurring subsequently will be bound by their coverage, i.e. a wider meaning than the one defined cannot be taken. For example, under the Central Excise Tariff Act, there are lists of items that come under the same head. If one of the lists says that it is to include textile articles, viz, clothing, sheets, bed covers, etc., it can in no way be inclusive of articles that cannot be termed strictly as being made of textile, like sheets made majorly of a synthetic fibre, though containing a small percentage of cotton fibre. Hence, if the list is an exhaustive or fairly indicative list, a wider meaning cannot be given to it.

If, however, there is no specific list, or the class is not that well defined, the application could cover a wider scope. The universal logic behind this principle is that if a statute had been intended for a general coverage, it would not have included specific words to define the scope of its usage. It is essential though, that this rule should be used with discretion, because there exists the practical risk of the act becoming too specific for actual use.

2007 - Dec [5] Write short notes on the following :

- (i) *Noscitur a sociis* (4 marks)

Answer :

It is one of the rules of interpretation. According to it, the meaning of a word has to be derived from the words mentioned along with it in the statute. This is because words at times have contextual meanings, and support complete interpretation only when read with contiguous words. This rule can be used when the word carries the same meaning everywhere in the statute, but not where alternative meanings are possible. This rule, like other rules of interpretation, is not resorted to when using it would lead to absurdities of interpretation.

DESCRIPTIVE QUESTIONS

2004 - June [2] (a) Where two provisions of the same enactment cannot be reconciled with each other, they should be so interpreted that, if possible, effect may be given to both. Comment. (8 marks)

Answer :

This is rule of harmonious construction. If in an enactment, there are two provisions, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect may be given to both. This is known as harmonious construction. A statute must be read as a whole and one provision of the Act should be so construed to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute.

In *Raj Krishana v. Binod Kanungo*, AIR 1954 SC 202, the Supreme Court observed that it is the duty of the Court to avoid a head-on-clash between two Sections of the same statute. The Court should construe provisions which appear to conflict in such a manner that they harmonise.

2004 - Dec [2] (a) Discuss the *ejusdem generis* rule of interpretation. (6 marks)

Answer :

Please refer 2007 - June [4] (a) (i) on page no. [68](#)

2005 - June [2] Explain the role and scope of the following in the interpretation of statutes:

- (i) Mischief rule.
- (ii) *Pari materia*.
- (iii) Preamble.
- (iv) Schedules. (4 marks each)

Answer :

- (i) The Mischief Rule or the Heydon's Rule –
According to this rule, when we interpret statutes, we need to consider some facts –
 - what was the rule pertaining to the subject matter before the current statute was made
 - what was the mischief or wrong that the common law did not cover till then, so that need for a special law was felt
 - the solution established by the new statute and the motive behind it.

These principles were established by Lord Coke in the famous case of Sir John Heydon. It was decided that when the literal meaning of the words of a statute is obscured, then seeking the mischief which the act seeks to correct or mitigate would help in its interpretation.

- (ii) This rule of interpretation of statutes says that when there is ambiguity in the comprehension of a statute, we can take the help of another statute made on the same subject. The other statute may have been framed in a different time, but if it relates to the same matter, it can provide a direction to the interpretation of the statute in hand. The events for which the statutes have been made may be comparable or with the same object.
- (iii) The preamble of an Act is the introduction or the key to the Act. Although not a part of the Act itself, and so does not perform any legal function, it is a valuable key for understanding the Act and resolving the ambiguities in drafting. The preamble provides the introduction to the Act and indicates its coverage. Both these views are taken together in comprehending the importance of preambles in interpretation of statutes. If the statute is clear in itself, the preamble is not resorted to for gaining comprehension; if it is ambiguous or unclear, then the preamble can be used to give a direction to the interpretation. It thus prescribes an outline to the Act itself, letting the person reading it know what all it includes within its boundaries.
- (iv) These are there in relation to the act itself as they provide the information mentioned in some part of the act in greater detail, which aids application of the section. For example, the XIII Schedule of the Companies Act, 1956.

2005 - Dec [2] (a) Explain the golden rule of interpretation of statutes. (5 marks)

Answer :

The Golden Rule says that the words of a statute have to be construed in their ordinary meaning, unless by using the general meaning, the statute will lose its full intent. For example, when a word has several meanings, that meaning should be chosen which would best fulfil the objective of the statute. [Becke v Smith (1836) and Grey v. Pearson (1857; 6 HL CAS 61)] These cases have adhered to the view that in comprehending a statute, the general meaning can be resorted to the limit where it makes the statute itself absurd in meaning. From that extent, the meaning can be modified or altered to suit the needs of the statute. Two things have to be kept in mind while doing so – firstly, whether or not the statute sounds logical within the framework of the given meaning, and secondly, whether the object of the legislature in making that statute is being fulfilled in deriving the meaning.

2006 - June [2] (b) Discuss Heydon's rule of interpretation of statutes. (5 marks)

Answer :

Please refer 2005 - June [2] (i) on page no. [69](#)

2006 - Dec [5] (a) Discuss the rule of 'reasonable construction' in the interpretation of statutes. (5 marks)

Answer :

Rule of reasonable construction - Ut res magis valeat quam pereat

According to this rule, while constructing the meaning of a statute, although we utilize the common or ordinary meaning of the words used in it, it should be done while according due regard to the following—

- The subject matter or the core concern of the act
- The objective intended to be fulfilled by it, for example, the wrongs it seeks to address.

If we ignore these two things and take the words at their literal, face value, chances are that the interpretation would be faulty. Only a well-rounded meaning would be of practical use, as it would help assign a sensible meaning to the act. Hence, the act of interpretation would begin from taking the literal or dictionary meanings of the words of a statute, subjecting them to a scrutiny in light of its objective and only if such meanings do not give a correct sense of the act should we resort to altering the meanings of the words according to the context.

2007 - June [1] {C} (c) What are the presumptions in the interpretation of statutes when the intention of legislature is not clear ? (6 marks)

Answer :

Presumptions are used in the interpretation of statutes only when the intention of the legislature is not clear; when it is clear, they are to be avoided. Conjecture or suppositions are used when it becomes difficult to comprehend the statute in its own light. The basic presumptions used in the interpretation of statutes are as follows –

- (i) The words used in the statute have been used in the literal sense with precise meanings unless otherwise defined.
- (ii) There has been effected no change in the rights of the people unless the statute prescribe such a change expressly.
- (iii) Liability only attaches where there is mens rea (guilty mind).
- (iv) The state or governmental institutions, unless expressly covered, are deemed to be exempted.
- (v) The legislature, while passing the new statute was aware of the manner of functioning of the judiciary and the executive as well as the legal condition in the country and unless stated, has not caused any changes in it.
- (vi) No mistakes have been committed by the legislature in drafting the statute.
- (vii) No pointless activity would be enjoined on the people.
- (viii) The statute has been made with a view to exercise the powers given through it equitably and fairly.
- (ix) Where the statute creates a legal duty which is accompanied by a legal power, and cannot stand without it, it is assume both go together.

2007 - June [2] Comment on the following :

- (ii) Heydon's rule is not always operative in interpretation of statutes. (4 marks)

Answer :

Please refer 2005 - June [2] (i) on page no. 69

2008 - June [1] {C} (c) Discuss the rule of harmonious construction in the interpretation of statutes. (6 marks)

Answer :

This rule of interpretation means that any section or part of a statute should be read with reference to the entire act, i.e. the meaning should be construed in entirety, not singularly. If while constructing the meaning of a section, it conflicts with the meaning given in another, in all probability there is an error in interpretation. Hence if two sections in the same statute seem to give different meanings or lead to opposite directions, the interpretation should be such as can accommodate both meanings.

2008 - June [4] Attempt of the following :

- (iv) "Marginal notes appended to the Articles in the Constitution of India furnish some clue as to the meaning and purpose of the Articles." Explain. (4 marks)

Answer :

Marginal notes are additional notes provided to the Articles in the Constitution. These are generally resorted to only when the meaning of the Articles is unclear, as these are not used for restricting the provisions of the Articles. These have generally been seen as being a part of the Constitution. It should be taken care of that the marginal notes should not be allowed to supersede the Articles though.

Repeatedly Asked Questions		
No.	Question	Frequency
1	Explain the mischief rule or Heydon's Rule of interpretation of Statutes. 06 - June [2] (b), 08 - Dec [3] (i)	2 Times
2	Explain in brief the rule of ejusdem generis for interpretation of statutes. 04 - Dec [2] (a), 2013 - June [1] (c)	2 Times
3	Explain the following : (i) Rule of <i>harmonious construction</i> 08 - June [1] (c), 09 - Dec [2] (i), 2011 - June [3] (c)	3 Times

4	Explain the mischief rule in the interpretation of statutes. 05 - June [2] (i), 10 - June [1] (c)	2 Times
5	What are the presumptions in the interpretation of statutes when the intention of the legislature is not clear? 07 - June [1] (c), 12 - June [1] (c)	2 Times

Table Showing Marks of Compulsory Questions

Year	09 J	09 D	10 J	10 D	11 J	11 D	12 J	12 D	13 J	13 D
Descriptive	6		6	6			6		6	6
Total	6		6	6			6		6	6

Star Rating

On the basis of Maximum marks from a chapter

☆☆☆☆☆

On the basis of Questions included every year from a chapter

☆☆☆☆☆

On the basis of Compulsory questions from a chapter

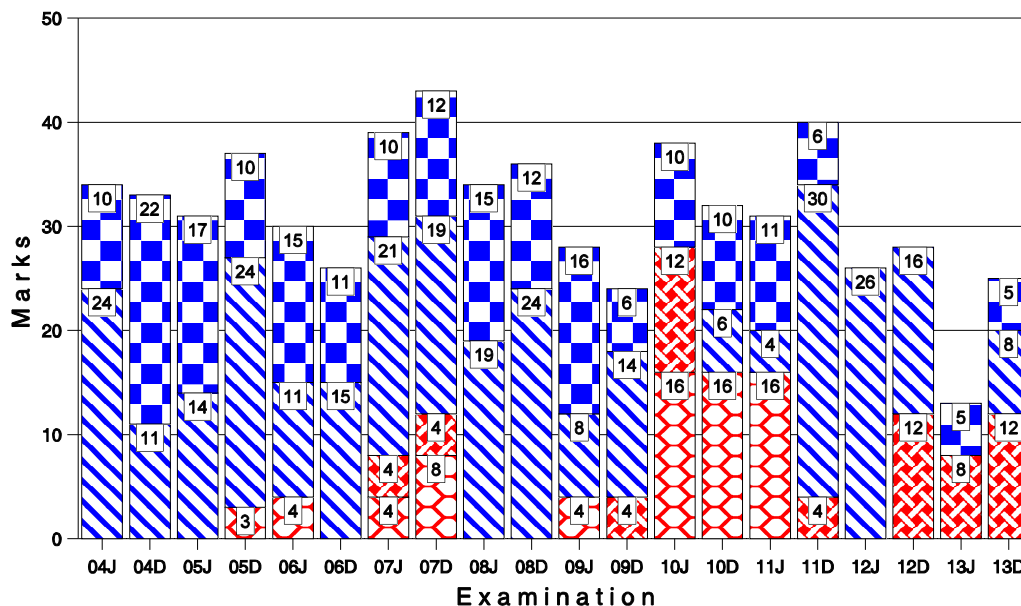
☆☆☆☆

3

An Overview of Law Relating to Specific Relief; Arbitration and Conciliation Torts; Limitation and Evidence

This Chapter Includes : Specific Relief Act : Scope, who may one, persons against specific performance available, & cannot be enforced, Discretion of Courts, Rectification of Instrument & cancellation Declaratory Decrees Preventive Relief. Arbitration & conciliation Act- Appointment of Arbitration Arbitral proceed , setting aside an Award, enforcement of Foreign Awards, Award Conciliation & ADR.

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



CS Executive Programme (Module I)

OBJECTIVE QUESTIONS

2008 - Dec [5] (b) Fill in the blank spaces with the appropriate nomenclature or terminology in the following :

- (iii) Attack on the reputation of a person is called _____ . (1 mark)
- (iv) Normally the tort-feasor is liable for his tort, but in some cases a person may be held liable for the tort committed by another. This is known as _____. (1 mark)

Answer :

- (iii) Attack on the reputation of a person is called **defamation**.
- (iv) Normally the tort-feasor is liable for his tort, but in some cases a person may be held liable for the tort committed by another. This is known as vicarious **liability**.

2008 - Dec [6] (a) Choose the most appropriate answer from the given options in respect of the following :

- (ii) The nature of remedy under the law of torts is -
 - (a) Criminal
 - (b) Civil
 - (c) Quasi-criminal
 - (d) Quasi-civil. (1 mark)
- (iii) When there are two types of evidence, one oral and another documentary, which type of evidence shall prevail -
 - (a) Documentary
 - (b) Oral
 - (c) None
 - (d) Both (a) and (b). (1 mark)
- (vi) Every breach of contract gives rise to a cause of action and a suit may be instituted to secure proper relief at the place -
 - (a) Where the contract was made
 - (b) Where the breach has occurred
 - (c) Where money is payable
 - (d) Any one of the above. (1 mark)

Answer :

- (ii) (d)
- (iii) (a)
- (vi) (b)

2008 - Dec [6] (b) State, with reasons in brief, whether the following statements are correct or incorrect :

- (i) The time limit for making an application for setting aside an arbitral award is 2 months from the date of receipt of award. (2 marks)
- (ii) Confession made before the magistrate by a co-accused against another co-accused, who is not jointly tried with him for an offence, is admissible as evidence. (2 marks)

Answer :

- (i) **Incorrect :** The time limit for applying for setting aside an award is three months from the date of receipt of order. It can be further extended by a period of thirty days.
- (ii) **Incorrect :** A statement made before a magistrate by a co-accused against another co-accused, who is jointly tried with him for an offence is admissible as evidence, as per Section 30 of the Indian Evidence Act, 1872.

2009 - June [5] State, with reasons in brief, whether the following statements are correct or incorrect :

- (i) In computing the period of limitation for an application to set aside an award, the time required for obtaining a copy of the award shall not be excluded. (2 marks)
- (iv) Suits for compensation for false imprisonment can be filed within two years from the date when the imprisonment ends. (2 marks)
- (vii) Under certain circumstances, the court may award damages in addition to specific enforcement of the contract. (2 marks)

Answer :

- (i) **Incorrect :** As per Section 12 of the Limitation Act, in computing the period of limitation for an application to set aside an award, the time required for obtaining a copy of the award shall be excluded.
- (iv) **Incorrect :** The period prescribed as per Part VII of the Schedule to the Limitation Act, 1963 is of one year, which is to be computed from the date when the imprisonment ends.
- (vii) **Correct :** The court might award damages in addition to specific enforcement of the contract, when some damages have already been incurred and need to be compensated.

2009 - June [6] (a) Choose the most appropriate answer from the given options in respect of the following :

- (iii) The relief regarding recovery of possession of immovable property is available under –
 - (a) Provisions of the Code of Civil Procedure, 1908

- (b) Provisions of the Specific Relief Act, 1963
- (c) Provisions of the Code of Criminal Procedure, 1973
- (d) Both (a) and (b). (1 mark)

Answer :

- (d) Both (a) and (b).

2009 - June [6] (b) Re-write the following sentences after filling-in the blank spaces with appropriate word (s)/figure (s) :

- (ii) Declaratory decree is granted under _____ of the Specific Relief Act, 1963. (1 mark)
- (v) The law of limitation bars the remedy as well as extinguishes the right where _____ . (1 mark)

Answer :

- (ii) Declaratory decree is granted under **Section 34** of the Specific Relief Act, 1963.
- (v) The law of limitation bars the remedy as well as extinguishes the right **where the remedy is extinguished by limitation.**

2009 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (ii) The period of limitation for instituting a summary suit is _____ from the date on which the debt becomes due. (1 mark)
- (iii) Limitation of taking cognizance is _____, if the offence is punishable with fine only. (1 mark)

Answer :

- (ii) 3 years
- (iii) 6 months

2009 - Dec [5] (b) Choose the most appropriate answer from the given options in respect of the following :

- (ii) Doctrine of sufficient cause under section 5 of the Limitation Act, 1963 will apply on—
 - (a) Suits
 - (b) Appeals and applications
 - (c) Both (a) and (b)
 - (d) None of the above. (1 mark)

Answer :

- (b) Appeals and applications

2010 - June [5] (b) Choose the most appropriate answer from the given options in respect of the following :

- (iv) Under the Specific Relief Act, 1963, the relief of cancellation of a written instrument is available—

- (a) When an instrument is void or voidable at the option of the plaintiff
- (b) Where the plaintiff may apprehend serious injury if the instrument is left outstanding
- (c) Where the instrument requires registration but is not registered
- (d) Where conditions mentioned (a) and (b) above are fulfilled. (1 mark)

Answer :

(d) Where conditions mentioned (a) and (b) above are fulfilled.

2010 - June [5] (c) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (i) Perpetual injunction is granted under section _____ of the Specific Relief Act, 1963. (1 mark)

Answer :

Section 38

2010 - June [6] State, with reasons in brief, whether the following statements are correct or incorrect :

- (v) Under certain circumstances, a person is liable for the torts committed by another. (2 marks)

Answer :

Correct. In the cases of vicarious liability.

2010 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (iii) The word 'tort' is a French equivalent of English word _____. (1 mark)
- (iv) All documents produced for inspection of the court are called _____. (1 mark)

Answer :

- (iii) The word 'tort' is a French equivalent of English word wrong .
- (iv) All documents produced for inspection of the court are called documentary evidence.

2010 - Dec [5] (b) Choose the most appropriate answer from the given options in respect of the following :

- (i) The relief of cancellation of a written instrument is available under the Specific Relief Act, 1963 —
 - (a) When an instrument is void or voidable at the option of plaintiff
 - (b) When the plaintiff may apprehend serious injury if the instrument is left outstanding
 - (c) Where the instrument requires registration but is not registered
 - (d) Where the conditions (a) and (b) mentioned above are fulfilled. (1 mark)

- (ii) An award may be challenged on the ground of —
- (a) Incapacity of a party
 - (b) Invalidity of an arbitration agreement
 - (c) Both (a) and (b)
 - (d) None of the above.
- (1 mark)

Answer :

- (i) (d) Where the conditions (a) and (b) mentioned above are fulfilled.
- (ii) (c) Both (a) and (b)

2010 - Dec [6] State, with reasons in brief, whether the following statements are true or false :

- (iii) Arbitration is the means by which the parties to a dispute get it settled through the intervention of a third person. (2 marks)
- (v) If the parties to arbitration fail to determine the number of arbitrators, the arbitral tribunal shall consist of three arbitrators. (2 marks)
- (vi) An easement can be transferred apart from dominant heritage. (2 marks)

Answer :

- (iii) **Correct :** Arbitration is the means by which parties to a dispute get the same settled through the intervention of a third person (or more persons) but without recourse to a court of law.
- (v) **Incorrect :** As per Section 10 of the Arbitration and Conciliation Act, 1996 if the parties failed to determine the number of arbitrators, the arbitral tribunal shall consist of a sole arbitrator.
- (vi) **Incorrect :** An easement cannot be transferred as apart from the dominant heritage. It is a right ancillary to the enjoyment of the land and cannot be separated from it.

2011 - June [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (i) The publication of defamatory statement through written words is known as _____. (1 mark)

Answer :

The publication of defamatory statement through written words is known as **libel**.

2011 - June [5] (b) Write the most appropriate answer from the given options in respect of the following :

- (iii) The relief of cancellation of instrument is founded upon the principle of -
 - (a) Preventive justice
 - (b) Protective justice
 - (c) Proper justice
 - (d) None of the above.
- (1 mark)

Answer :

- (b) Protective justice

2011 - June [6] State, with reasons in brief, whether the following statements are true or false :

- (i) A contract which is dependent upon the personal qualifications can be specifically enforced. (2 marks)
- (ii) 'Arbitral tribunal' means a sole arbitrator or a panel of arbitrators. (2 marks)

Answer :

- (i) **False.** As per Section 14 of the Specific Relief Act, contracts of personal volition or qualification cannot be specifically enforced, as the quality of work performance cannot be ensured, nor can the continuity be ensured.
- (ii) **True.** As per Section 2 (1) (d) and Section 10 of the Arbitration and Conciliation Act, 1996

2011 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (v) A person liable for the torts committed by other person is called _____ under the law of torts. (1 mark)

Answer :

A person liable for the torts committed by other person is called vicarious liability under the law of torts.

2011 - Dec [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (iv) The conciliation proceedings shall be terminated —
 - (a) By signing of the settlement agreement by the parties
 - (b) By a written declaration of the conciliator
 - (c) By a written declaration of the parties for termination
 - (d) All the above. (1 mark)
- (viii) Appointment of an arbitral tribunal under section 11 of the Arbitration and Conciliation Act, 1996 has to be made by an agreement between the parties within —
 - (a) 30 Days
 - (b) 45 Days
 - (c) 60 Days
 - (d) None of the above. (1 mark)

Answer :

- (iv) (d) All the above
- (viii) (a) 30 days.

2011 - Dec [7] State, with reasons in brief, whether the following statements are true or false:

- (iii) Arbitration is the means by which the parties to a dispute get the same settled through the intervention of a third person. (2 marks)

Answer :

True: Under the Arbitration And Conciliation Act, 1996 parties to a dispute can by agreement appoint the Arbitrator who settles their dispute outside the court. The parties rely on the judgement of Arbitrator and show their willingness to accept the decision.

2012 - June [6] (b) Write the most appropriate answer from the given options in respect of the following:

- (ii) The limitation period for money lent under an agreement that it shall be payable on demand is —
- (a) 3 years
 - (b) 5 years
 - (c) 15 years
 - (d) 12 years.
- (1 mark)

Answer:

- (a) 3 years

2012 - June [7] State, with reasons in brief, whether the following statements are true or false :

- (i) The law of limitation is not unconstitutional. (2 marks)
- (iv) A trustee may sue for possession of specific movable property of which he is a trustee. (2 marks)
- (v) Where there is infringement of a legal right not resulting in harm, but plaintiff can still sue under the law relating to torts. (2 marks)
- (vi) The maximum period of limitation prescribed under the Limitation Act, 1963 is 30 years. (2 marks)

Answer:

- (i) **True:** The law of limitation exists as a protection for the plaintiff, hence it is entirely constitutional.
- (iv) **True:** Section 7 of the Specific Relief Act allows for this.
- (v) **True:** As per the law of torts, which allow for injuria sine damnum, i.e. legal infringement without actual damage can be sued against.
- (vi) **True:** The maximum period allowable under the Limitation Act is thirty years for three kinds of suits.

2012 - Dec [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (i) Which of the following contracts are not specifically enforced as per the Specific Relief Act, 1963—
- (a) Contracts for sale of patent right
 - (b) Contracts for copyright
 - (c) Contracts for rent laws
 - (d) Contracts for future property.
- (1 mark)

- (v) Which of the following authority under section 5 of the Limitation Act, 1963 is empowered to extend the period of limitation—
- (a) Labour Court
 - (b) District Court
 - (c) High Court
 - (d) Arbitrator.
- (1 mark)

Answer:

- (i) (c) Contract for rent laws
- (v) (b) District Court & (c) High Court

2013 - June [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (vi) Attack on the reputation of a person is called _____. (1 mark)

Answer:

defamation

2013 - June [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (vii) Under law of torts, exception to the strict liability is –
- (a) Inevitable accident
 - (b) Inevitable mistake
 - (c) Consent of the plaintiff
 - (d) All of the above.
- (1 mark)

Answer:

- (c) Consent of the plaintiff

2013 - June [6] State, with reasons in brief, whether the following statements are true or false:

- (ii) The rules of evidence are the same in civil and criminal proceedings and there is no strong and marked difference as to the effect of evidence in civil and criminal proceedings.
- (iii) The courts of India are not bound by the specific provisions of the Limitation Act, 1963.
- (vi) The mere existence of arbitration clause in agreement bars the jurisdiction of civil courts automatically.
- (vii) The chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of kinsman or any other mere possibility of a like nature cannot be transferred. (2 marks each)

Answer:

- (ii) **False:** The most marked difference is the incidence of probability. It is enough in civil cases to decide on the basis of probability, whereas in criminal matters, no decision is taken without being certain of the facts to a large extent.

- (iii) **False:** The courts in India are bound by the Limitation Act, 1963, as they are bound to accept cases only if filed within a particular time frame. The only exception is when the courts condone the delay for sufficient cause, which is also allowed within set time frames.
- (vi) **False:** The existence of arbitration clause in an agreement does not bar the jurisdiction of the Civil Court automatically. If a party wants to go to court, he/she has to raise objection not later than the first submission of the statement of defence on the matter. [*Mahesh Kumar v. Rajasthan State Road Corporation*].
- (vii) **True:** This is included within the cases provided in Section 6 of the Transfer of Property Act, which provides a list of properties that cannot be transferred.

2013 - Dec [5](a) Re- write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (iii) A declaratory decree is a decree whereby any right as to any property or the _____ of a person is judicially ascertained.
- (iv) According to the maxim _____ where there is infringement of a legal right not resulting in harm, the plaintiff can still sue in tort.
- (viii) The test of 'sufficient cause' is purely an individualistic test. It is not an _____ test. (1 mark each)

2013 - Dec [5](b) Write the most appropriate answer from the given options in respect of the following:

- (ii) Where a contract comprises an affirmative as well as negative agreement, the court can grant an injunction to perform -
 - (a) Affirmative agreement
 - (b) Negative agreement
 - (c) Both of the above
 - (d) None of the above.
- (iv) The mandate of an arbitrator gets terminated when -
 - (a) He becomes unable to perform his functions
 - (b) He remains in his office to perform his functions
 - (c) The parties agree to retain him in the office
 - (d) None of the above. (1 mark each)

2013 - Dec [6] State, with reasons in brief, whether the following statements are true or false:

- (ii) The court can *suo moto* take note of question of limitation.
- (iv) A person suing for rescission of a contract can also sue for specific performance of a contract.
- (v) Any fact is relevant even when it does not show or constitute a motive or preparation for any fact in issue. (2 marks each)

SHORT NOTES

2009 - June [2] Write short notes of the following :

- (i) Expert opinion (4 marks)

Answer:

- (i) Section 45 of the Indian Evidence Act, 1872 makes the opinions of experts important on points of specialized areas like handwriting analysis, fingerprints, artistic impressions, scientific principles and foreign legal positions. Anyone possessing specialized knowledge in the above mentioned fields would be deemed to be an expert.

Section 73 opines that comparison of signature, seal or handwriting of a person is allowed to see whether they actually belong to the said person. The Court may even ask that person to write before it in order to prove his handwriting. For this purpose, the help of an expert might be taken.

The statement of an expert can even be admitted as evidence in documentary form without his presence being stressed upon; this is known as 'hearsay evidence'.

2010 - June [4] Write notes on the following :

- (ii) Setting aside of an award
(iii) Perpetual injunction
(iv) Rectification of an instrument
(v) Specific performance of a contract (4 marks each)

Answer:

- (ii) An arbitral award can be set-aside on application to the High Court having jurisdiction, and any civil court of an inferior grade. This has been provided under Section 34 of the Arbitration and Conciliation Act, 1996.

The grounds based on which an application under this section can be filed are as follow—

- Invalid or unacceptable arbitration agreement
- Incapacity of parties
- Improper notice of arbitration proceedings
- Inability in presenting a proper case to the arbitral authority
- Award not according to the terms of reference
- Improperly constituted arbitral tribunal
- Proceedings not as per agreement
- Award against the public policy of India
- Matter of dispute not capable of being the subject matter of arbitration

The application for setting aside an award has to be made within three months of receiving the award. If there is a previous application for correction or interpretation of the award already pending, the time would be counted from the date of disposal of that application. This period can be extended on proof of sufficient cause for not presenting the application being evident.

- (iii) 'Preventive Relief' implies the issue of an injunction to stop a person from doing something that he should not be doing. It is contained in Part III of the Specific Relief Act, 1963. Specific relief being a discretionary remedy, it depends upon the judgment of the Court.

Section 36 under this part provides for both temporary and perpetual injunctions. Temporary injunctions are for stopping the person for a short duration of time specified in the order, for example, when the suit is pending or yet to be decided. They are provided under Order 39 of the Code of Civil Procedure, 1908. These can be dissolved at sufficient cause being proven by the defendant. Alternatively, these will terminate at the final decision regarding the suit being passed by the Court.

Permanent injunctions, on the other hand, are covered under Section 38 of the Specific Relief Act. These are passed to uphold the plaintiff's right arising from a contract. A 'perpetual injunction', often a 'permanent injunction', is a relief available to the plaintiff only at the conclusion of the trial. This type of injunction would be granted when the conditions that necessitated the injunction in the first place continue and are proved to be of a permanent nature. It is ordered using the final judgment.

- (iv) Rectification of an instrument means removing the apparent mistakes or errors. This is covered under Section 26 of the Specific Relief Act, 1963. It is to be done with the permission of the Registrar. The purpose of rectification of instruments is to give effect to the real intention of the parties to the contract that is represented by the instrument.

If the error is formal in nature, it can be rectified with the Registrar's permission, who gives sufficient time to do the needful. The guiding principle here is that the parties should be placed in the positions they would have been in had the error not occurred.

- (v) Specific Performance implies the enforcement of a contract in its exact and pre-determined terms, by way of a court order or injunction. It is used when no other relief would suffice to provide relief to the aggrieved. The principles on which courts may grant specific performance

The principles on which courts may grant specific performance are as defined in Section 10 of the Specific Relief Act, 1963, and are as under –

- If damages can better address the harm to the plaintiff by the wrong committed, specific performance will not be ordered.
- Both the parties will be bound by it, i.e. irrespective of which party files a suit, if specific performance is ordered by the court in response to the suit by one party, it will be the same if the other files a suit.
- Specific relief is a discretionary power and the courts will also see whether it is a type of contract that can be brought within this Act or not.

2010 - Dec [2] Write notes on the following :

- (i) Circumstantial evidence (4 marks)
- (ii) Appointment of experts by an arbitral tribunal under the Arbitration and Conciliation Act, 1996. (4 marks)
- (iii) The rule of strict liability as laid down in *Rylands vs. Fletcher* (4 marks)
- (iv) Rules relating to presumption (4 marks)

Answer:

- (i) Circumstantial evidence is that derived from the surrounding facts. For example, if in a room, an attempt to murder has taken place, the state of the things in the room will be taken into consideration as circumstantial evidence. For although, the state of things by itself is not sufficient proof that a murder took place, but it can strongly indicate to it, through the signs of struggle in the room, the sight of blood, a weapon lying on the ground etc. In the absence of primary evidence, circumstantial or secondary evidence can be relied upon to give an idea about the situation. It cannot, however, be used by itself in murder cases.

Under Section 60 of the Evidence Act of the English law, the expression "direct evidence" is not intended to exclude circumstantial evidence of things which could be seen, heard or felt. Thus, evidence whether direct or circumstantial under English law is "direct" evidence under Section 60. Before acting on circumstances put forward are satisfactorily proved and whether the proved circumstances are sufficient to bring the guilt to the accused the Court should not view in isolation the circumstantial evidence but it must take an overall view of the matter.

- (ii) Section 26 of the Arbitration and Conciliation Act, 1996 says that the tribunal can take the help of an expert for opinions on any matter in the proceedings. The expert can contribute by being a part of the proceedings and forwarding his reports, if any, to the tribunal. His reports also have to be forwarded to both the parties to arbitration. The experts can be appointed subject to agreement between the parties. Clause (b) of Sub-section (1) of the Section obligates the parties to provide the expert access to necessary information and documents.

Conversely, there is a duty placed on the expert under Section 26(3) to make available to the parties on their request the various documents etc. on which the expert has based his report. This will enable the parties to present counter questions or objections.

(iii) **Strict liability or absolute liability** – This liability arises when some harm takes place without any intention or negligence on the part of the defendant, even then he is liable for it. This can happen in any of the following cases –

- **Unavoidable accidents** –When a person is doing some work, which, if it goes wrong, is liable to cause harm to another, it will bring liability upon him even if the harmful substances were being kept and maintained by another on his land. For instance, if someone has a godown, which he leases to another, and if that other causes some illegal activity to take place in that place, the owner is also liable for it.
- **Unavoidable mistake** – When a person affects another's tangible or intangible property, for example, someone who gives wrong information about another to the press has to undertake full liability for it.

The rule of strict liability in *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330 is that a man acts at his peril and is the insurer of the safety of his neighbour against accidental harm. Such duty is absolute because it is independent of negligence on the part of the defendant or his servants.

In this case, B, a mill owner employed independent contractors, who were apparently competent to construct a reservoir on his land to provide water for his mill. There were old disused mining shafts under the site of the reservoir which the contractors failed to observe because they were filled with earth. The contractors therefore, did not block them. When the reservoir was filled, the water from it burst through the old shafts and flooded the plaintiff's coal mines on the adjoining land. It was found as a fact that B did not know of the shafts and had not been negligent, though the independent contractors were definitely negligent, and B was held liable.

(iv) The Indian Evidence Act of 1872 recognizes some rules as to presumptions. Presumptions are used in the interpretation of statutes only when the intention of the legislature is not clear; when it is clear, they are to be avoided. Conjecture or suppositions are used when it becomes difficult to comprehend the statute in its own light. The basic presumptions used in the interpretation of statutes are as follows –

- (i) The words used in the statute have been used in the literal sense with precise meanings unless otherwise defined.
- (ii) There has been effected no change in the rights of the people unless the statute prescribe such a change expressly.

- (iii) Liability only attaches where there is mens rea (guilty mind).
- (iv) The state or governmental institutions, unless expressly covered, are deemed to be exempted.
- (v) The legislature, while passing the new statute was aware of the manner of functioning of the judiciary and the executive as well as the legal condition in the country and unless stated, has not caused any changes in it.
- (vi) No mistakes have been committed by the legislature in drafting the statute.
- (vii) No pointless activity would be enjoined on the people.
- (viii) The statute has been made with a view to exercise the powers given through it equitably and fairly.
- (ix) Where the statute creates a legal duty that is accompanied by a legal power, and cannot stand without it, it is assumed both go together.

2011 - June [2] Write notes on the following :

- (ii) Temporary and perpetual injunction (4 marks)
- (iii) Malicious prosecution (4 marks)
- (iv) *Res gestae* (4 marks)
- (v) Primary and secondary evidence. (4 marks)

Answer :

- (ii) 'Temporary injunctions' or 'interlocutory injunctions', according to Order XXXIX of the Code of Civil Procedure, 1908, means an order passed by a court to restrain someone from doing something that would result in alienation of property, or its destruction, or when the plaintiff is in danger of being dispossessed altogether. The plaintiff needs to establish to the satisfaction of the court that the losses suffered by him would be irreversible, and of such a nature as cannot be compensated, if the injunction is not granted. Such an injunction is for a short duration of time, normally for the time taken by the court to reach a final decision. It is issued after the suit has been filed and when it remains pending. A prima facie case and balance of convenience in the plaintiff's favor are essential to get a temporary injunction issued.

A 'perpetual injunction', often a 'permanent injunction', on the other hand, is a relief available to the plaintiff only at the conclusion of the trial. This type of injunction would be granted when the conditions that necessitated the injunction in the first place continue and are proved to be of a permanent nature. It is ordered using the final judgment.

- (iii) An action for malicious prosecution is the remedy for baseless and malicious litigation. It is not limited to criminal prosecutions but may be brought in response to any baseless and malicious litigation or prosecution, whether criminal or civil. The criminal defendant or civil respondent in a baseless and malicious case may later file this claim in civil court against the parties who took an active role in

initiating or encouraging the original case. The defendant in the initial case becomes the plaintiff in the malicious prosecution suit, and the plaintiff or prosecutor in the original case becomes the defendant. In most states the claim must be filed within a year after the end of the original case.

A claim of malicious prosecution is a tort action. A tort action is filed in civil court to recover money damages for certain harm suffered. The plaintiff in a malicious prosecution suit seeks to win money from the respondent as recompense for the various costs associated with having to defend against the baseless and vexatious case.

To win a suit for malicious prosecution, the plaintiff must prove four elements: (1) that the original case was terminated in favor of the plaintiff, (2) that the defendant played an active role in the original case, (3) that the defendant did not have probable cause or reasonable grounds to support the original case, and (4) that the defendant initiated or continued the initial case with an improper purpose.

- (iv) **Res gestae:** Res gestae means facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction.

Section 6 of the Indian Evidence Act embodies the rule relating to what is commonly known as res gestae. Acts or declarations accompanying the transaction or the facts in issue are treated as part of the res gestae and admitted as evidence. The obvious ground for admission of such evidence is the spontaneity and immediacy of the act or declaration in question.

For example, A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

- (v) 'Primary evidence' as per the Indian Evidence Act, 1872 means the very document itself, not a copy of it. The provision of primary evidence is based on the 'Best Evidence' principle, i.e. if there is better evidence available, then that must be provided. If the person capable of providing superior evidence supplies an inferior one, it creates an unfavorable stance against him. (Section 62)

'Secondary evidence' means certified or compared copies of, or counterparts of, or oral accounts of documents. (Section 63)

According to Section 65 of the Act, where primary evidence can be provided, secondary evidence should not be used. It should only be given where the original document is not available because it has been lost or destroyed, or it is otherwise unavailable because it cannot easily be moved because of bulk, or because it is under the control of some public authority's control.

DISTINGUISH BETWEEN

2009 - Dec [3] Distinguish between the following :

- (i) 'Admission' and 'confession'.

(4 marks)

Answer :

<i>Basis</i>	<i>Admission</i>	<i>Confession</i>
Nature	Admission is a statement, oral or documentary or contained in electronic form, which suggests inference as to any fact in issue or relevant fact.	A confession is an admission of guilt by an accused person.
Civil/criminal/matter	An admission is the acknowledgement of any right or liability in relation to a particular thing. Admission generally relates to civil matters.	Confession arises in criminal matters related to admission of guilt by an accused person.
Estoppel	Admission operates as an estoppel but confession does not operate as an estoppel.	No special formalities are required for recording admissions but formalities are prescribed for 'recording a confession U/S 164 Cr. P.C.
Binding	Admission binds the maker of admission.	Confession is binding to the maker of confession and to the other co-accused in a joint trial.
Supplementary evidence	Where some supplementary evidence is required to make a conviction, then it is an admission.	Where conviction is based on the statement alone, it is a confession.

2010 - June [3] Distinguish between the following :

- (iii) 'Battery' and 'assault'.

(4 marks)

- (iv) 'Condition precedent' and 'condition subsequent'.

(4 marks)

- (v) 'Primary evidence' and 'secondary evidence'.

(4 marks)

Answer :

- (iii) Battery - Battery implies the unlawful beating of another. It includes every willful, angry, violent or negligent touching of another's person or clothes, or anything attached to his person or held by him.

Assault – It is a threatened or attempted physical attack by someone who appears to be able to cause bodily harm if not stopped. An assault is any unlawful attempt or offer with force or violence to do a corporal hurt to another, whether from malice or wantonness; for example, by striking at him or even holding up the fist at him in a threatening or insulting manner, or with other circumstances as denote at the time. It indicates an intention, coupled with a presentability, of actual violence against his person, as by pointing a weapon at him when he is within reach of it.

- (iv) In the concept of contingent interest, the transferee is required to fulfil some condition so that the transfer can be perfected. The condition can be a condition precedent or a condition subsequent.

A condition precedent is one that needs to be fulfilled before the transfer of interest can take place. For example, A asks B to marry C, then only he will transfer some land to him. The marriage is a condition precedent, essential for the transfer of interest to take place. The transfer itself is contingent on B's acceptance of the condition.

A condition subsequent is one that has to be followed even after the transfer has taken place. For example, A transfers land to B subject to the condition that if he cuts the trees on that land, it will revert back to A.

- (v) 'Primary evidence' as per the Indian Evidence Act, 1872 means the very document itself, not a copy of it. The provision of primary evidence is based on the 'Best Evidence' principle, i.e. if there is better evidence available, then that must be provided. If the person capable of providing superior evidence supplies an inferior one, it creates an unfavorable stance against him. (Section 62)

'Secondary evidence' means certified or compared copies of, or counterparts of, or oral accounts of documents. (Section 63)

According to Section 65 of the Act, where primary evidence can be provided, secondary evidence should not be used. It should only be given where the original document is not available because it has been lost or destroyed, or it is otherwise unavailable because it cannot easily be moved because of bulk, or because it is under the control of some public authority's control.

2011 - Dec [3] Distinguish between the following:

- (ii) 'Facts in issue' and 'issues of fact'.

(4 marks)

Answer :

According to Section 3 of the Indian Evidence Act, 1872, the expression "facts in issue" means and includes-any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceedings, necessarily follows.

Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an "issue of fact", the fact to be asserted or denied in the answer to such issue is a "fact in issue".

A "fact in issue" is called as the principal fact to be proved or factum probandum and the relevant fact the evidentiary fact or factum probans from which the principal fact follows. The fact which constitutes the right or liability called "fact in issue" and in a particular case the question of determining the "facts in issue" depends upon the rule of the substantive law which defines the rights and liabilities claimed.

Under Civil Procedure Code, the Court has to frame issues on all disputed facts which are necessary in the case. These are called "issues of fact" but the subject matter of an issue of fact is always a "fact in issue". Thus when described in the context of Civil Procedure Code, it is an "issue of fact" and when described in the language of Evidence Act it is a "fact in issue".

2012 - Dec [3] Distinguish the following:

- (ii) 'Remedies of specific performance' and 'remedies of injunction'. (4 marks)
- (iii) 'Arbitration' and 'conciliation'. (4 marks)
- (iv) 'Libel' and 'slander'. (4 marks)

Answer:

(ii) The basic differences are as follow -

- Performance/ non-performance – Injunctions are an order by the court not to do a specific act, i.e. an order for non-performance, whereas an order for specific performance is issued to make someone do the very thing mentioned in the order.
- Types of cases – Injunctions are normally for torts and other civil wrongs; specific performance is generally used in case of contracts.
- Necessity of contract – In case of injunctions, there is no need for prior contracts, as they are issued mainly for acts done without the other party agreeing to or even knowing about them. Specific performance, on the other hand, requires a contract to be entered into first, the breach of which gives right to the need for specific performance as a remedy. [The only exception here is an agreement of forbearance; in this case, injunctions might be issued.]

(iii) Section 2 (1)(a) of the Arbitration and Conciliation Act, 1996, defines "Arbitration means any arbitration whether or not administered by permanent arbitral institution."

ARBITRATION can be defined as a method by which parties to a dispute get the dispute settled through the intervention of a third independent person. Parties can also settle their disputes through a permanent arbitral Institutions like, Indian Council of Arbitration, Chamber of Commerce, etc. Arbitration, a form of alternative

dispute resolution (ADR), is a legal technique for the resolution of disputes outside the courts, thus saving time and money. In this, the parties to a dispute refer it to one or more persons (the “arbitrators” or “arbitral tribunal”), by whose decision (known as the “arbitral award”) they agree to be bound.

Halsbury defines Arbitration as follows:—

“Arbitration is the reference of dispute between not less than two parties, for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction.”

Conciliation

It is an informal process in which both the disputing parties appoint a neutral conciliator or a third person to bring them to an agreement and to help end the dispute. This is done by sorting out any misinterpretations between the parties and removing the technical difficulties and working out possible solutions. It is an alternative dispute resolution (ADR) process whereby the parties to a dispute using the help of a conciliator, resolve the issues bothering them. The conciliator meets with the parties separately in an attempt to resolve their differences. They help by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated, mutually acceptable settlement.

Conciliation differs from arbitration in that the conciliation process, in and of itself, has no legal standing, and the conciliator usually has no authority to seek evidence or call witnesses, usually writes no decision, and makes no award.

The main differences between the two are as follows –

- Legal standing – Arbitration has a legal standing; conciliation does not have a legal standing.
- Authority to seek evidence or examine witnesses – An arbitrator has the right to seek evidence or call witnesses; a conciliator does not have these rights.
- Writing of decisions- An arbitrator can write decisions, a conciliator just aids the two parties in reaching to an agreement.
- Making of awards – An arbitrator can pass an arbitral award; a conciliator can pass no awards; just help in a conciliation agreement.

(iv) What Is Slander?

Slander verbally harming the reputation or activities of another individual or entity, using information that is known to be false or misleading. This might involve not only the use of specific words to damage a reputation, but also actions such as hand gestures or facial expressions in order to reinforce the misinformation that is being distributed. Any defamation that is expressed in an ephemeral or transitory mode is usually considered slander. For example, a disgruntled shareholder might say bad things about the company, like it is going bankrupt. If it is said in a form that cannot be retained for future references, it is slander.

What Is Libel?

Like slander, libel also refers to statements or opinions that damage another person's reputation. The difference is that libel takes the form of fixed, relatively permanent or printed material rather than verbal assaults. For example, the employee in the above mentioned illustration may choose to leave the company and write an article about the company operations, against the directors etc. The article may be supported by photographs that were taken and then used out of context or to reinforce the purported validity of the lies. This type of activity would likely constitute libel.

2013 - June [3] Distinguish between the following.

- (i) 'Specific performance' and 'injunction'.
- (ii) 'Battery' and 'assault'. (4 marks each)

Answer:

(i) Specific performance and injunction:

The basic differences are as follow:

- **Performance/ non-performance:** Injunctions are an order by the court not to do a specific act, i.e. an order for non-performance, whereas an order for specific performance is issued to make someone do the very thing mentioned in the order.
- **Types of cases:** Injunctions are normally for torts and other civil wrongs; specific performance is generally used in case of contracts.
- **Necessity of contract:** In case of injunctions, there is no need for prior contracts, as they are issued mainly for acts done without the other party agreeing to or even knowing about them. Specific performance, on the other hand, requires a contract to be entered into first, the breach of which gives right to the need for specific performance as a remedy. [The only exception here is an agreement of forbearance; in this case, injunctions might be issued.]

(ii) Battery and assault

- **Battery:** Battery implies the unlawful beating of another. It includes every wilful, angry, violent or negligent touching of another's person or clothes, or anything attached to his person or held by him.
- **Assault:** It is a threatened or attempted physical attack by someone who appears to be able to cause bodily harm if not stopped. An assault is any unlawful attempt or offer with force or violence to do a corporal hurt to another, whether from malice or wantonness; for example, by striking at him or even holding up the fist at him in a threatening or insulting manner, or with other circumstances as denote at the time. It indicates an intention, coupled with a present ability, of actual violence against his person, as by pointing a weapon at him when he is within reach of it.

2013 - Dec [3] Distinguish between the following:

- (i) 'Judicial remedies' and 'extra-judicial remedies'.
- (iv) 'Admissions' and 'confessions' under the Indian Evidence Act, 1872.
- (v) 'Condition precedent' and 'condition subsequent.' (4 marks each)

DESCRIPTIVE QUESTIONS

2008 - Dec [2] Attempt the following :

- (ii) Mention persons against whom specific performance cannot be enforced.
- (iii) What are the essentials of an arbitral award?
- (iv) What is the principle of estoppel under the Indian Evidence Act, 1872? (4 marks each)

Answer :

- (ii) Mention persons against whom specific performance cannot be enforced.
According to Sections 16 and 17 of the Specific Relief Act, 1963, specific performance cannot be enforced in favour of the following –
 - Someone who cannot claim any damages or compensation for the non-performance of an act.
 - Someone who has breached any conditions of the contract or become incapable of performing his part in the contract.
 - Someone who commits a fraud or is party to it.
 - Who fails to convince that he is willing to perform his end of the contract.
 - Who deals in property to which he has no title?
 - Who believes himself to possess a good title, enters into a contract of which it forms the subject matter, but is unable to get a clear title until the date of performance.
- (iii) Section 2(1)(c) of the Arbitration and Conciliation Act, 1996 contains the definition of an arbitral award, which includes an interim award. The essential ingredients of an arbitral award, however, are contained in Section 31 of the Act, which contains the details regarding the form and contents of such an award. It can be a 'speaking award' or a simple one, just giving the decision. In case it is a speaking award, it will be more detailed, giving the reasons and justifications for the award. It will contain also the date and place of passing the award (Section 20). The prescribed form requires that the award be in writing and signed by the members of the tribunal.

Moreover, if the award includes decision regarding monetary payments, it has to contain details of payment, interest to be paid alongwith and the specifications regarding the period to which these sums pertain. It will also speak of the allocation of the cost of arbitration, i.e. in what ratio are the parties to bear it, who should bear it etc.

- (iv) The principle of estoppel implies that a person who states certain facts must not be allowed to state something contrary to the facts stated by him earlier. It follows from the generally accepted rule that a person cannot approbate and reprobate at the same time. This is specially the case when another has relied on the information or statement given by one and done something that he otherwise would not have done. This is to prevent undue hardship for others who depend on the statements previously made by that person.

2008 - Dec [5] (a) Attempt the following :

- (i) When do the statements made under special circumstances become relevant ?
(iii) What is a valid acknowledgement under the Limitation Act, 1963 ?
(iv) Explain the maxim *injuria sine damnum*. (4 marks each)

Answer :

- (i) This is covered under Sections 45 to 51 in the Indian Evidence Act, 1872. They prescribe as under –

Section 45 - This makes the opinions of experts important on points of specialized areas like handwriting analysis, fingerprints, artistic impressions, scientific principles and foreign legal positions. Anyone possessing specialized knowledge in the above mentioned fields would be deemed to be an expert.

Section 46 – Facts that provide support to the opinions mentioned in Section 45 will also be relevant.

Section 47 – In case of an opinion regarding handwriting verification, the opinion of someone who was familiar with it would be relevant.

Section 47A – When it is a case of identifying someone's digital signature, the opinion of the Certifying Authority under the Information Technology Act, 2000 would be a relevant fact.

Section 48 – When it is a question of establishing facts regarding existence of a right or custom, the opinion of someone who knows about them would be relevant.

Section 49 – When it is a matter of opinion regarding meaning of words or particular terms and their usages in certain areas, or the set-up or running of a religious/charitable foundation, the opinion of a person who knows facts regarding them would be deemed to be relevant.

Section 50 – When it is a question of the relationship between two persons, i.e. its existence or nature, the opinion of someone who knows facts about it would be relevant.

Section 51 – When an opinion is considered relevant, the facts it is based on also become relevant.

- (iii) The effect of acknowledgment as per Section 18 of the Limitation Act, 1963, is to extend the period of limitation. A fresh period of limitation begins from the date of acknowledgment of liability with regard to any property or right. The only conditions of a valid acknowledgment are that the person signing the acknowledgment has to give it in writing and sign it and it has to be regarding a claim of a property or right against him. In order to bind him, it has to have the effects of an admission.
- (iv) 'Injury' here means 'physical injury' and 'damnum' means 'financial loss' or 'loss of property'. Injuria sine damnum implies a legal wrong that causes no actual damage or injury to anyone. For example, someone got hurt by another's vehicle due to his own fault; it is not the other person's liability, so no financial loss is caused to him.

2009 - June [4] Attempt the following :

- (v) "Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it." Discuss.
- (vi) Explain the maxim *damnum sine injuria* under the law of torts. (4 marks each)

Answer :

- (v) 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.

Applicability –

- It applies to cases where the cause of action continues; when that is varied, a fresh period of limitation will begin from the date of variation.
 - This Section applies only to suits and applications, and not to appeals, which are generally allowed unless expressly covered under some other section.
 - Cases of property being vested in trusts and in legal representatives will be included only in the instance of the property being vested for a specific purpose.
- (vi) '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.

2009 - Dec [2] Explain the following :

- (iii) Rectification of an instrument
- (iv) International commercial arbitration
- (v) Valid acknowledgment and its effect on period of limitation. (4 marks each)

Answer :

- (iii)** Section 26 of the Specific Relief Act provides that when through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not express their real intention, then either party may file a suit for rectification of the instrument. Whenever the court finds that the instrument through fraud or mistake does not express the real intention of the parties, the court may in its discretion direct rectification of the instrument so as to express that intention. A contract in writing may first be rectified, no relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed.
- (iv) International Commercial Arbitration -** As per **section 2(1)(f)** of the Arbitration and Conciliation Act, 1996, 'international commercial arbitration' means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is the following:
- (i) An individual who is a national of, or habitually resident in any country other than India.
 - (ii) A body corporate which is incorporated in any country other than India,
 - (iii) A company or an association or a body of individuals whose central management and control is exercised in any country other than India,
 - (iv) The Government of a foreign country.
- (v)**
- (1) As provided in section 18 of the Limitation Act, 1963, where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.
 - (2) Where the writing containing the acknowledgement is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 oral evidence of its contents shall not be received.
 - (3) An acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal

to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right,

- (4) The word 'signed' means signed either personally or by an agent duly authorised in this behalf, and an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

2009 - Dec [5] (c) Explain the following :

- (ii) Circumstantial evidence.

(2 marks)

Answer :

Circumstantial evidence: In law, evidence that is drawn not from direct observation of a fact at issue but from events or circumstances that surround it is called circumstantial evidence. If a witness arrives at a crime scene seconds after hearing a gunshot to find someone standing over a corpse and holding a smoking pistol, the evidence is circumstantial, since the person may merely be a bystander who picked up the weapon after the killer dropped it. The popular notion that one cannot be convicted on circumstantial evidence is false. Most criminal convictions are based, at least in part, on circumstantial evidence that sufficiently links criminal and crime. For example, from the evidence that a person was seen running away from the scene of a crime, a judge may infer that the person committed the crime. It is the testimony of a witness to other relevant facts from which the fact in issue may be determined.

2010 - Dec [4] (a) Explain with illustration the doctrine of '*damnum sine injuria*' and '*injuria sine damnum*'. (6 marks)

Answer :

- (a) **Injuria sine damnum** – 'Injuria' means 'infringement' of some legal right. 'Damnum' means 'actual damage or loss', caused either to the person or to the property of the aggrieved. Injuria sine damnum gives the aggrieved the right to proceed in a court of law, as his legal rights have been harmed. For example, trespass gives the owner the right to sue the trespasser.

Damnum sine injuria – This implies that although there has been loss caused to the aggrieved, he cannot sue as there has been no infringement of any legal rights. For example, if a trespasser entered a property and was injured by the owner's dog, there is no legal remedy if the owner has a board outside saying, "Do not trespass. Beware of dog."

2011 - June [4] (a) The law of limitation bars the remedy in a court of law when the period of limitation has expired. However, there are certain exclusions in the computation of the period of limitation. Explain. (4 marks)

Answer :**Extension of limitation period and the Doctrine of Sufficient Cause**

Extension of limitation period is covered under Section 5 of the Limitation Act, 1963, which covers the Doctrine of Sufficient Cause. It provides for the period of limitation being extended in case the plaintiff was hindered by a cause serious enough to have prevented him from initiating proceedings.

Calculation of Limitation Period

Sections 12 to 19 and Section 24, which are contained in Part III of the Limitation Act, 1963, titled "Computation of Period of Limitation", provide the details for this. They are as under –

Section 12 – It says that the time required for filing a suit, appeal or application, either against a decree or order or otherwise, is exclusive of the day from which the limitation period is calculated. Moreover, the time needed for obtaining a copy of the order being appealed against is also to be excluded.

Section 13 – The time during which the suit for being adjudged a pauper is applied for but not decided.

Section 14 – The period that was taken by a court that had no jurisdiction on a matter that was under question, and the plaintiff had applied to that court in the mistaken belief that it had power to entertain that suit.

Section 15 – Under this Section certain other situation in which there would be an extension of time in calculating the period of limitation are given. For example, in case of the defendant being out of India and arriving after the suit has been instituted, only the time when he is in India shall be included.

Section 16 – In case the plaintiff's right to appeal is hindered by his death, the period shall be calculated from the time when there is a representative appointed for the plaintiff.

Section 17 – In case the suit or application has been initiated on the basis of some fraud, the period of limitation would be counted from the date when the fraud is discovered.

Section 18 – This section states that in case of an acknowledgment regarding any property or right in relation to which any claim has been made against him, a fresh period of limitation will commence from the date of such acknowledgment.

Section 19 – This records the cases of a debt or interest on legacy, on account of which if interest is paid, it results in a fresh period of limitation commencing from the date of such payment.

Section 24 – all periods shall be calculated in accordance with the standard Gregorian calendar.

2011 - Dec [2] Comment on the following:

- (i) "Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it". (4 marks)
- (iii) "A contract may not always be specifically enforceable." (4 marks)
- (iv) "Conciliation is an informal process in which the conciliator (the third party) tries to bring the disputants to agreement." (4 marks)
- (v) "An instrument admitted in evidence is not to be questioned." (4 marks)

Answer :

- (i) 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. 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.

Applicability – It applies to cases where the cause of action continues; when that is varied, a fresh period of limitation will begin from the date of variation.

This Section applies only to suits and applications, and not to appeals, which are generally allowed unless expressly covered under some other section.

Cases of property being vested in trusts and in legal representatives will be included only in the instance of the property being vested for a specific purpose.

Sections 12 to 19 and Section 24, which are contained in Part III of the Limitation Act, 1963, titled "Computation of Period of Limitation", provide the details for this. They are as under –

Section 12 – It says that the time required for filing a suit, appeal or application, either against a decree or order or otherwise, is exclusive of the day from which the limitation period is calculated. Moreover, the time needed for obtaining a copy of the order being appealed against is also to be excluded.

Section 13 – The time during which the suit for being adjudged a pauper is applied for but not decided.

Section 14 – The period that was taken by a court that had no jurisdiction on a matter that was under question, and the plaintiff had applied to that court in the mistaken belief that it had power to entertain that suit.

Section 15 – Under this Section certain other situation in which there would be an extension of time in calculating the period of limitation are given. For example, in case of the defendant being out of India and arriving after the suit has been instituted, only the time when he is in India shall be included.

Section 16 – In case the plaintiff's right to appeal is hindered by his death, the period shall be calculated from the time when there is a representative appointed for the plaintiff.

Section 17 – In case the suit or application has been initiated on the basis of some fraud, the period of limitation would be counted from the date when the fraud is discovered.

Section 18 – This section states that in case of an acknowledgement regarding any property or right in relation to which any claim has been made against him, a fresh period of limitation will commence from the date of such acknowledgment.

Section 19 – This records the cases of a debt or interest on legacy, on account of which if interest is paid, it results in a fresh period of limitation commencing from the date of such payment.

Section 24 – all periods shall be calculated in accordance with the standard Gregorian calendar.

(iii) The contracts that cannot be specifically enforced (as per section 14 of the Act) are as under –

When damages are sufficient remedy

When specific performance requires constant supervision by the court or a continuous duty to be performed, and it does not seem feasible to the court

When the repercussions of non-performance can be quantified

When the contract has multiple diminutive details that the Court finds difficult to supervise.

(iv) Conciliation It is an informal process in which both the disputing parties appoint a neutral conciliator or a third person to bring them to an agreement and end the dispute. This is done by mounting the communications between the parties so that any misinterpretations can be removed, technical difficulties alleviated and possible solutions worked out.

Normally the appointment of conciliator(s) takes place in any of the following ways –

The disputing parties might agree on one name as conciliator.

Each party might choose one conciliator each.

Each party might choose one conciliator each; each of their conciliators will then agree on the name of a third conciliator, who will act as the presiding conciliator.

The parties might contact an institution which is involved in arbitration and conciliation work, and that institution might then choose a conciliator for them or suggest some names.

The role of the conciliator is to get the parties to settle the dispute amicably. In trying to achieve this, he has to act in an impartial way, so that he can take into consideration the positions and interests of both the parties involved. He can hear opinions and statements orally and suggest settlement options to the parties.

- (v) **Admission of instrument where not to be questioned** - Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35 or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same and may impound the same when produced. (Section 61).

2011 - Dec [4] Attempt the following:

- (iii) "Law of limitation bars the remedy, but does not extinguish the right." Explain the statement with its exceptions. (4 marks)
- (iv) State the effects of 'acknowledgement' and 'payment against debt' on the period of limitation. (4 marks)

Answer :

- (iii) It simply means that although the Limitation Act, 1963, places a limit on the remedy, or rather the period available for the remedy, it does not obstruct the right of the aggrieved. Section 3 of the Act provides that it is a part of the duties of every court to reject a suit, petition, application or appeal if it comes after the period for filing it has expired.

According to Section 27 of the Act, a person's right to any property shall cease after the period that has been decided for filing a suit for its recovery. Although these two sections seem contradictory, they in fact place a limit on the aggrieved person's right to file a suit on the logic that if the person is truly distressed, he will find an opportunity to file a suit as soon as possible. If that has not been done, and the court sees no valid reason, or sufficient cause, it will reject the suit. This has been justified on grounds of public policy. Hence, under this act, any suit related to claims has a chance of being accepted, unless it is a stale suit, in which case, the very right has been extinguished. Where the right persists, there might be constitutional remedies and other options. For example, if the parties make a settlement between themselves, that would be acceptable in the eyes of law.

- (iv) Section 18 – This section states that in case of an acknowledgement regarding any property or right in relation to which any claim has been made against him, a fresh period of limitation will commence from the date of such acknowledgement. The effect of acknowledgement as per Section 18 of the Limitation Act, 1963, is to extend the period of limitation. A fresh period of

limitation begins from the date of acknowledgement of liability with regard to any property or right. The only conditions are that the person signing the acknowledgement has to give it in writing and it has to be regarding a claim of a property or right against him. In order to bind him, it has to have the effects of an admission.

Section 19 – This records the cases of a debt or interest on legacy, on account of which if interest is paid, it results in a fresh period of limitation commencing from the date of such payment.

According to Section 19 of the Limitation Act, 1963, a fresh limitation period begins from the date of part payment or the payment of interest on a debt. The original limitation period stands extended when part payment occurs, but the payment has to take place within the original period of limitation applicable on the debt. For this to happen, an acknowledgement given by the creditor is mandatory, as proof of part payment.

2011 - Dec [6] (a) Explain strict or absolute liability under the law of torts. (6 marks)

Answer :

Strict liability or absolute liability: This liability arises when some harm takes place without any intention or negligence on the part of the defendant, even then he is liable for it. This can happen in any of the following cases –

Unavoidable accidents: When a person is doing some work, which, if it goes wrong, is liable to cause harm to another, it will bring liability upon him even if the harmful substances were being kept and maintained by another on his land. For instance, if someone has a godown, which he leases to another, and if that other causes some illegal activity to take place in that place, the owner is also liable for it.

Unavoidable mistake: When a person affects another's tangible or intangible property, for example, someone who gives wrong information about another to the press has to undertake full liability for it.

There are, however, exceptions to the rule of strict liability. They are as under –

Damage caused even when land used for natural purposes: When land is used for the purposes it is meant to be used for, and still harm is caused, then no liability arises. For example, when the land to be used for building a house is used for that purpose, and still it causes some harm to another, then the defendant is not liable for it if he has exercised normal care.

With the knowledge and consent of plaintiff: When the plaintiff will benefit from the action too, then he cannot complain against it later, having enjoyed the fruit of that action.

Damage caused from an act of a stranger or a third party – However, if the defendant was aware of the damage being caused, then he should have taken steps to mitigate the harm, else he would be held liable.

Action of a statutory body: This will be exempt when the statutory body, i.e., the municipality etc. has taken proper steps to keep the substance in a way so as to ensure that no one is harmed because of its leakage.

Act of God is exempt, for example, floods, lightning, etc.

When the plaintiff is at fault himself: In this case, if the plaintiff was forewarned of the chance of damage, but he did not pay heed, he himself is liable for his loss or harm.

2012 - June [2] (a) Mention the persons against whom specific performance of contract can not be enforced. (6 marks)

Answer :

According to Sections 16 and 17 of the Specific Relief Act, 1963, specific performance cannot be enforced in favour of the following –

- Someone who cannot claim any damages or compensation for the non-performance of an act.
- Someone who has breached any conditions of the contract or become incapable of performing his part in the contract.
- Someone who commits a fraud or is party to it.
- Who fails to convince that he is willing to perform his end of the contract.
- Who deals in property to which he has no title?
- Who believing himself to possess a good title, enters into a contract of which it forms the subject matter, but is unable to get a clear title until the date of performance.

2012 - June [3] (a) What are the grounds on which an arbitral award may be challenged before the court? (6 marks)

(b) Describe the exceptions to the rule of strict liability. (5 marks)

(c) Explain the 'doctrine of sufficient cause' for condonation of delay as provided in section 5 of the Limitation Act, 1963. (5 marks)

Answer :

(a) An arbitral award can be challenged and **set-aside** on application to the High Court having jurisdiction, and any civil court of an inferior grade. This has been provided under Section 34 of the Arbitration and Conciliation Act, 1996.

The grounds based on which an application under this section can be filed are as follow –

- Invalid or unacceptable arbitration agreement
- Incapacity of parties
- Improper notice of arbitration proceedings
- Inability in presenting a proper case to the arbitral authority
- Award not according to the terms of reference
- Improperly constituted arbitral tribunal

- Proceedings not as per agreement
- Award against the public policy of India
- Matter of dispute not capable of being the subject matter of arbitration

The application for **setting aside** an award has to be made within three months of receiving the award. If there is a previous application for correction or interpretation of the award already pending, the time would be counted from the date of disposal of that application. This period can be extended on proof of sufficient cause for not presenting the application being evident.

- (b) Strict liability or absolute liability – This liability arises when some harm takes place without any intention or negligence on the part of the defendant, even then he is liable for it. This can happen in any of the following cases –
- Unavoidable accidents – When a person is doing some work, which, if it goes wrong, is liable to cause harm to another, it will bring liability upon him even if the harmful substances were being kept and maintained by another on his land. For instance, if someone has a godown, which he leases to another, and if that other causes some illegal activity to take place in that place, the owner is also liable for it.
 - Unavoidable mistake – When a person affects another's tangible or intangible property, for example, someone who gives wrong information about another to the press has to undertake full liability for it.

There are, however, exceptions to the rule of strict liability. They are as under –

- Damage caused even when land used for natural purposes – When land is used for the purposes it is meant to be used for, and still harm is caused, then no liability arises. For example, when the land to be used for building a house is used for that purpose, and still it causes some harm to another, then the defendant is not liable for it if he has exercised normal care.
- With the knowledge and consent of plaintiff – When the plaintiff will benefit from the action too, then he cannot complain against it later, having enjoyed the fruit of that action.
- Damage caused from an act of a stranger or a third party – However, if the defendant was aware of the damage being caused, then he should have taken steps to mitigate the harm, else he would be held liable.
- Action of a statutory body – This will be exempt when the statutory body, i.e., the municipality etc. has taken proper steps to keep the substance in a way so as to ensure that no one is harmed because of its leakage.
- Act of God is exempt, for example, floods, lightning, etc.
- When the plaintiff is at fault himself – In this case, if the plaintiff was forewarned of the chance of damage, but he did not pay heed, he himself is liable for his loss or harm.

- (c) Extension of limitation period is covered under Section 5 of the Limitation Act, 1963, which covers the Doctrine of Sufficient Cause. It provides for the period of limitation being extended in case the plaintiff was hindered by a cause serious enough to have prevented him from initiating proceedings. In this case, while going to the court, Amar met with an accident, which prevented him from presenting the plaint in time. Now he filed an application for condonation of the delay on grounds of sufficient cause. Under Section 5, 'sufficient cause' is seen as something of a serious nature that prevents the person concerned from initiating or carrying on the proceedings within the required or prescribed time. He cannot claim extension of time, as the Section does not apply to suits and to applications made under Order XXI of the Code of Civil Procedure, 1908.

2012 - June [4] Explain the following:

- (iv) 'Expert opinion' under the Indian Evidence Act, 1872 (4 marks)

Answer :

Expert opinion under the Indian Evidence Act, 1872

This is covered under Sections 45 to 51 in the Indian Evidence Act, 1872. They prescribe as under –

Section 45 - This makes the opinions of experts important on points of specialized areas like handwriting analysis, fingerprints, artistic impressions, scientific principles and foreign legal positions. Anyone possessing specialized knowledge in the above mentioned fields would be deemed to be an expert. However, the court is not bound by the opinion of the expert. It might or might not give weightage to the opinion of the expert while adjudicating the issue. This is allowed since an expert has detailed knowledge vis-à-vis a judge who is not equipped with the technical knowledge and hence not capable of drawing inferences from the facts presented before him.

For example – An expert can be considered when the analysis of someone's handwriting is to be done, or when it is to be found whether someone was killed by a particular poison.

2012 - Dec [2] Comment the following:

- (ii) Persons against whom specific performance of contract is available.
 (iii) Making of additional award by arbitral tribunal.
 (v) Computation of period of limitation for an appeal or an application for leave to appeal. (4 marks each)

Answer:

(ii) Section 19 in The Specific Relief Act, 1963

As per this section, specific performance of a contract may be enforced against-

- (a) either party thereto;
 (b) any other person claiming under him by or through a title arising after the contract was entered into, except a bona fide transferee for value

- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been dislodged by the defendant;
- (d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the resultant, amalgamated company which arises out of the amalgamation;
- (e) when the promoters of a company have entered into a pre-incorporation contract for the purpose of the company and such contract has been accepted by the company has and communicated such acceptance to the other party to the contract.

[Dalmia Jain And Company Ltd. vs Kalyanpur Lime Works Ltd. And Anr. on 10 December, 1962.]

- (iii) Additional award is the award that is given by the arbitral tribunal at the instance of either party. It allows for claims that were originally included in the arbitral proceedings but omitted from the award. The request for such an additional claim can be submitted within thirty days of the original award being received. The tribunal will intimate its decision within a period of sixty days, which period can be extended upon need.

This is under Section 33, which is for Correction and interpretation of award and additional award. This Section says that -

Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties, a party, with notice to the other party, may request the arbitral tribunal to correct any computational, clerical or typographical errors or any other errors of a similar nature.

If so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

Within thirty days of receiving the award, either party can request the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award. The arbitral tribunal shall make the additional arbitral award within sixty days from the receipt of such request.

- (v) Sections 12 to 19 and Section 24, which are contained in Part III of the Limitation Act, 1963, titled "Computation of Period of Limitation", provide the details for this. They are as under –

Section 12 – It says that the time required for filing a suit, appeal or application, either against a decree or order or otherwise, is exclusive of the day from which the limitation period is calculated. Moreover, the time needed for obtaining a copy of the order being appealed against is also to be excluded.

The following are to be excluded while calculating this period –

- In calculating the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

- In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment was pronounced and the time required for obtaining a copy of the decree, sentence or order appealed from shall be excluded.
- Where a decree or order is appealed from for sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment on which the decree or order is based or from which it is sourced, shall be excluded.
- In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

However, in computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.

2012 - Dec [4] Attempt the following:

- (iv) The principle of *estoppel* says that a man shall not say one thing at one time and later on say a different thing. Comment. (4 marks)

Answer:

The Principle of estoppel says that a person may not approbate and reprobate at the same time, and that if he has said or claimed something at one time, he may not claim the opposite anytime hence.

It is a rule of law which says that when person A, by act or words, gives person B reason to believe a certain set of facts upon which person B relies or takes some action, person A cannot later, to his (or her) benefit, deny those facts or say that his (or her) earlier act was improper or that it is a nullity.

An example of this principle is the 'Doctrine of feeding the grant by estoppel', which covers the case of a person who leads another to believe that he is the owner of any property and transfers it to him for value. Later on, he is stopped from denying his ownership of the property and rejecting the transfer if he acquires the rights to that property subsequent to that transfer. The pre-requisites are –

- The transferor should have led the transferee to believe that he is, in fact, the owner of that property.
- The rights should have devolved on the transferor subsequently.
- The transfer was in good faith and for value.
- The transferee had no notice of the transferor's real position at the time of transfer.

2013 - Dec [2] Discuss the following:

- (i) Vicarious liability of the State. (4 marks)

2013 - Dec [4] Attempt the following:

- (v) Explain form and contents of an arbitral award. (4 marks)

PRACTICAL QUESTIONS

2008 - Dec [7] (a) A mill owner employed an independent contractor to construct a reservoir on his land to provide water for his mill. There were old disused mining shafts under the site of the reservoir, which the contractor failed to observe because they were filled with soil. Therefore, the contractor did not block them. When water was filled in the reservoir, it burst through the shaft and flooded the plaintiff's coal mines on the adjoining land. Is the mill owner liable to compensate for loss or damage caused to the plaintiff? Give reasons. (6 marks)

Answer :

This is a category of tort known as "nuisance", which implies causing something so as to disrupt the "right of quiet enjoyment" to such an extent that a tort is being committed.

The rule that is most often followed in this is the rule in *Rylands vs. Fletcher*. In this case, a dam burst into a coal mine shaft, causing flooding of the neighbor's property. A dangerous escape of some hazard, including water, fire, or animals causes strict liability in the tort of nuisance. The only defence is when the event is unusual and unpredictable.

Moreover this is a "private nuisance", which means the interference with the right of specific people. Hence, the mill owner is liable to compensate for loss or damage caused to the plaintiff.

2008 - Dec [8] (a) Atul was running a school at a certain place. Ali started another school near the school of Atul. As a result of this, most of the students of Atul's school left his school and joined Ali's school. Due to competition, Atul had to reduce the fees by ₹ 40 per student per quarter and thus he suffered huge monetary loss. Atul filed a suit against Ali in the court for compensation. Is the suit instituted by Atul maintainable? Give reasons by referring to relevant case law. (6 marks)

Answer :

This would come under the anti-trust laws and is a kind of business tort. However, the suit instituted by Atul shall be maintainable only if it is proven that Ali followed some anti-competitive practices and resorted to wrongdoing to cut down the competition posed by Atul. If a person presents fair competition by lowering his own prices and enticing the others customers to his trade, it is valid. It will cross the bounds of legality when the price cuts result in losses to him, but he continues regardless.

2009 - June [7] (c) Anurag, a child, entered the botanical garden of a municipality and consumed some attractive looking but poisonous berries. As a result of that, he died. The representatives of the child sued the municipality for damages. Will they succeed? Give reasons. (5 marks)

Answer :

They will not succeed in case the plants were properly categorized and the municipality took due care to warn people of the dangerous nature of the berries. If after this, anyone consumes them, and is harmed by that consumption, it is not the responsibility of the municipality.

2009 - June [8] (a) On 20th March, Kamal told his wife that he was going to Berhmpore, as Pankaj's wife has written a letter and asked him to come and receive payments due to him. On 21st March, Kamal left his house in time to catch a train for Berhmpore, where Pankaj lived with his wife. On 23rd March, Kamal's dismembered body was found in a box which had been purchased for Pankaj. Decide whether on the trial of Pankaj for the murder of Kamal, the statement made by Kamal to his wife was admissible in evidence. If so, on what grounds? (6 marks)

(b) Arpit took a debt of ₹ 10,000 from Bharat on January, 1998 and promised to pay by 31st December, 2003. He could not pay such debt within the stipulated time. On 1st December, 2006, Arpit paid ₹ 500 as interest against such debt to Bharat against receipt. Bharat filed a suit against Arpit to recover such debt on 15th December, 2008. Whether the suit filed by Bharat is within the period of limitation? Decide with reasons citing relevant provisions of the law. (5 marks)

Answer :

(a) As per the Indian Evidence Act, Section 122, " No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other." Hence, in this case, if the statement is willingly given by his wife, it is admissible as evidence.

(b) As per section 19 of the Limitation Act, 1963, where part payment of debt or interest on debt is made, then a fresh period of limitation begins from that date. The limitation period for loans and contracts is three years. Since the interest is paid on 1st December, 2006, and the suit against Arpit to recover such debt is filed on 15th December, 2008, it is within the limitation period.

2009 - Dec [6] (a) Ragini, a singer agreed to sing at Lakshmi's theatre from January to April, 2009 and not to sing anywhere else during that period. Afterwards, she entered into a contract to sing at Kamala's theatre during the said period and refused to sing at Lakshmi's theatre during that period. Lakshmi filed an injunction application to appropriate court. What relief Lakshmi is entitled to get, and for which part court may refuse to grant injunction ? Decide giving reasons. (6 marks)

Answer :

As per section 42 of Specific Relief Act where a contract comprises an affirmation agreement to do a certain act, coupled with a negative agreement, express or implied not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmation agreement shall not preclude it from granting an injunction to perform the negative agreement.

Facts of the case : Ragini a singer, agreed to sing at lakhmi's theatre for a certain period and not to sing any where else during that period. Afterwards Ragini entered into a contract to sing at another theatre and refused to perform her contract with Lakshmi. Lakshmi sued Ragini for specific performance of contract and prohibitory injunction from singing in another theatre.

Question involved: Will Lakshmi succeed?

Decision: Lakshmi cannot obtain specific performance of the contract to sing, but Lakshmi is entitled to an injunction restraining Ragini from singing at any other place of public entertainment.

2010 - June [7] (c) Alok contracts to sell a piece of land to Vimal consisting of 100 bighas for ₹ 10 lakh and it turns out that only 50 bighas of land belongs to Alok. Who can demand specific performance of contract and who cannot ? If there is a demand of specific performance from rightful party, what will be the consideration ? (5 marks)

Answer :

According to Section 12 of this Act, specific performance of a part of a contract shall not normally be ordered. The section, however, contains some exceptions as laid down in sub-sections 2 to 4. These are as follows –

- When the part of the contract that is left unperformed is comparatively a smaller portion as compared to the part that is performed, then part performance is ordered. For the leftover part, compensation is deemed to be adequate relief.
- When the party has done some portion of the work desired, and the leftover portion cannot be done, then the other party will pay an amount as reduced by the consideration for the non- performed part. Another alternative could be that the party pays the entire sum and relinquishes all rights to the balance work left.
- When the contract is such which has two portions: one that can be specifically performed and another that cannot, the court can order one portion to be specifically performed. For example, if A promised to sell two houses, X and Y to B, but before the date of the transaction being completed, house Y got destroyed, the court can order A to hand over house X to B.

Here, 50 bighas are a substantial part of the contract. So, instead of Alok, Vimal can demand specific performance of the contract by paying the entire consideration of Rupees ten lakhs.

2010 - June [8] (c) Kamini informed Ajay in the year 2001 that she had committed theft of the jewellery of her neighbour. Thereafter, Kamini and Ajay were married in 2002. In the year 2003, criminal proceeding were instituted against Kamini in respect of the theft of jewellery. Ajay is called to give evidence in the case. Decide whether Ajay can disclose the communication made to him by Kamini. (5 marks)

Answer :

As per Section 122 of the Indian Evidence Act, there are certain facts of which evidence cannot be given. It includes communications between husband and wife during marriage private and unbreachable. The intention is to prevent domestic concord being disrupted.

In this case, Kamini gave the information to Ajay in 2001, but they got married in 2002. Hence, Ajay can give evidence and disclose the communication made to him by Kamini.

2010 - Dec [7] (b) Anil prefers an appeal for setting aside the arbitral award on the ground that he was not given a proper notice of arbitral proceedings and thereby not being able to present his case. He also furnishes sufficient proof and pleads before the court that he received the arbitral award just 15 days back. Decide with reasons —

- (i) whether Anil will succeed in his prayer; and
- (ii) whether the law of limitation will not be a bar ? (5 marks)

Answer :

An arbitral award can be set-aside on application to the High Court having jurisdiction, and any civil court of an inferior grade. This has been provided under Section 34 of the Arbitration and Conciliation Act, 1996.

The grounds based on which an application under this section can be filed are as follow —

- Invalid or unacceptable arbitration agreement
- Incapacity of parties
- Improper notice of arbitration proceedings
- Inability in presenting a proper case to the arbitral authority
- Award not according to the terms of reference
- Improperly constituted arbitral tribunal
- Proceedings not as per agreement
- Award against the public policy of India
- Matter of dispute not capable of being the subject matter of arbitration

The application for setting aside an award has to be made within three months of receiving the award. If there is a previous application for correction or interpretation of the award already pending, the time would be counted from the date of disposal of that application. This period can be extended on proof of sufficient cause for not presenting the application being evident.

Hence, the court may set aside the arbitral award or may provide relief in accordance with Section 34(2) of the Act, and Anil will succeed in his prayer. The law of limitation will not create any bar, since the period of limitation has not expired in view of the provisions of Section 34(3).

2010 - Dec [8] (b) Amrit contracts "Bhushan to sell a piece of land consisting of five bighas of land for ₹ 5 lakh. Subsequently, it turns out that only four bighas of land belongs to Amrit. Whether specific enforcement of such part-contract may be possible on the part of either party to the contract? Decide by referring the specific provisions of the Specific Relief Act, 1963. (5 marks)

Answer :

According to Section 12 of this Act, specific performance of a part of a contract shall not normally be ordered. The section, however, contains some exceptions as laid down in sub-sections 2 to 4. These are as follows—

- When the part of the contract that is left unperformed is comparatively a smaller portion as compared to the part that is performed, then part performance is ordered. For the leftover part, compensation is deemed to be adequate relief.
- When the party has done some portion of the work desired, and the leftover portion cannot be done, then the other party will pay an amount as reduced by the consideration for the non - performed part. Another alternative could be that the party pays the entire sum and relinquishes all rights to the balance work left.
- When the contract is such which has two portions: one that can be specifically performed and another that cannot, the court can order one portion to be specifically performed. For example, if A promised to sell two houses, X and Y to B, but before the date of the transaction being completed, house Y got destroyed, the court can order A to hand over house X to B. In the given problem Amrit contracts Bhushan to sell a piece of land consisting of 5 bighas of land for Rs 5 lakh. It turns out that only 4 bighas of land belong to Amrit.

The one bigha is not necessary for the use or enjoyment of the 4 bighas, nor of such a nature that the loss cannot be compensated in money. Amrit may be ordered to convey to Bhushan the 4 bighas and to compensate him for the loss of one bigha or conversely, Bhushan, at the suit of Amrit, may be ordered to pay to Amrit, the stipulated purchase money, less the sum awarded as compensation for the deficiency, on receiving the conveyance and possession of the land.

2011 - June [8] (a) A mill owner employed an independent contractor to construct a reservoir on his land to provide water for his mill. There were old disused mining shafts under the site of the reservoir, which the contractor failed to observe because they were filled with soil. Therefore, the contractor did not block them. When water was filled in the reservoir, it burst through the shafts and flooded the plaintiff's coal mines on the adjoining land. Is the mill owner liable to compensate for loss or damage caused to the plaintiff? Give reasons. (6 marks)

- (c) Ram and Shyam entered into an agreement to refer a dispute relating to genuineness of a will to an arbitral tribunal. In spite of this, Shyam commenced proceedings relating to this dispute in the district court of competent jurisdiction. Ram filed an application for stay of legal proceedings under the Arbitration and Conciliation Act, 1996. Will Ram succeed? Explain. (5 marks)

Answer :

- (a) This is as per the case of *Rylands v. Fletcher* (1868) It follows the Doctrine of STRICT LIABILITY, which states that an occupier of land who brings onto it anything likely to do damage if it escapes, and keeps that thing on the land, will be liable for any damage caused by an escape.

In this case, the defendant occupied land near to where the plaintiff operated a coal mine. The coal seams extended under the defendant's land. These had been previously worked but the tunnels and shafts had been cut off and forgotten about. The defendant obtained approval to construct a reservoir to provide water for his mill. The water from this reservoir permeated the old coal shafts beneath and flooded the plaintiff's mine.

The decision was that the person who for his own purpose brings on his lands anything likely to do mischief if it escapes, must keep it at his peril and is prima facie answerable for all the damage which is the natural consequence of its escape.

Liability under this rule is strict and it is no defence that the thing escaped without the defendant's wilful act, default or neglect or even that he had no knowledge of its existence. The only defence available to such an escape would be vis major (natural reasons beyond his control) or to show that it was due to some fault of the plaintiff (or a third person).

- (c) The Arbitration and Conciliation Act, 1996 provides for settlement of all private rights. However, certain matters are excluded from arbitration.

Generally speaking all disputes of a civil nature can be referred to Arbitration e.g. breach of a contract, question of assignment or right to hold premises etc. However, certain disputes where the law has given jurisdiction to determine certain matters to specified tribunal only cannot be referred to arbitration.

An illustrative list of such matters is given below :—

Testamentary matters involving questions about validity of a will.

Disputes relating to appointment of a guardian.

Disputes pertaining to criminal proceedings.

Disputes relating to Charitable Trusts.

Winding up of a company.

Matters of divorce or restitution of conjugal rights.

Lunacy proceedings.

Disputes arising from an illegal contract.

Insolvency matters, such as adjudication of a person as an insolvent.

Matters falling within the preview of the M.R.T.P. Act.

Hence, in this case, Ram will not succeed.

2011 - Dec [8] (a) A confession made by an accused on the faith of a promise made by the police officer making the investigation that he would get off if he made a disclosure of the offence committed by him or would get pardon. Whether such a confession made by the accused is admissible in evidence? Answer citing the relevant provisions of law. (6 marks)

Answer :

According to Section 24 of the Indian Evidence Act, 1872, any confession obtained under threat or inducement is inadmissible as evidence in criminal proceedings. Hence only a voluntary confession can be admitted as evidence. However, for the section to be applicable, the inducement or threat has to be given by a person in authority.

In this case, the person conducting the enquiry, the police officer, urges the accused to make a confession, on the assurance that he will be let off. Hence, the situation comes within the coverage of this section and the confession made by the accused is inadmissible as evidence.

2013 - June [8] (a) Mohan and Sohan are jointly tried for the murder of Rohan. It is proved that Mohan said, "Sohan and I murdered Rohan." Can the court consider the effect of this confession as against Sohan? Give reasons. (5 marks)

Answer:

According to Section 30 of the Indian Evidence Act, 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. Admissions have the capacity to bind both-the party making them as well as the co-accused.

The person who is making the confession and the person on whose behalf he is admitting the guilt, i.e. who according to his confession is a co-accused needs to be tried jointly with him, only then his confession will bind both. Hence, a joint trial is one of the pre-requisites for the confession to be binding on the co-accused also.

In this case, as both Mohan and Sohan are jointly tried, the confession of Mohan will be binding against Sohan also, and the Court may consider the effect of this confession as against Mohan.

2013 - Dec [8] (b) Arun prefers an appeal for setting aside the arbitral award on the ground that he was not given a proper notice of arbitral proceedings and thereby not being able to present his case. He also furnishes sufficient proof and pleads before the court that he received the arbitral award just 15 days back.

Decide with reasons—

- (i) Whether Arun will succeed in his prayer; and
 - (ii) Whether the law of limitation will not be a bar ?
- (5 marks)

CS Inter Gr. I

SHORT NOTES

2005 - Dec [3] (c) Write short notes on the following:

- (i) Doctrine of Sufficient cause
- (3 marks)

Answer :

Section 5 of the Limitation Act, 1963 provides for the extension of time, or condonation of delay in cases of exigency. This is known as the Doctrine of Sufficient Cause. The applicant will have to prove that he had sufficient cause or a valid reason for not applying within the prescribed time as per the Act.

The Court might then overlook the delay and accept the application in all regularity, as if it were submitted within the specified time. However, this power is a discretionary power, only to be exercised by the courts where they feel that the case so warrants.

2006 - June [3] Write notes on the following :

- (ii) Effect of acknowledgement on the period of limitation.
- (4 marks)

Answer :

The effect of acknowledgement as per Section 18 of the Limitation Act, 1963, is to extend the period of limitation. A fresh period of limitation begins from the date of acknowledgement of liability with regard to any property or right. The only conditions are that the person signing the acknowledgement has to give it in writing and it has to be regarding a claim of a property or right against him. In order to bind him, it has to have the effects of an admission.

2007 - June [4] (a) Write short notes on the following :

- (ii) Jurisdiction of arbitral tribunals.
- (4 marks)

Answer :

According to Section 16 of the Arbitration and Conciliation Act, 1996, the arbitral tribunal can choose its own jurisdiction. If any of the parties feel that the tribunal is acting out of

the scope of its jurisdiction, they can set up a plea till the submission of the defence statement, and not later. Even though the pleading party would be one of the appointing parties, this fact would not prevent the party from filing such a plea.

2007 - Dec [5] Write short notes on the following :

- (ii) Finality of arbitral award (4 marks)
- (iii) Principles on which court may grant specific performance (4 marks)

Answer :

- (ii) An arbitral award may be challenged in the following ways –
- Under Section 33 of the Arbitration and Conciliation Act, 1996. It has been provided under this section that an arbitral award may be corrected or interpreted on application by someone who has been a party to the proceedings. This application has to be given to the arbitral tribunal, with due notice to the other party, within thirty days of the receipt of the award. The reason for such correction might be existence of clerical, typographical or computational errors in the award. Similarly, for interpretation of the award also, an application may be sent to the tribunal within 30 days of the receipt of the award. In both these cases, the tribunal may extend the time by a further period of thirty days. The tribunal can also correct an award suo motu within thirty days of passing that award.
 - An arbitral award can be set-aside on application to the High Court having jurisdiction, and any civil court of an inferior grade. This has been provided under Section 34 of the Arbitration and Conciliation Act, 1996.

The grounds based on which an application under this section can be filed are as follow –

- Invalid or unacceptable arbitration agreement.
- Incapacity of parties.
- Improper notice of arbitration proceedings.
- Inability in presenting a proper case to the arbitral authority.
- Award not according to the terms of reference.
- Improperly constituted arbitral tribunal.
- Proceedings not as per agreement.
- Award against the public policy of India.
- Matter of dispute not capable of being the subject matter of arbitration.

The application for setting aside an award has to be made within three months of receiving the award. If there is a previous application for correction or interpretation of the award already pending, the time would be counted from the date of disposal of that application. This period can be extended on proof of sufficient cause for not presenting the application being evident.

- (iii) The principles on which courts may grant specific performance are as defined in Specific Relief Act, 1963, and are as under –
- (i) If damages can better address the harm to the plaintiff by the wrong committed, specific performance will not be ordered.
 - (ii) Both the parties will be bound by it, i.e. irrespective of which party files a suit, if specific performance is ordered by the court in response to the suit by one party, it will be the same if the other files a suit.
 - (iii) Specific relief is a discretionary power and the courts will also see whether it is a type of contract that can be brought within this Act or not.
 - (iv) Where the order under this Act requires that the court keeps a continuous track to ensure that it is followed properly, it would prefer not to grant specific performance.

DISTINGUISH BETWEEN

2007 - June [3] Distinguish between the following :

- (iv) 'Injunction' and 'specific performance'. (4 marks)

Answer :

Injunction and specific performance – The basic differences are as follow -

- Performance/ non-performance – Injunctions are an order by the court not to do a specific act, i.e. an order for non-performance, whereas an order for specific performance is issued to make someone do the very thing mentioned in the order.
- Types of cases – Injunctions are normally for torts and other civil wrongs; specific performance is generally used in case of contracts.
- Necessity of contract – In case of injunctions, there is no need for prior contracts, as they are issued mainly for acts done without the other party agreeing to or even knowing about them. Specific performance, on the other hand, requires a contract to be entered into first, the breach of which gives right to the need for specific performance as a remedy. [The only exception here is an agreement of forbearance; in this case, injunctions might be issued].

2007 - Dec [3] Distinguish between the following:

- (ii) 'Admission' and 'confession'. (4 marks)

Answer :

'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.

'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 v. Emperor*, 66 Ind App 66: (AIR 1939 PC 47):

"A confession is a statement made by an accused which must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence."

Their differences are as follows –

1. Scope - A confession is a smaller category than an admission, of which it is a part.
2. Types of cases - Confession can only be with reference to criminal cases, whereas admissions are accepted in both criminal and civil cases.
3. Effect of willingness - If confessions are to be accepted, they have to be made willingly; admissions are not bound by this constraint.
4. Parties allowed - Confessions need to be made by the accused himself, only then they are to be given importance, whereas the accused or even his agent or a third party can make admissions.
5. Parties bound - 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. Admissions have the capacity to bind both-the party making them as well as the co-accused.

DESCRIPTIVE QUESTIONS

2004 - June [2] (b) Who are the persons against whom specific performance of a contract cannot be enforced? Can the court grant the specific performance of a contract to a plaintiff who is ready and willing to perform his part of the agreement? (8 marks)

Answer :

According to Sections 16 and 17 of the Specific Relief Act, 1963, specific performance cannot be enforced in favour of the following –

- Someone who cannot claim any damages or compensation for the non-performance of an act.
- Someone who has breached any conditions of the contract or become incapable of performing his part in the contract.
- Someone who commits a fraud or is party to it.
- Who fails to convince that he is willing to perform his end of the contract.
- Who deals in property to which he has no title.
- Who believes himself to possess a good title, enters into a contract of which it forms the subject matter, but is unable to get a clear title until the date of performance. Yes, the Court can grant specific performance of a contract in favour

of a person who is willing to perform his part of a contract. This is included in the principles on which Court will decide whether or not to grant the remedy of specific performance.

2004 - June [3] (a) Describe the grounds and procedure to challenge the appointment of an arbitral tribunal under the Arbitration and Conciliation Act, 1996. (8 marks)

(b) Mention in brief the provisions relating to computation of period of limitation under the Limitation Act, 1963. (8 marks)

Answer :

(a) The grounds and procedure for challenging the appointment of an arbitral tribunal are contained in Sections 12 and 13 of the Arbitration and Conciliation Act, 1996. Section 12 contains the specifications regarding the grounds on which the appointment of an arbitral tribunal can be challenged. Normally, this takes place either when the arbitrator lacks the qualifications needed by the parties, or when the arbitrator neutrality is in doubt. In case any such conditions arise, the arbitrator is required to intimate the parties immediately.

The challenge procedure is prescribed in Section 13 of the Arbitration and Conciliation Act, 1996. Normally the parties agree to the challenge procedure in their agreement. If they have not done so, they will follow the procedure set down in Section 13 (2). According to this section, the parties need to start the challenge procedure within fifteen days of coming to know of the constitution of the arbitral tribunal or of the grounds of challenge coming into relevance. He will send an application to the tribunal, notifying the tribunal about his grounds of challenge. The tribunal shall make a decision regarding the challenge. Alternatively, if the other party agrees to it, the mandate of the tribunal automatically stands cancelled. The third option is that the arbitrator vacates the office of his own volition.

(b) Sections 12 to 19 and Section 24, which are contained in Part III of the Limitation Act, 1963, titled "Computation of Period of Limitation", provide the details for this. They are as under –

Section 12 – It says that the time required for filing a suit, appeal or application, either against a decree or order or otherwise, is exclusive of the day from which the limitation period is calculated. Moreover, the time needed for obtaining a copy of the order being appealed against is also to be excluded.

Section 13 – The time during which the suit for being adjudged a pauper is applied for but not decided.

Section 14 – The period that was taken by a court that had no jurisdiction on a matter that was under question, and the plaintiff had applied to that court in the mistaken belief that it had power to entertain that suit.

Section 15 – Under this Section certain other situations in which there would be an extension of time in calculating the period of limitation are given. For

example, in case of the defendant being out of India and arriving after the suit has been instituted, only the time when he is in India shall be included.

Section 16 – In case the plaintiff's right to appeal is hindered by his death, the period shall be calculated from the time when there is a representative appointed for the plaintiff.

Section 17 – In case the suit or application has been initiated on the basis of some fraud, the period of limitation would be counted from the date when the fraud is discovered.

Section 18 – This section states that in case of an acknowledgement regarding any property or right in relation to which any claim has been made against him, a fresh period of limitation will commence from the date of such acknowledgement.

Section 19 – This records the cases of a debt or interest on legacy, on account of which if interest is paid, it results in a fresh period of limitation commencing from the date of such payment.

Section 24 – all periods shall be calculated in accordance with the standard Gregorian calendar.

2004 - Dec [4] (a) If a person is dispossessed of immovable property without his consent and otherwise than in due course of law, what legal remedy is available to him if he does not establish his title? (6 marks)

(b) Define 'arbitration agreement'. What are the essentials for a valid arbitration agreement? (5 marks)

Answer :

(a) Section 5 of the Specific Relief Act, 1963 provides for re-possession of property from where the plaintiff has been evicted without his consent and otherwise than in due course of law. However, this remedy can be resorted to if the plaintiff can prove a good title. In case the claim is based upon possession, he has to rely upon the procedure established in Section 6 of the Act. This Section specifies that the plaintiff can, within a period of six months, prove that he was dispossessed without his consent and without recourse to what was lawfully required. This case can be initiated even if the defendant has a better title than that of the plaintiff.

(b) Under Section 2(1)(b) of the Arbitration and Conciliation Act, 1996, an arbitration agreement has been defined under Section 7 of the Act. It means an agreement between parties to refer present or future disputes arisen or arising between them to arbitration. Such disputes may arise out of contractual or other capacities.

Such an agreement can take two forms – it can be part of a contract, i.e. in the form of a clause in the main contract, or it can be a separate contract by itself. This will include all the documents that indicate the existence of such an agreement. For example, written communications between the two parties that such a contract

transpired between them, or even document in which one party claims that such an agreement exists and the party does not refute the fact. It needs to be in writing though.

2005 - June [3] (a) What is meant by 'preventive relief' under the Specific Relief Act, 1963? How is it granted? Discuss. (8 marks)

Answer :

'Preventive Relief' implies the issue of an injunction to stop a person from doing something that he should not be doing. It is contained in Part III of the Specific Relief Act, 1963. Specific relief being a discretionary remedy, it depends upon the judgment of the Court.

Section 36 under this part provides for both temporary and perpetual injunctions. Temporary injunctions are for stopping the person for a short duration of time specified in the order, for example, when the suit is pending or yet to be decided. They are provided under Order 39 of the Code of Civil Procedure, 1908. These can be dissolved at sufficient cause being proven by the defendant. Alternatively, these will terminate at the final decision regarding the suit being passed by the Court.

Permanent injunctions, on the other hand, are covered under Section 38 of the Specific Relief Act. These are passed to uphold the plaintiff's right arising from a contract.

2005 - June [5] (a) Enumerate the salient features of an 'arbitration agreement' under the Arbitration and Conciliation Act, 1996. (6 marks)

Answer :

Under Section 2(1)(b) of the Arbitration and Conciliation Act, 1996, an arbitration agreement has been defined under Section 7 of the Act. It means an agreement between parties to refer present or future disputes arisen or arising between them to arbitration. Such disputes may arise out of contractual or other capacities.

Such an agreement can take two forms – it can be part of a contract, i.e. in the form of a clause in the main contract, or it can be a separate contract by itself. This will include all the documents that indicate the existence of such an agreement. For example, written communications between the two parties that such a contract transpired between them, or even document in which one party claims that such an agreement exists and the party does not refute the fact. It needs to be in writing though.

2005 - Dec [2] (b) When does the payment of interest or part-payment of principal amount by the debtor extend the period of limitation? Discuss. (5 marks)

Answer :

If someone makes a payment on a debt before the period for payment expires, the period of limitation extends from the date of such payment. It can be made by the debtor himself or his duly appointed representative. Any amount payable under any order of

the courts or under a decree is excluded. In case there exists a mortgage to secure the repayment of a loan or debt, receipts of the produce or the rents from that land would constitute a payment for the purpose of this section.

2005 - Dec [3] (a) State the contracts which can be specifically enforced under the Specific Relief Act, 1963. (5 marks)

Answer :

This is included in Sections 10, 11 and 12 of the Specific Relief Act, 1963.

Section 10 – According to it, the following contracts can be specifically enforced –

- Contracts for the non-performance of which damages cannot be adequately ascertained, for example, when the thing is of specific value that cannot be compensated in money.
- When compensation for non-performance would not be adequate relief.

The courts normally believe that –

- Contracts of immovable property are generally to be specifically performed, unless the plaintiff is willing to accept compensation instead.
- Contracts of movables are generally not specifically enforced unless they are contracts for property held by the defendant in the role of a trustee for the plaintiff or if the property in question is of special personal value or is of value because it involves special skills.

According to Section 11 of the Act, a contract in the nature of a trust can be specifically performed, unless the trustee has entered into that contract by crossing the limits of his powers.

According to Section 12, even a part of a contract can be specifically performed, if the part left unperformed is only a small proportion of the entire contract, which can be overlooked or accepted. In such a case, specific performance of that part will be ordered as is possible and if the plaintiff prays for it, and compensation awarded for the rest. This, however, is the exception and not the norm.

2005 - Dec [4] (a) Discuss the essential ingredients of an arbitral award. On what grounds may an award be challenged before the court under the provisions of the Arbitration and Conciliation Act, 1996? (8 marks)

Answer :

Section 2(1)(c) of the Arbitration and Conciliation Act, 1996 contains the definition of an arbitral award, which includes an interim award. The essential ingredients of an arbitral award, however, are contained in Section 31 of the Act, which contains the details regarding the form and contents of such an award. It can be a 'speaking award' or a simple one, just giving the decision. In case it is a speaking award, it will be more detailed, giving the reasons and justifications for the award. It will contain also the date and place of passing the award (Section 20). The prescribed form requires that the award be in writing and signed by the members of the tribunal.

Moreover, if the award includes decision regarding monetary payments, it has to contain details of payment, interest to be paid alongwith and the specifications regarding the period to which these sums pertain. It will also speak of the allocation of the cost of arbitration, i.e. in what ratio are the parties to bear it, who should bear it etc.

The grounds and procedure for challenging the appointment of an arbitral tribunal are contained in Sections 12 and 13 of the Arbitration and Conciliation Act, 1996. Section 12 contains the specifications regarding the grounds on which the appointment of an arbitral tribunal can be challenged. Normally, this takes place either when the arbitrator lacks the qualifications needed by the parties, or when the arbitrator neutrality is in doubt. In case any such conditions arise, the arbitrator is required to intimate the parties immediately. The challenge procedure is prescribed in Section 13 of the Arbitration and Conciliation Act, 1996.

2005 - Dec [7] (c) Under what circumstances the opinion of the third person becomes relevant under the Indian Evidence Act, 1872? (6 marks)

Answer :

This is covered under Sections 45 to 51 in the Indian Evidence Act, 1872. They prescribe as under –

Section 45 - This makes the opinions of experts important on points of specialized areas like handwriting analysis, fingerprints, artistic impressions, scientific principles and foreign legal positions. Anyone possessing specialized knowledge in the above mentioned fields would be deemed to be an expert.

Section 46 – Facts that provide support to the opinions mentioned in Section 45 will also be relevant.

Section 47 – In case of an opinion regarding handwriting verification, the opinion of someone who was familiar with it would be relevant.

Section 47A – When it is a case of identifying someone's digital signature, the opinion of the Certifying Authority under the Information Technology Act, 2000 would be a relevant fact.

Section 48 – When it is a question of establishing facts regarding existence of a right or custom, the opinion of someone who knows about them would be relevant.

Section 49 – When it is a matter of opinion regarding meaning of words or particular terms and their usages in certain areas, or the set-up or running of a religious/charitable foundation, the opinion of a person who knows facts regarding them would be deemed to be relevant.

Section 50 – When it is a question of the relationship between two persons, i.e. its existence or nature, the opinion of someone who knows facts about it would be relevant.

Section 51 – When an opinion is considered relevant, the facts it is based on also become relevant.

- 2006 - June [2]** (a) What are the contracts which cannot be specifically enforced ?
(6 marks)
- (c) Mention the grounds under which an arbitral award may be challenged before the court under the provisions of the Arbitration and Conciliation Act, 1996.
(5 marks)

Answer:

- (a) 'Specific performance' means carrying out the same work as was agreed by the parties to the agreement or contract, so that the plaintiff is not put to any hardship. This remedy is available only when damages would not provide a sufficient remedy.
- Specific performance may be obtained by the following persons, under section 15 of the Act –
- the parties to the contract.
 - their representatives, in case the interests of the parties are assignable.
 - beneficiaries if any, if it is a contract of marriage settlement or family settlement.
 - in case of tenancy for life, the holder of the remainder benefit, and the holder of a reversionary interest.
 - the promoters of a company provided their rights are created in the contracts before the company is incorporated.
- The contracts that cannot be specifically enforced (as per section 14 of the Act) are as under –
- When damages are sufficient remedy
 - When specific performance requires constant supervision by the court or a continuous duty to be performed, and it does not seem feasible to the court
 - When the repercussions of non-performance can be quantified
 - When the contract has multiple diminutive details that the Court finds difficult to supervise.
- (c) An arbitral award may be challenged in the following ways –
- Under Section 33 of the Arbitration and Conciliation Act, 1996. It has been provided under this section that an arbitral award may be corrected or interpreted on application by someone who has been a party to the proceedings. This application has to be given to the arbitral tribunal, with due notice to the other party, within thirty days of the receipt of the award. The reason for such correction might be existence of clerical, typographical or computational errors in the award. Similarly, for interpretation of the award also, an application may be sent to the tribunal within 30 days of receipt of the award. In both these cases, the tribunal may extend the time by a further period of thirty days. The tribunal can also correct an award suo motu within thirty days of passing that award.

- An arbitral award can be set-aside on application to the High Court having jurisdiction, and any civil court of an inferior grade. This has been provided under Section 34 of the Arbitration and Conciliation Act, 1996.

The grounds based on which an application under this section can be filed are as follow –

- Invalid or unacceptable arbitration agreement.
- Incapacity of parties.
- Improper notice of arbitration proceedings.
- Inability in presenting a proper case to the arbitral authority.
- Award not according to the terms of reference.
- Improperly constituted arbitral tribunal.
- Proceedings not as per agreement.
- Award against the public policy of India.
- Matter of dispute not capable of being the subject matter of arbitration.

The application for setting aside an award has to be made within three months of receiving the award. If there is a previous application for correction or interpretation of the award already pending, the time would be counted from the date of disposal of that application. This period can be extended on proof of sufficient cause for not presenting the application being evident.

2006 - Dec [3] (a) Discuss the principle of *estoppel* and state the conditions of its applicability. (5 marks)

(b) Explain primary and secondary evidence of documents. When may secondary evidence be given? (5 marks)

Answer :

(a) The Principle of Estoppel is covered in Chapter VIII of the Indian Evidence Act, 1872. Section 115 of this chapter says that when a person declares or leads others to believe a fact or thing to be true, he and his legal representatives are stopped from denying its non-veracity afterwards.

Section 116 says that tenant or anyone claiming under him cannot deny the title of the landlord during the period of his tenancy. Same is the case with a license, when a person to whom it was given cannot deny that the person who gave it does not possess proper title during the continuance of the license.

Section 117 pronounces that an acceptor of a bill of exchange cannot deny that the drawer had no authority to draw or endorse if he has accepted it without demurring earlier. The same condition would apply to a bailee and licensee.

The conditions in which this principle is applied are when a person is alluding to contrary facts at the same time, as a person cannot be allowed to approbate and reprobate at the same time.

- (b) 'Primary evidence' as per the Indian Evidence Act, 1872 means the very document itself, not a copy of it. The provision of primary evidence is based on the 'Best Evidence' principle, i.e. if there is better evidence available, then that must be provided. If the person capable of providing superior evidence supplies an inferior one, it creates an unfavorable stance against him. (Section 62)

'Secondary evidence' means certified or compared copies of, or counterparts of, or oral accounts of documents. (Section 63)

According to Section 65 of the Act, where primary evidence can be provided, secondary evidence should not be used. It should only be given where the original document is not available because it has been lost or destroyed, or it is otherwise unavailable because it cannot easily be moved because of bulk, or because it is under the control of some public authority's control.

2006 - Dec [5] (b) "The relief of specific performance of contract is discretionary." Comment. (5 marks)

Answer :

The relief is discretionary as it is upto the Court to decide whether or not to assign specific performance. Section 20 of the Specific Relief Act, 1963 confirms this. However, even though the Court is not bound to give a decision favouring specific performance, such a decision cannot be capricious and subjective. It needs to come with due reason and logic, and appeal should always be available to the aggrieved parties.

In the following cases, the Court may not decide upon specific performance, according to Sub-section (2) -

- When the plaintiff would gain an inequitable benefit.
- When the defendant would be put to undue hardship if he were forced to perform his part of the contract.
- When at the time of signing of the contract, the conditions under which the defendant agreed to the contract are enough to make his position iniquitous.

Sub Section (3) says that the relief of specific performance would be ordered when the plaintiff has already performed partly on the contract, or incurred a considerable cost to perform his part.

The final judgment of the Court depends upon the conduct of both the parties.

2007 - June [2] Comment on the following :

- (i) The law of limitation bars the remedy in a court of law only, but does not extinguish the right. (4 marks)
- (iii) A contract may not always be specifically enforced. (4 marks)
- (iv) Conciliation is an informal process in which the conciliator, the third party, tries to bring the disputants to agreement. (4 marks)
- (v) An instrument admitted in evidence is not to be questioned. (4 marks)

Answer :

- (i) It simply means that although the Limitation Act, 1963, places a limit on the remedy, or rather the period available for the remedy, it does not obstruct the right of the aggrieved. Section 3 of the Act provides that it is a part of the duties of every court to reject a suit, petition, application or appeal if it comes after the period for filing it has expired.

According to Section 27 of the Act, a person's right to any property shall cease after the period that has been decided for filing a suit for its recovery. Although these two sections seem contradictory, they in fact place a limit on the aggrieved person's right to file a suit on the logic that if the person is truly distressed, he will find an opportunity to file a suit as soon as is possible. If that has not been done, and the court sees no valid reason, or sufficient cause, it will reject the suit. This has been justified on grounds of public policy. Hence, under this act, any suit related to claims has a chance of being accepted, unless it is a stale suit, in which case, the very right has been extinguished. Where the right persists, there might be constitutional remedies and other options. For example, if the parties make a settlement between themselves, that would be acceptable in the eyes of law.

- (iii) 'Specific performance' means carrying out the same work as was agreed by the parties to the agreement or contract, so that the plaintiff is not put to any hardship. This remedy is available only when damages would not provide a sufficient remedy.

Specific performance may be obtained by the following persons, under section 15 of the Act –

- the parties to the contract.
- their representatives, in case the interests of the parties are assignable.
- beneficiaries if any, if it is a contract of marriage settlement or family settlement.
- in case of tenancy for life, the holder of the remainder benefit, and the holder of a reversionary interest.
- the promoters of a company provided their rights are created in the contracts before the company is incorporated.

The contracts that cannot be specifically enforced (as per section 14 of the Act) are as under –

- When damages are sufficient remedy
- When specific performance requires constant supervision by the court or a continuous duty to be performed, and it does not seem feasible to the court
- When the repercussions of non-performance can be quantified
- When the contract has multiple diminutive details that the Court finds difficult to supervise.

- (iv) This is an informal process in which both the disputing parties appoint a neutral conciliator or a third person to bring them to an agreement and end the dispute. This done by mounting the communications between the parties so that any misinterpretations can be removed, technical difficulties alleviated and possible solutions worked out.

Normally the appointment of conciliator(s) takes place in any of the following ways –

- The disputing parties might agree on one name as conciliator.
- Each party might choose one conciliator each.
- Each party might choose one conciliator each; each of their conciliators will then agree on the name of a third conciliator, who will act as the presiding conciliator.
- The parties might contact an institution which is involved in arbitration and conciliation work, and that institution might then choose a conciliator for them or suggest some names.

The role of the conciliator is to get the parties to settle the dispute amicably. In trying to achieve this, he has to act in an impartial way, so that he can take into consideration the positions and interests of both the parties involved. He can hear opinions and statements orally and suggest settlement options to the parties.

- (v) This is provided in Chapter IV of the Indian Stamp Act, 1899. According to Section 36, evidence that has already been admitted in a case shall not be later questioned on grounds of it being insufficiently stamped. It can only be done on the basis of grounds mentioned in Section 61 of the Act, which provides for revision of the Court's judgment regarding a particular decision under this Act.

2007 - June [5] (b) What are the circumstances under which the court may, in its discretion, award damages instead of specific performance of a contract ? (5 marks)

Answer :

This is covered under Section 21 of the Specific Relief Act. It provides that the Court has the power to award damages in the following cases–

- When the Court feels that the defendant has breached the contract and the plaintiff can sufficiently be compensated with the assigning of damages.
- Where the Court feels that other than specific performance, some damages ought to be allotted to the plaintiff for his hardships.

The plaintiff is free to ask for damages as an alternate remedy, or even in addition to specific performance. Generally, the Court would decide upon damages if –

- Specific performance is not possible, but the plaintiff deserves some redress.
- Even after granting specific performance, the Court feels that damages ought to be allotted.

However, damages would only be allotted when the plaintiff himself has not done anything to preclude specific performance.

2007 - Dec [1] {C} Comment on the following :

- (iv) Courts are concerned with legal relevancy and not logical relevancy of the facts. (4 marks)
- (v) A person suing for rescission cannot in the alternative sue for specific performance, but a person suing for specific performance can sue of rescission. (4 marks)

Answer :

- (iv) 'Relevant fact' has been defined in Section 3 of the Indian Evidence Act, 1872. It includes facts holding logical relevance, i.e. facts that are so linked with other facts that they might affect their existence. Legal relevance of facts might be defined as the importance of some facts necessary to assert the existence or state of other facts. Relevance depends on the case and the state of things. For example, a fact may be relevant for one case, but completely irrelevant for another.
- (v) This statement is true and is explained in Section 29 of the Specific Relief Act, 1963. It says that the plaintiff suing for specific performance may sue for the contract to be rescinded if it cannot be specifically performed. As tradition goes, such a remedy will generally be accompanied by damages. This would naturally involve the restoration of all benefits delivered to the other party under the contract that is now to be rescinded, otherwise it would lead to undue advantages accruing to one party (Section 30).

2007 - Dec [6] (a) "Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it". Comment. (6 marks)

(c) Outline the objectives of the Arbitration and Conciliation Act, 1996. (5 marks)

Answer :

- (a) 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.

Applicability –

- It applies to cases where the cause of action continues; when that is varied, a fresh period of limitation will begin from the date of variation.
- This Section applies only to suits and applications, and not to appeals, which are generally allowed unless expressly covered under some other section.
- Cases of property being vested in trusts and in legal representatives will be included only in the instance of the property being vested for a specific purpose.

- (c) The Arbitration and Conciliation Act, 1996 has been made keeping the following objectives in mind –
- To provide for an objective, fair and neutral procedure for settlement of disputes.
 - To cover areas of both national and international commercial arbitration and conciliation.
 - To provide for procedures regarding selection and functioning of the arbitral tribunal.
 - To provide a well-defined work area for arbitral tribunals, and the methods they can use to bring about a settlement between the disputing parties, viz, mediation, conciliation, arbitration and other associated methods, and to give equal statute to all methods.
 - To provide a feasible and acceptable option to the disputing parties for settlement of their disputes, rather than approaching the courts.
 - To provide for a fairly reached and well-structured arbitral award and its enforcement.
 - To help in enforcement of foreign awards.

2008 - June [2] (a) Explain the expression 'specific performance of contract'. Describe the contracts which cannot be specifically enforced under the Specific Relief Act, 1963. (6 marks)

(b) Discuss the procedure to be followed for arbitral proceedings by an arbitral tribunal under the Arbitration and Conciliation Act, 1996. (5 marks)

Answer :

(a) *Please refer 2006 - June [2] (a) on Page no. [126](#)*

(b) Sections 23 to 27 of the Arbitration and Conciliation Act, 1996 lay down the procedure to be followed in arbitration proceedings. No such procedure was laid down under the old arbitration Act. The procedure involves:

- (i) **Statements of claim and defence :** The claimant has to submit his claim, consisting of facts supporting the claim, points at issue and the relief or remedy sought - within the period agreed by the parties, or determined by the arbitral tribunal. Likewise, the respondent has to state the defence in respect of the claims of the claimant. Parties are required to attach to these statements, all relevant documents. They may also add references to the documents or evidence which they will submit later on. Parties may amend or supplement these statements during the proceedings, unless otherwise agreed by the parties or the arbitral tribunal considers it inappropriate to allow the amendment or supplement, due to delay in making it.

- (ii) **Hearings and written proceedings** :It is open to parties to agree for holding oral hearings for presentation of evidence and for oral arguments or, alternatively, for conducting proceedings on the basis of documents (such as affidavits). In absence of any such agreement, a decision in this regard may be taken by the arbitral tribunal. Even if the arbitral tribunal decides to conduct arbitration on the basis of documents only, it shall grant an oral hearing at the appropriate stage, on request by a party, unless such oral hearings are barred by agreement by the parties.
The arbitral tribunal shall give adequate advance notice to the parties of any hearing or of any meeting of the tribunal for inspection of documents, goods or property. All documents received any expert report or document in evidence must be communicated to the parties.
- (iii) **Default of a party** : It is open to the parties to agree to what constitutes a default in the proceedings. In absence of any such agreement, certain situations as stipulated under the Act are regarded as defaults, leading to certain consequences.
- (iv) **Expert appointment by arbitral tribunal** : The arbitral tribunal may appoint one or more experts to report to it, on specific issues to be determined by the arbitral tribunal. The tribunal may require the parties to give to the expert (s), relevant information or to produce or give access to any relevant documents, goods or other property for the experts inspection. The experts reports shall be communicated to the parties, by the arbitral tribunal.
- (v) **Court assistance in taking evidence**: The tribunal, or a party, with the approval of the tribunal, may apply to a court for assistance in taking evidence. Such an application shall specify all details as specified in Section 27(2). The court may then order that the evidence be provided direct to the tribunal. The court may issue the same process (summons, or commissions), as in suits before it. Persons failing to attend, or making a default, during the conduct of the proceedings, shall be subject to the same punishments and penalties by the orders of the court, as for like offences in suits tried by the court.
- (vi) **Decision**: The decision of the tribunal is generally by a majority of all its members. (Section 29)

2008 - June [3] Explain of the following :

- (ii) Declaratory decree (4 marks)
(v) Circumstantial evidence (4 marks)

Answer :

- (ii) A declaratory decree is a pronouncement in favour of the decree holder (in whose favour the decree has been given) regarding a right or claim to a property. It is simply a declaration not an order in favour of or against somebody to do

something or to refrain from doing anything. The effect of such a decree, as per Section 35 of the Specific Relief Act, is that it binds both the parties to the suit, although it cannot bind strangers since it is not like a normal order. Moreover, its effect extends to the parties claiming under both the plaintiff and the defendant and their trustees, if any. These decrees are passed to shed light on the right to a property, or to uphold a claim or right of a party. By doing so, it clarifies the doubts regarding ownership or legal entitlement to a property or legal right.

Since this decree is passed only at the discretion of the court, it can also refuse to pass such a decree. This will be done when the court feels that there is a better remedy available to the plaintiff. In that case, the plaintiff will be guided to avail that remedy, instead of pressing for a declaratory decree.

- (v) 'Circumstantial Evidence' is a kind of derived evidence, that can be gained from sources seen as secondary. For example, a copy of a document or a record in a public file can be taken as evidence in the absence of the original documents. Another example could be that of the state of things in a particular room, where a crime has taken place. They can be considered when no eye-witness account is available.

Circumstantial or secondary evidence is used only in case the primary evidence is missing or unavailable.

PRACTICAL QUESTIONS

2004 - June [7] (b) Amar agrees in writing to sell a horse to Bijoy for ₹ 2,000 or ₹ 3,000. Can evidence be given to show which price was to be given? (5 marks)

Answer :

According to Section 93 of the Indian Evidence Act, 1872, if the document is in itself ambiguous or the language defective, no evidence may be given of facts that clarify its meaning or make good the defect.

Hence, in this case, since Amar did not specify the price at which he would sell the horse to Bijoy, and has mentioned two prices, the document itself would be treated as ambiguous. No external evidence can be proven to remove or alleviate the defect or ambiguity in this case.

2004 - June [8] (c) Anurag intentionally and falsely leads Bhanu to believe that certain land belongs to Anurag, and thereby induces Bhanu to buy and pay for it. The land afterwards becomes the property of Anurag. Anurag seeks to set aside the sale on the ground that at the time of sale he had no title. Decide. (5 marks)

Answer :

The Principle of Estoppel is covered in Chapter VIII of the Indian Evidence Act, 1872. Section 115 of this chapter says that when a person declares or leads others to believe a fact or thing to be true, he and his legal representatives are stopped from denying its non-veracity afterwards.

Hence, in this case since Anurag himself led Bhanu to believe that he owned the land and sold it to him. When Anurag later found that the land has become his property, he wants to set aside the sale, saying that at the time of sale he had no title to the property. He will not be allowed to do so, as the Principle of Estoppel applies on him, and stops him from denying or negating the contract he entered into with Bhanu.

2004 - Dec [5] (a) Ajoy, after learning that Chander had been murdered by Bijoy, went to the spot and found that the body of Chander was being taken to the house of Chander by four persons who told him that Bijoy had murdered Chander and he had run away. Is the statement of Ajoy that he was told by four persons that Bijoy had murdered Chander and run away admissible as an evidence? (6 marks)

(b) Anand bequeaths his house to trustees, declaring that they may sell it with the consent of Bhanu. Bhanu gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with Chetan to sell him the house. Chetan refuses to carry out the contract. Can trustees specifically enforce the contract. (5 marks)

(c) Ramesh owed ₹ 50,000 to Brijesh on a bond which fell due on 1st January, 2002. Brijesh died in an accident on 30th June 2003 without having brought any suit, and was succeeded by his son Mohan of 12 years of age. Is Mohan entitled to any extension of time because of his minority? (5 marks)

Answer :

(a) Section 6 of the Indian Evidence Act, 1872 opines the inclusion of res gestae in a case as relevant facts. They can be defined as those facts that were although incidental to the main fact but were explanatory of it, and hence to be included as relevant facts. It includes the statements of bystanders who witnessed a crime or offence occurring.

In this case, Ajoy is not a bystander; he was told by other bystanders that Bijoy had murdered Chander and run away. Hence, his statement is not to be admitted as evidence.

(b) This case is governed by Section 17 of the Specific Relief Act, 1963, which says that a contract that involves any specific immovable property cannot be enforced in favour of any party to the contract who cannot prove a clear legal title to it.

In this case, the trustees enter into a contract to sell the property on the basis of the general prospective assent given by Bhanu. They have acted beyond their powers, i.e. to sell a specific immovable property, a special permission is needed,

not a general assent. Hence, they cannot enforce Chetan to carry on with the contract when he refuses to do so, as he cannot be enforced for specific performance in the given case.

- (c) According to Section 9 of the Limitation Act, 1963 says that when once the period of limitation has begun to run, no subsequent disability will cause it to stop. In this case, Ramesh owed money to Brijesh on a bond, the due date of which was on 01/01/2002. Brijesh died without having initiated a suit for recovery, and was succeeded by his minor son, Mohan. Mohan's minority will not result in causing the time to stop in construction of the limitation period. Hence, he is not entitled to an extension of time.

2004 - Dec [8] (a) Under the terms of an arbitration agreement the court appointed Anurag, chairman of the arbitral tribunal, as the arbitrator. During the pendency of the arbitration, Anurag was demoted and ceased to be the chairman of arbitrator tribunal. The parties to the dispute objected to his continuance as arbitrator on the ground that he had now become disqualified. Is he entitled to continue as the arbitrator? Decide.

(6 marks)

Answer :

In this case, Anurag, who was the Chairman of the tribunal, was appointed as an arbitrator under the terms of an arbitration agreement. During the proceedings, he was demoted and removed from the post of Chairman of the tribunal. The parties contended that since he is no longer the chairman of the tribunal, he does not have a right to be the arbitrator in their case.

Section 14 applies to this case. According to sub-section (1) of this case, an arbitrator will cease to function as one when he becomes incapable of performing his duties, or causes delays or withdraws on his own accord.

Even though Mr. Anurag has been removed from the post of Chairman of the tribunal, he is still an arbitrator. His removal as such will not endanger his working as an arbitrator, hence he may continue to be the arbitrator.

2005 - June [7] (a) Aman is entitled to a picture by a dead painter and a pair of rare Chinese vases. Bhuvan has possession of them. The articles are of special character to bear unascertainable market value. Can Bhuvan be compelled to deliver these articles to Aman? Give reasons.

(6 marks)

Answer :

The explanation to Section 10 provides that specific performance can be enforced in cases of contracts where the subject matter is an object of rare value and is not a common, ordinary article.

In this case, Bhuvan possesses a rare painting and some rare Chinese vases to which Aman is entitled. The objects are of unascertainable market value. Hence, Bhuvan can be specifically enforced to hand over the articles to Aman, the rightful owner.

2005 - June [8] (a) Anand is on his trial for the murder of Chanchal. There is evidence to show that Chanchal was murdered by Anand and Birender and that Birender said, "Anand and I murdered Chanchal." Can the court take into consideration this statement against Anand? Will your reply be different in case there is a joint trial against Anand and Birender? Give reasons. (6 marks)

(c) Sanjay instituted a suit against Manoj beyond the prescribed period of limitation. Manoj did not raise the objection that the suit was beyond the period of limitation. The civil court allowed the suit for a hearing and decreed. Would the decree be treated valid in such suit? Give reasons. (5 marks)

Answer :

(a) According to Section 30 of the Indian Evidence Act, 1872 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. Admissions have the capacity to bind both-the party making them as well as the co-accused.

The person who is making the confession and the person on whose behalf he is admitting the guilt, i.e. who according to his confession is a co-accused needs to be tried jointly with him, only then his confession will bind both. Hence, a joint trial is one of the pre-requisites for the confession to be binding on the co-accused also.

In this case, Birender's statement that "Anand and I murdered Chanchal." Cannot be taken into consideration by the Court in the first case where only Anand is the accused. In the case where both Anand and Birender are co-accused and facing trial, Birender's statement will bind Anand also.

(c) According to Section 3 of the Limitation Act, 1963, it is the duty of the court not to accept suit, appeal or application if it is submitted beyond the limitation period without any sufficient cause being shown. It is the responsibility of the court to reject such a suit. However, the decision passed in such a suit would not be rejected because the court did not have jurisdiction to accept and hear such a suit. A decree passed in such a time barred suit would not be invalid and void.

2005 - Dec [6] (a) Ashok contracts to buy Bhushan's business at the amount to be determined by two valuers, one to be named by Ashok and the other by Bhushan. Both Ashok and Bhushan name their respective valuers. Before the valuation is made. Ashok instructs his valuer not to proceed. Can Bhushan specifically enforce this contract?

(5 marks)

Answer :

This case is covered by Section 14 (1) (b) of the Specific Relief Act, 1963, which says that a contract, which involves the personal skill or volition of the parties involved, cannot be specifically enforced.

In this case, the two valuers appointed by Ashok and Bhushan were to have valued the business that Ashok was supposed to buy from Bhushan. Ashok himself instructs his appointed valuer not to proceed. Hence, this clearly indicates that his will has been withdrawn and it is no longer possible to have the contract specifically enforced.

2005 - Dec [8] (b) Amar and Bimal are jointly tried for the murder of Roshan. It is proved that Amar said, "Bimal and I murdered Roshan". Can the court consider the effect of this confession as against Bimal? Give reasons. (5 marks)

Answer :

According to Section 30 of the Indian, 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. Admissions have the capacity to bind both-the party making them as well as the co-accused.

In this case, Amar's statement that both Bimal and he murdered Rodhan will have the effect of binding Bimal also.

2006 - June [5] (b) Arpit pledges certain jewels to Rakshit to secure a loan. Rakshit disposes of jewels before he is entitled to do so. Arpit without having paid or tendered the amount of the loan, sues Rakshit for possession of the jewels. Is Arpit entitled to do so ? (5 marks)

(c) Pankaj is the owner of a ship. He takes an insurance policy declaring fraudulently that the ship is sea-worthy. But, the ship is not sea-worthy. Has the insurance company any right against Pankaj ? Give answer with reasons. (5 marks)

Answer :

(b) According to Section 7 of the Specific Relief Act, 1963, a person can recover possession of specific movable property. In this case, Arpit had pledged certain jewels with Rakshit, to cover his loan. Not having repaid the loan amount, he wants to sue Rakshit for repossession of his jewels. He cannot succeed in his suit, as the section envisages, as is the general principle in the Act, that anyone suing for specific performance will have performed his part first.

(c) Under Section 31 (1) of the Specific Relief Act, 1963, a person who apprehends that there exists an instrument against him that is void and cannot be relied or operated upon, and which if allowed to remain outstanding or due will cause him harm, can have it declared void, voidable or cancelled.

In this case, the insurance company, after having come to know that Pankaj has used fraud to obtain insurance for his ship that is not sea worthy, can have the insurance policy declared void on the grounds of fraud. If left outstanding, Pankaj might decide to claim the amount payable by the insurance company in case the ship sinks or meets with an accident. Hence, it is advisable that the insurance company obtains a cancellation of the policy as soon as possible.

2006 - June [7] (c) An accused person makes a confessional statement to the police officer in the hearing and presence of a private person. Can the private person give evidence of the confessional statement made by the accused person so as to be proved against the accused ? (5 marks)

Answer :

According to Section 25 of the Indian Evidence Act, 1872, no confession made to a police officer can be proved against the maker of the confession, i.e. the accused. Section 26 of the Act says that a confession made in police custody will not be valid against the maker unless it is made in the presence of a Magistrate.

In the given case, there is no Magistrate present; hence, the private person cannot give evidence of the confessional statement of the accused so that it can be proved against the accused.

2006 - Dec [6] (b) On 31st December, 1997 Suresh took a loan of ₹ 10,000 from Umesh. He paid ₹ 2,000 to him on 16th June, 2001 towards part-payment. After that, Umesh did not receive any amount from Suresh. Subsequently, Umesh instituted a suit for recovery of the dues from Suresh after the expiry of two years from the date of last part-payment. Decide whether Umesh will succeed in his suit. (5 marks)

(c) Madhav moves an application for setting aside the arbitral award on the ground that he was not given a proper notice of the arbitral proceedings and thereby not being able to present his case. He furnishes sufficient proof and pleads before the court that he received the arbitral award just 15 days back. Decide with reasons —
(i) whether Madhav will succeed in his prayer; and
(ii) whether the law of limitation will not be a bar in his case. (6 marks)

Answer :

(b) Section 19 of the Limitation Act, 1963, says that a fresh limitation period begins from the date of part payment or the payment of interest on a debt. In this case, Suresh took a loan from Umesh on 31/12/1997. He makes part payment of his debt on 16/06/2001 to the creditor. Two years after this part payment, Umesh files a suit for recovery of the balance amount of his debt.

The court will dismiss the suit for recovery of debt. The reason for this would be that the payment came not within the period of limitation, but after it, and hence the original limitation period was not extended. Hence, the suit was not maintainable and would be dismissed.

(c) Section 34 of the Arbitration and Conciliation Act, 1996, governs this case. According to this section, an arbitral award can be set aside on the following grounds -

- Invalid or unacceptable arbitration agreement
- Incapacity of parties
- Improper notice of arbitration proceedings

- Inability in presenting a proper case to the arbitral authority
- Award not according to the terms of reference
- Improperly constituted arbitral tribunal
- Proceedings not as per agreement
- Award against the public policy of India
- Matter of dispute not capable of being the subject matter of arbitration

Hence, improper notice is a valid reason for applying for setting aside the award. Such an application, however, has to come not later than three months from the date of receipt of the award. In case an application for correction or interpretation of the award has been made under Section 33 of the Act, the period will be counted from the date of disposal of the application by the authorities.

2007 - June [7] (c) Ratan is charged with forging a particular document. The prosecution produces in evidence a number of documents apparently forged, found in possession of the accused. Are these documents admissible in evidence ? (5 marks)

Answer :

Section 6 of the Indian Evidence Act, 1872 opines the inclusion of res gestae in a case as relevant facts. They can be defined as those facts that were although incidental to the main fact but were explanatory of it, and hence to be included as relevant facts. They have to form part of the same transaction in order to be included within this definition. In this case, the other forged documents found with the accused are not res gestae and hence not admissible as evidence. Torts

2007 - June [8] (c) Ram agrees to sell and deliver a ship to Shyam, to be paid for by Shyam's acceptance of four bills of exchange, for sum amounting to ₹ 50,000 to be drawn by Ram on Shyam. The bills are drawn and accepted, but the ship is not delivered according to the agreement. Ram sues Shyam on one of the bills. State with reasons whether Shyam can obtain cancellation against all bills ? (5 marks)

Answer :

This case is covered under the provisions of Section 31 (1) of the Specific Relief Act, 1963. It says that where there is an instrument outstanding against the plaintiff, and he feels that he may come to harm if that instrument is left outstanding or due, he may have it cancelled or declared void.

In this case, there is a condition attached to the bills of exchange, that they are in exchange for the sale and delivery of a ship by Ram to Shyam. If Ram does not honour the agreement, Shyam can have all the bills cancelled to ensure his safety.

2007 - Dec [7] (a) Abhilasha, a renowned lady singer, agreed to sing in Bhuvnesh's theatre for a certain period and not to sing anywhere else during that period. Afterwards, Abhilasha entered into an agreement to sing at another theatre during that period and refused to sing in the theatre of Bhuvnesh during the agreed period. In a suit filed by

Bhuvnesh, the court refused to intervene in the matter of agreement for compelling Abhilasha to sing in Bhuvnesh's theatre, but granted an injunction restraining Abhilasha from singing in any other theatre during that period for which she had already agreed. How far is the court justified in this regard ? (6 marks)

Answer :

Section 14 (1) (b) (ii) of the Specific Relief Act, 1963 provides that a contract that requires the personal skill or qualification of the parties cannot be specifically enforced.

In this case, Abhilasha, a singer, agrees to sing in Bhuvnesh's theatre for a certain period and not to contract with any other theatre during that period. She, however, refuses to honour the contract and sing, and also enters into a contract with another theatre for the said period. The Court refuses to enforce specific performance in favour of Bhuvnesh and instead issues an injunction against Abhilasha, to restrain her from singing in other theatres for the said period. The Court's refusal is justified, as per Section 14 (1) (b) (ii).

2007 - Dec [8] (a) Ashwani has taken ₹ 5,000 as a loan from Bhushan and has promised to return the loan amount within one year. Ashwani failed to return the loan amount within the stipulated period, but he has written a letter to Bhushan that he would pay the amount within a month. Whether the period of limitation will start after expiry of one year or from the date when Bhushan received the letter? Give reasons. (6 marks)

Answer :

According to Section 18 of the Limitation Act, 1963, a fresh period of limitation begins from the date of acknowledgement of liability regarding any property or right. The requirement is that the acknowledgement has to be made in writing before the period of limitation expires.

In this case, Ashwani took a loan from Bhushan, promising to return the amount within one year. When he was unable to repay the amount within the prescribed period, he gave Bhushan a letter saying that he would pay within a month.

In this case, a fresh period of limitation will not start from the date of acknowledgement, as the letter was not given within the original period of limitation.

2008 - June [7] (b) Atul contracts Bimal to sell a piece of land consisting of 200 bighas of land for ₹ 3 lakh. It turns out that only 100 bighas of land belongs to Atul.

(i) Can Atul demand specific performance of the contract ?

(ii) What are the rights of Bimal in this case ?

(4 marks)

Answer :

As per Sub-section 3 of Section 12 of the Specific Relief Act, 1963, Specific performance can be demanded for even a part of a contract. It can be done if the plaintiff pays the consideration for the whole contract if contract cannot be compensated by money. Hence, in this case, Atul cannot demand specific performance of the contract, but Bimal can do so, as per the above mentioned section.

2008 - June [8] (a) Ritu informed Sushil in the year 1998 that she had committed theft of the jewellery of her neighbour. Thereafter, Ritu and Sushil were married in 1999. In the year 2001, prosecution was started against Ritu in respect of the theft of jewellery. Sushil is called to give evidence in this case. Discuss whether Sushil can disclose the communication made to him by Ritu. (6 marks)

(b) Mizaz and Siraj entered into an agreement to refer a dispute relating to genuineness of a will to an arbitral tribunal. In spite of this, Siraj commenced proceedings relating to this dispute in the district court of competent jurisdiction. Mizaz submits an application for stay of legal proceedings under the Arbitration and Conciliation Act, 1996. Will he succeed? Explain. (5 marks)

Answer :

(a) According to Section 122 of the Indian Evidence Act, 1872 the privileges relating to the communication between husband and wife extends to communication made during marriage.

In this case, Ritu informed Sushil that she committed theft of jewellery of her neighbour before her marriage with Sushil. Hence, Sushil can disclose the information given to him by Ritu.

(b) Generally, all disputes which can be decided by a Civil Court, involving private rights, can be referred to arbitration. Thus, disputes about property or money, or about the amount of damages payable for breach of contract etc. can be referred to arbitration. However, according to the general practice, certain matters are not referred to arbitration. One of them is testamentary matters. Testamentary matters, for example, questions about the validity of a will are not referred to arbitration.

In this case, Mizaz will not succeed. The arbitration agreement as such is not valid. The question relating to the genuineness of a will can only be decided with law dealing with probate as given in the Indian Succession Act. Hence, court cannot grant remedy of stay of Mizaz.

Repeatedly Asked Questions		
No.	Question	Frequency
1	What are the contracts which cannot be specifically enforced ? 06 - June [2] (a), 07 - June [2] (iii)	2 Times
2	Mention the grounds under which an arbitral award may be challenged before the court under the provisions of the Arbitration and Conciliation Act, 1996. 05 - Dec [4] (a), 06 - June [2] (c)	2 Times
3	Write short notes on Effect of acknowledgement on the period of limitation. 06 - June [3] (ii), 08 - Dec [5] (a) (iii)	2 Times

4	Practical Questions of 05 - June [8] (a) and 05 - Dec [8] (b)	2 Times
5	Practical Questions of 05 - June [8] (a) and 05 - Dec [8] (b)	2 Times
6	Distinguish between 'Admission' and 'confession'. 07 - Dec [3] (ii), 09 - Dec [3] (i)	2 Times
7	A declaratory decree is a decree passed to prevent the violation of a negative act. 06 - Dec [3] (a), 08 - Dec [2] (iv)	2 Times
8	Explain the Circumstantial evidence. 08 - June [3] (v), 09 - Dec [5] (c) (ii)	2 Times
9	Practical Questions of 07 - Dec [7] (a), 09 - Dec [6] (a)	2 Times
10	Distinguish between 'Primary evidence' and 'secondary evidence'. 06 - Dec [3] (b), 10 - June [3] (v), 11 - June [2] (v)	3 Times
11	Write notes on Rectification of an instrument. 09 - Dec [2] (iii), 10 - June [4] (iv)	2 Times
12	Practical Question on 08 - June [8] (b), 11 - June [8] (c)	2 Times
13	Mention the persons against whom specific performance of contract can not be enforced. 08 - Dec [2] (ii), 12 - June [2] (a)	2 Times
14	Explain the 'doctrine of sufficient cause' for condonation of delay as provided in section 5 of the Limitation Act, 1963. 05 - Dec [3] (a), 12 - June [3] (c)	2 Times
15	Distinguish between 'Specific performance' and 'injunction'. 07 - June [3] (iv), 13 - June [3] (i)	2 Times
16	Distinguish between 'Battery' and 'assault'. 10 - June [3] (iii), 13 - June [3] (ii)	2 Times
17	Distinguish between the 'Admissions' and 'confessions' under the Indian Evidence Act, 1872. 07 - Dec. [3] (ii), 09 - Dec [3] (i), 13 - Dec [3] (iv)	3 Times

Star Rating

On the basis of Maximum marks from a chapter

☆☆☆

On the basis of Questions included every year from a chapter

☆☆☆☆

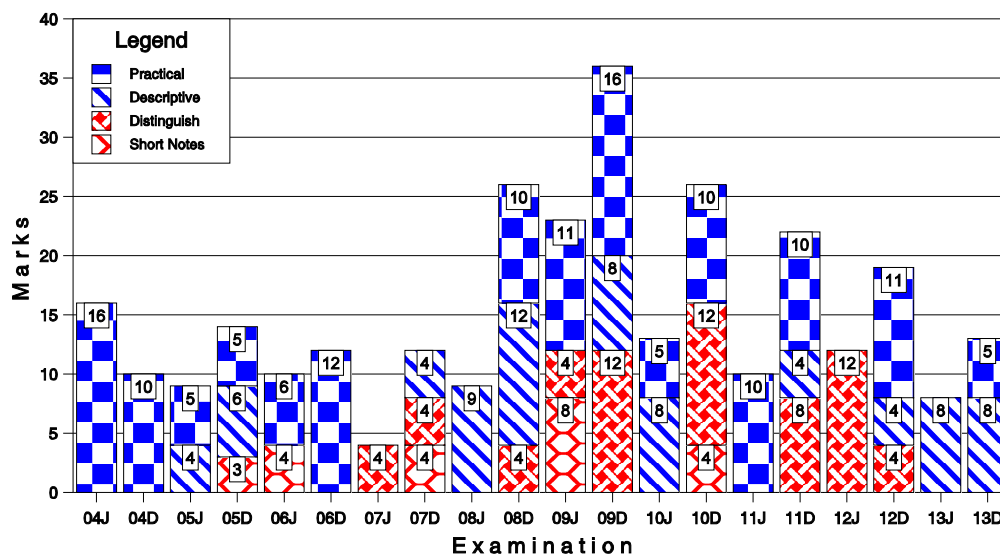
On the basis of Compulsory questions from a chapter

Nil

4 Law Relating to Transfer of Property

This Chapter Includes : Distinction between moveable and immoveable property, Rules relating to Transfer of Property, Who can transfer, Rule against inalienability, Transfer to Unborn person, Doctrine of Election, Doctrine of Holding out, Doctrine of Estoppel, Doctrine of fraudulent Transfer, Doctrine of part performance; Rule against perpetuity ; Accumulation of Income, Doctrine of Lis pendens provision relating to specific transfer-sale lease mortgage, gift, etc. Actionable claims charges.

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



CS Executive Programme (Module I)**OBJECTIVE QUESTIONS**

2008 - Dec [1] {C} (c) Re-write the following sentences after filling-up the blank spaces with appropriate word(s)/figure(s) :

- (iii) Attestation is valid and complete when _____ witnesses sign the instrument. (1 mark)

Answer :

Attestation is valid and complete when **two** witnesses sign the instrument.

2008 - Dec [6] (a) Choose the most appropriate answer from the given options in respect of the following :

- (iv) The Transfer of Property Act, 1882 applies to - (1 mark)
- (a) Movable property
 - (b) Immovable property
 - (c) Both (a) and (b).
 - (d) Only to testamentary dealings.
- (v) "I do acknowledge myself to be indebted to Bhupesh in ₹ 1,000 to be paid on demand for value received", is a - (1 mark)
- (a) Bond
 - (b) Security
 - (c) Promissory note
 - (d) Agreement.

Answer :

- (iv) (c)
(v) (c);

2008 - Dec [6] (b) State, with reasons in brief, whether the following statements are correct or incorrect :

- (iii) The right to collect rents of immovable property has been recognised as immovable property.

Answer :

Correct : As per the definitions given in the Transfer of Property Act, 1882, the General Clauses Act, and The Registration Act, 1908.

2009 - June [6] (a) Choose the most appropriate answer from the given options in respect of the following :

- (ii) The right to alienate the mortgaged property without intervention of the court is available to the mortgagee in the case –

- (a) Where the mortgagee is government
 - (b) Where there is English mortgage
 - (c) Where there is mortgage by conditional sale
 - (d) Under both (a) and (b). (1 mark)
- (iv) In the transfer of property with condition, the condition is void and transfer is valid –
- (a) Where transfer is made with void condition
 - (b) Where transfer is made with the condition restraining absolutely future transfer of such property
 - (c) Where transfer is made absolutely with the condition restraining enjoyment of such property
 - (d) Both (b) and (c). (1 mark)

Answer :

- (ii) (d) Under both (a) and (b).
- (iv) (d) Both (b) and (c).

2010 - June [5] (b) Choose the most appropriate answer from the given options in respect of the following :

- (i) Under the Transfer of Property Act, 1882, the transfer of property may be made—
 - (a) Orally
 - (b) By written document
 - (c) By written document with its registration
 - (d) By delivery of property except where transfer is required to be in writing under the law. (1 mark)
- (ii) The right to foreclosure is available to the mortgagee when it is—
 - (a) English mortgage
 - (b) Simple mortgage
 - (c) Mortgage by conditional sale
 - (d) Usufructuary mortgage. (1 mark)
- (iii) The income of transferred property may be accumulated for an unlimited time where the property is transferred with condition—
 - (a) For the payment of debts taken by the transferor
 - (b) For the maintenance of the property itself
 - (c) For the maintenance of the descendants of the transferor generation after generation
 - (d) All of the above. (1 mark)

Answer :

- (i) (d)
- (ii) (c)
- (iii) (d)

2010 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (v) The provisions regarding use of adhesive stamps are given under section ____ of the Indian Stamp Act, 1899. (1 mark)

Answer :

The provisions regarding use of adhesive stamps are given under Section 11 of the Indian Stamp Act, 1899.

2010 - Dec [5] (b) Choose the most appropriate answer from the given options in respect of the following :

- (v) Where possession of the property is to be given to the mortgagee, the mortgage is called —
- (a) Usufructuary mortgage
 - (b) Simple mortgage
 - (c) Anomalous mortgage
 - (d) None of the above. (1 mark)

Answer :

- (a) Usufructuary mortgage

2010 - Dec [6] State, with reasons in brief, whether the following statements are true or false :

- (vii) The doctrine of part-performance is applicable only where the transferee has taken possession of the immovable property. (2 marks)

Answer :

Incorrect : All the ingredients of Section 53A of the Transfer of Property Act, 1882 should be present.

2011 - June [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (v) Actionable claims are claims to _____ debts. (1 mark)

Answer :

Actionable claims are claims to unsecured debts.

2011 - June [5] (b) Write the most appropriate answer from the given options in respect of the following :

- (iv) As per the Transfer of Property Act, 1882, a person is an ostensible owner of an immovable property where he becomes interested therein by -
- (a) Express consent
 - (b) Implied consent
 - (c) Either (a) or (b)
 - (d) Both (a) and (b). (1 mark)

Answer :

- (c) Either (a) or (b)

2011 - June [6] State, with reasons in brief, whether the following statements are true or false :

- (iii) A mere right to sue can be transferred. (2 marks)
- (vii) All documents produced for the inspection of the court are known as documentary evidence. (2 marks)

Answer :

- (iii) **False.** As per Section 6 (e) of the Transfer of Property Act.
- (vii) **True.** As per Section 3 of the Indian Evidence Act.

2011 - Dec [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (ii) The mortgagee has the right to sell out the mortgaged property without intervention of the court in the —
 - (a) English mortgage
 - (b) Usufructuary mortgage
 - (c) Mortgage by conditional sale
 - (d) Simple mortgage. (1 mark)

Answer :

- (a) English Mortgage

2011 - Dec [7] State, with reasons in brief, whether the following statements are true or false:

- (i) 'Actionable claim' as defined in the Transfer of Property Act, 1882 is a property and transferable. (2 marks)

Answer :

True: As per the definition of Section 3 of the Transfer of Property Act, 1882, actionable claim includes all kinds of unsecured debts and beneficial interest in movable property which is not in the possession of claimant. Actionable claim can be transferred by execution of an instrument in writing signed by the transferor or his duly authorized agent.

2012 - June [6] (b) Write the most appropriate answer from the given options in respect of the following:

- (i) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be —
 - (a) Voidable
 - (b) Not voidable
 - (c) Void
 - (d) Illegal. (1 mark)

- (iv) Immovable property under the law relating to transfer of property includes —
- (a) Growing trees
 - (b) Growing crops
 - (c) Both (a) and (b)
 - (d) None of the above.
- (1 mark)

Answer:

- (i) (a) Voidable
- (iv) (a) Growing Trees

2012 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (iii) The right to receive future rents and profits of land is _____ property.
(1 mark)
- (iv) In lease, the transfer of immovable property is for a certain period or _____.
(1 mark)

Answer:

- (iii) immovable
- (iv) perpetuity

2013 - June [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (i) 'Lease' means a lease of _____ property.
- (viii) A licence does not transfer any _____ in the property and the licensee has no right to possession.
(1 mark each)

Answer:

- (i) immovable
- (viii) interest in the property

2013 - June [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (i) Which of the following conditions are necessary for the application of section 41 of the Transfer of Property Act, 1882—
 - (a) The transferor is the ostensible owner
 - (b) The transferor has given his consent
 - (c) The transfer is not for consideration
 - (d) Both (a) and (b) above.
- (1 mark)

Answer:

- (d) both a and b above

2013 - June [6] State, with reasons in brief, whether the following statements are true or false:

- (viii) Delay in registration of a deed of gift under the Transfer of Property Act, 1882 postpones its operation. (2 marks)

Answer:

False: In the case of *Kalyan Sundaram v. Kumarappa*, it was decided that a gift is entirely valid as from the date of acceptance, regardless of its registration taking place at a later date. Although in case of immovable properties, registration of gift becomes mandatory, but still a later registration will not postpone its operation.

2013 - Dec [5](a) Re- write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (v) In lease, there is a transfer of the right to _____ immovable property. (1 mark)

SHORT NOTES

2009 - June [2] Write short notes on the following :

- (ii) Doctrine of feeding the grant by *estoppel* (4 marks)
(iii) Doctrine of *lis pendens* (4 marks)

Answer :

- (ii) The Principle of Estoppel is covered in Chapter VIII of the Indian Evidence Act, 1872. Section 115 of this chapter says that when a person declares or leads others to believe a fact or thing to be true, he and his legal representatives are stopped from denying its non-veracity afterwards.

Section 116 says that tenant or anyone claiming under him cannot deny the title of the landlord during the period of his tenancy. Same is the case with a license, when a person to whom it was given cannot deny that the person who gave it does not possess proper title during the continuance of the license.

Section 117 pronounces that an acceptor of a bill of exchange cannot deny that the drawer had no authority to draw or endorse if he has accepted it without demurring earlier. The same condition would apply to a bailee and licensee.

The conditions in which this principle is applied are when a person is alluding to contrary facts at the same time, as a person cannot be allowed to approbate and reprobate at the same time.

- (iii) 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. For example, if Ram and Shyam were fighting a case in the High Court regarding the ownership of land, which Ram transfers to Balram while the suit is still under process, this transfer would not give Balram full rights until and unless Ram gets a clear title in the suit.

2010 - Dec [2] Write notes on the following :

(v) *Spes successionis*.

(4 marks)

Answer :

Properties that cannot be transferred have been defined in Section 6 of the Transfer of Property Act, 1882. According to this, the rights of an heir apparent or someone who has a chance to obtain the rights at a later date, but who has still not obtained them, are known as the chances of an heir apparent or 'spes successionis'.

For example, A, in the hope that since he is the only child of his parents, will be the heir of the entire estate, has entered into a contract with B, for the sale of a house that he hopes to get. This transfer is not valid till the will takes effect upon the father's death, and A actually obtains the property.

Where a person wants to make a gift of the property which is to come in his hands in future, he cannot transfer it because a gift is voluntary transfer without any consideration. Thus a gift of future property is void. Similarly, the chance of a heir apparent succeeding to the estate of a deceased person cannot be transferred.

DISTINGUISH BETWEEN

2008 - Dec [4] Distinguish between the following :

(vi) 'Mortgage' and 'charge'.

(4 marks)

Answer :

'Mortgage' and 'charge' - The differences between mortgages and charges are as under –

- Interest/Security – A mortgage involves transfer of an interest in property, whereas a charge is created as a security for a debt.
- Creation – Mortgages are created voluntarily when the parties so decide, but a charge can be created voluntarily or it can be a mandatory requirement under a law for the time being in force.

- Mode of creation – Mortgages need to be in writing to take effect; charges can also be oral; if they are oral they can be induced to writing.
- Registration – Mortgages need compulsory registration to be effective, for that they need to be attested by at least two witnesses. Charges need not be registered, unless a company creates them.
- Foreclosure – There is a possibility of foreclosure in certain types of mortgages, not all, but charges are without this benefit. The only recourse a charge-holder will have in case of non-payment is to get the property sold.
- Personal liability – In a mortgage, the element of personal liability will be generally present, but it will depend also on the category of mortgage chosen. In a charge, it is always absent.

2009 - June [3] Distinguish between the following:

- (ii) 'Vested interest' and 'contingent interest'. (4 marks)

Answer :

Vested interest as per the Transfer of Property Act, 1882 is both heritable and transferable. Such an interest already exists at the time of the transfer. On the other hand, a contingent interest is one the existence of which depends on the happening of future events. For example, if A is given a property for life, which is afterwards given to B for life. The interest of B is a vested interest as per the Transfer of Property Act, 1882.

2009 - Dec [3] Distinguish between the following :

- (ii) 'Vested interest' and 'contingent interest'.
(iii) 'Mortgage' and 'charge'.
(v) 'Lease' and 'licence'. (4 marks each)

Answer :

- (ii) Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect; or specifying that it is to take effect forthwith; or on the happening of an event which must happen—such interest is vested. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event or if a specified uncertain event shall not happen such person thereby acquires a contingent interest in the property.

A vested interest does not depend upon the fulfillment of any condition; it creates an immediate right though the enjoyment may be postponed to a future date. A contingent interest is solely dependent upon the fulfillment of the condition, so that if the condition is not fulfilled the interest may fall through.

A vested interest is not defeated by death of transferee before he obtains possession. A contingent interest can not take effect in the event of transferee's death before the fulfillment of the condition.

A vested interest is both transferable as well as heritable whereas a contingent interest is neither transferable nor heritable.

If the transferee of a vested interest dies before actual enjoyment, it passes on to his heirs. If the transferee of a contingent interest dies before actual enjoyment the interest does not pass on to his heirs.

(iii) *Please refer 2008 - Dec [4] (vi) on page no. [151](#)*

(v) Distinctive aspect between lease and licence

A lease is defined in section 105 of the Transfer of Property Act as a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised or of money, a share of crops, service or of any other thing of value to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer of such terms.

Whereas, section 52 of the Indian Easements Act defines a licence as a right to do in or upon the immovable property of the guarantor, something, which in the absence of such right is unlawful and such right does not amount to an easement or interest in the property.

1. A lease transfers an interest in land whereas a licence does not create any interest in land in favour of the licensee.
2. A lease can be assigned but a licence cannot be assigned.
3. A lessee can sue a trespasser in his own name but a licensee cannot do so.
4. Death of either party does not affect a lease while death of licensee terminates the licence.
5. A lease cannot be revoked until the expiry of the term but a licence can be revoked subject to certain exceptions.

2010 - Dec [3] Distinguish between the following :

- (i) 'Condition restraining alienation' and 'condition restraining enjoyment'.
- (ii) 'Mortgage' and 'charge'.
- (iii) 'Sale' and 'contract for sale'. (4 marks each)

Answer :

- (i) According to Section 10 of the Transfer of Property Act, 1882 the right of absolute alienation of property is not to be allowed to the transferor. Partial restraint, however, is allowed under the Act.
Partial restraint implies transfer of property to another with a condition that does not make transfer impossible per se but limits it under certain conditions. For example, a condition attached to a family settlement that a transferor has to offer his share to a family member first and then to a stranger, is valid.

Absolute restraint is not allowed as it limits the transferee from freely transferring the property as he thinks fit. The term might also apply to restrictions placed on the enjoyment of acquired property. For example, a condition that the transferee cannot further sell the land except when the price is above a fixed sum comes under this term.

However there are certain exceptions to Section 10.

1. A condition that the lessee cannot further sublet the property is valid.
2. In the case of a woman to whom the Hindu, Buddhist or Muslim personal law does not apply shall not have power to transfer the property as long as her marriage subsists.

Restraint on enjoyment :

Section 11 of the Act also embodies a rule which is based on the principle that restraint on the enjoyment of the property is invalid. The section lays down that where land is transferred by one to another, the transferor should not impose conditions as to how and in what manner the transferee should enjoy the property. As for instance, A sells his house to B and adds a condition that B only should reside in that house, the condition is invalid. This is subject to the exception that, if a person transfers a plot of land keeping another plot for himself, he can impose certain conditions which may interfere with the right of enjoyment of the transferee.

- (ii) *Please Refer 2008 - Dec [4] (vi) on page no. [151](#)*
- (iii) **Sale** – As per Section 54 of the Transfer of Property Act, a sale is a transfer of property to another for consideration that is paid or promised, or partly paid and partly promised. The essentials of a sale are as under –
- (a) The seller must be a person competent to transfer. The buyer must be any person who is not disqualified to be the transferee under Section 6(h)(3).
 - (b) The subject matter should be capable of being defined as transferable property.
 - (c) There is a transfer of ownership.
 - (d) It must be an exchange for a price paid or promised or part paid and part promised.
 - (e) There must be present a money consideration. Any other valuable consideration but money makes it an exchange or barter but not a sale.

Contract for sale

A contract for the sale of immoveable property will be specifically enforced by a court unless special reasons to the contrary are shown. For example, if in a contract, A agreed to sell to B a plot X, this is a contract of sale, and specific performance of the contract can be ordered by the court.

2011 - Dec [3] Distinguish between the following:

- (iii) 'Movable property' and 'immovable property'. (4 marks)
- (iv) 'Sale' and 'exchange'. (4 marks)

Answer :

(iii) **Movable property** – Property that is so attached to the land that it can be severed and transferred. It does not derive its value from the fact of its attachment to the land. For example, growing crops, timber etc.

Immovable property – Property that is permanently affixed to land. Severing it would result in loss in value or functionality of the property.

Section 3 of the Transfer of Property Act, 1882 does not provide for a comprehensive definition of 'immovable property', however, it only mentions that 'immovable property' does not include standing timber, growing crops, or grass. Thus the definition only points out certain kinds of property to be not considered as an immovable property and further classifies certain kind of properties which can be considered to be immovable property. As per the provision of Section 3, the immovable property includes the things attached to the earth, which has been sub-divided into three categories:

- (a) Things rooted in the earth, as in the case of trees and shrubs
- (b) Imbedded in the earth, as in the case of walls or buildings
- (c) Attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.

(iv) Barter is a contract by which the parties exchange goods for goods. To complete the contract the goods must be delivered, for without delivery, the contract would not be complete as there would be no conveyance, or the right to property would not change hands. This contract differs from a sale in this, that barter always results in exchange of goods for goods, whereas a sale is an exchange of goods for money. In the former there never is a price fixed, in the latter a price is indispensable.

2012 - June [5] Distinguish between the following:

- (i) 'Vested interest' and 'contingent interest'
- (ii) 'English mortgage' and 'mortgage by conditional sale'
- (iii) 'Actionable claim' and 'mere right to sue' (4 marks each)

Answer :

(i) Vested interest is one that is complete and perfect at the time of transfer. In opposition, we have the concept of contingent interest, in which the transferee is required to fulfil some condition so that the transfer can be perfected. The condition can be a condition precedent or a condition subsequent.

The differences between the two are as under-

1. Perfection of title – In case of vested interest the acquirer gets a perfect title, but in case of contingent interest the title is perfected upon fulfillment of specific conditions.
2. Effective date – A vested interest is effective from the date of transfer. Contingent interest takes effect from the date of fulfillment of conditions.
3. Effect of death of transferee – Vested interest still continues in validity; conditional interest is defeated in case of death of transferee before the condition can be fulfilled.
4. Transferability and inheritance – Vested interest is transferable and heritable but Contingent interest is heritable but not transferable.

(ii) English mortgage –

- There is a personal binding on the part of the mortgagor.
- The property is transmitted to the mortgagee.
- The property is reconveyed to the mortgagor after repayment of the debt amount.

Mortgage by deposit of title deeds (Equitable mortgage) –

- This type of mortgage can be created in some towns in India, not in all.
- It involves the deposit of the deed to the property with the mortgagee, with the intention of the property providing security against non-payment of the amount of loan.
- Such a mortgage need not be registered; it can even be created orally.
- The best feature of this mortgage is that it is extremely fast, as compared to other types of mortgages.

(iii) Actionable claims – Actionable claims are defined in Section 3 of the Transfer of Property Act, 1882. They are debts that are unsecured by any asset, and therefore only recoverable by a suit. Since the debt is unsecured, on non-repayment, the only remedy available to the creditor is to sue the debtor for the sum due. These can be transferred to another person. It includes only specified sums; payable either in the present or in the future, i.e. it can be an accrued debt or an accruing one. It can even be a contingent or conditional debt. For example, bills receivable or debts due from a customer.

Rights to sue, for example (i) a person was defrauded by a seller; he himself has the right to sue the seller, and this right cannot be transferred. (ii) A stranger to a contract cannot sue; only those who are a party to that contract can sue on that contract. Section 6 of the Transfer of Property Act, 1882 says that mere right to sue cannot be transferred.

2012 - Dec [3] Distinguish between the following:

- (v) 'Mortgage' and 'charge'.

(4 marks)

Answer:

The differences between mortgages and charges are as under –

- Interest/Security – A mortgage involves transfer of an interest in property, whereas a charge is created as a security for a debt.
- Creation – Mortgages are created voluntarily when the parties so decide, but a charge can be created voluntarily or it can be a mandatory requirement under a law for the time being in force.
- Mode of creation – Mortgages need to be in writing to take effect; charges can also be oral; if they are oral they can be reduced to writing.
- Registration – Mortgages need compulsory registration to be effective, for that they need to be attested by at least two witnesses. Charges need not be registered, unless a company creates them.
- Foreclosure – There is a possibility of foreclosure in certain types of mortgages, not all, but charges are without this benefit. The only recourse a charge-holder will have in case of non-payment is to get the property sold.
- Personal liability – In a mortgage, the element of personal liability will be generally present, but it will depend also on the category of mortgage chosen. In a charge, it is always absent.

DESCRIPTIVE QUESTIONS

2008 - Dec [2] Attempt of the following :

- (i) State the conditions to recover the possession of dispossessed immovable property based merely on possession. (4 marks)

Answer :

A person dispossessed from immovable property without his consent and otherwise than in due course of law will have the protection of Section 6 of the Specific Relief Act, 1963. This section says that such a person can sue for possession of that property. The limitation period under this section would be six months, barring sufficient cause. The following points have to be kept in mind while doing so –

- The suit has to be filed within six months.
- The six months have to be counted from the date of the dispossession.
- A suit cannot be brought against the government under this section.
- This remedy is available even if there is a better title in existence.
- No review or appeal can be filed against a decree passed under Section 6, sub-section (3).

This section thus, provides an easy and fast way of redressal, by providing a summary trial for the suit.

2008 - Dec [3] Explain the following :

- (ii) Doctrine of part-performance.
- (iii) Doctrine of election. (4 marks each)

Answer :

- (ii) According to Section 53A (Chapter II) of the Transfer of Property Act, 1882, if a person contracts to buy land or property from another, and pays part of the consideration and hence continues in or obtains possession, his right cannot be taken away by the transferor or any person claiming under him. This can only be done if the contract so provides. This is known as part-performance, i.e. part of the contract has been performed and the transferee has not indicated his unwillingness to complete the remaining half of the contract. The protection is available even if the transferee takes possession without the transfer being registered. This section shall not cover a transferee who has purchased the property for value and without notice of the previous contract or of the fact that it had been partly performed.

The Specific Relief Act, 1963, Section 27A provides that the benefit of part performance will be allowed to a party if he is able to prove that there is a contract in writing that evidences the terms of transfer of property. Under this contract, if the transferee had taken possession of the property in full or otherwise, in part performance of the pre-decided contract, or if he was in possession before the contract and continues so, the doctrine of part performance would apply and be sufficient proof of the contract.

- (iii) 'One cannot approbate and reprobate at the same time.' This is the main theme of the Doctrine of Election covered under Section 35 of the Transfer of Property Act, 1882. This doctrine is based upon the principle that anyone taking over some benefit has to shoulder the responsibilities coming with it too; he cannot just choose to take the benefit and reject the rest of the contract.

In *R.N.Gosain v. Yashpal Dhir* (AIR 1993 sc 352) it has been laid down that:-

"Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that" a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage."

There are certain prerequisites to this principle –

- The counterpart of the transaction giving some benefit to the party should contain the liabilities or the conditions in which the transfer intended for him can take place. For example, if B gives a property to A on condition that he transfers property to C, both these transactions should form part of the same contract, otherwise the doctrine fails.

- This doctrine will apply only when there is a direct transfer of interest or benefit. For example, if X transfers his land to Y's wife on condition that Y transfers his property to Z, this transaction will not bind Y.
- In case there are multiple properties being transferred, and the condition of election applies only on one property, the transferee can benefit from the other transfers on which no conditions apply.

2009 - Dec [4] (a) Discuss briefly the doctrine of part-performance embodied in section 53A of the Transfer of Property Act, 1882. (6 marks)

Answer :

Doctrine of Part Performance : As per section 53A of the Transfer of Property Act where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has in part performance of the contract taken possession of the property or any part thereof, or the transferee being already in possession continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract.

2009 - Dec [5] (c) Explain the following :

- (i) Doctrine of marshalling (2 marks)

Answer :

Doctrine of Marshalling: As per section 81 of the Transfer of Property Act if the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is in the absence of a contract to the contrary entitled to have the prior mortgage debt satisfied out of the property or properties not mortgaged to him so far as the same will extend but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties.

2010 - June [2] Attempt the following :

- (i) State the circumstances in which a property may be transferred in favour of an unborn person. (4 marks)
- (ii) Explain the rule of *lis pendens* as provided in the Transfer of Property Act, 1882. (4 marks)

Answer :

- (i) As per Section 13 of the Transfer of Property Act, 1882, transfer of property to an unborn person can only take place if before such a transfer; a life estate is transferred to a person existing at the date of transfer. Moreover, it should not be a partial interest, but the entire interest that is transferred to the unborn. The vesting of absolute interest in favour of an unborn person may be postponed

until he attains full age. Such an unborn person should get full rights to that property, and no further rights can be created to that property after those of the unborn.

- (ii) 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.

2011 - Dec [4] Attempt the following:

- (v) Discuss briefly the right of redemption.

(4 marks)

Answer :

Right of redemption is the right which every mortgagor possesses, which is created by virtue of the mortgage deed. This right is considered to be inalienable, and cannot be taken away from a mortgagor by means of any contract to the contrary. This right finds place under Section 60 of the Transfer of Property Act, 1882 which makes mortgagor the owner of the property mortgaged, and makes him able get his property back from the mortgagee on paying the amount borrowed from him. Clog on redemption or on a right means the insertion of any clause or any provision under the mortgaged deed which would alienate mortgagor of his property under certain circumstances. Under Indian legal system, such provisions would not be able to alienate a mortgagor of his "Right of Redemption", and such provisions would be void ab initio. The reason for such clauses under the mortgage deed being void is quite interesting and reasonable. It would not be difficult to understand that a person mortgages his property when he is in need of money, and would not be in the same position as that of the mortgagee. Also, it would not be difficult to understand that mortgagee would try to misuse his position to exploit the mortgagor, and it is for this reason that such clause becomes obvious which would alienate a mortgagor of his property. It is highly possible that a person agrees to enter in a mortgage having clauses which extinguish his right of redemption, but it would not be necessary that the provisions have been accepted by him willingly. In need of money, a person would agree to the terms and conditions of the mortgagee even if he doesn't want to do so. But, law doesn't sit silent and in such cases it steps in the picture, and save the basic rights of a mortgagor. Law doesn't allow any person to alienate a mortgagor of his "Right of redemption". Such right would remain effective

unless the property has been sold off or under any statutory provision. Even if mortgagee has gone to the court for the foreclosure of the property mortgaged, mortgagor can redeem his property by paying off the full amount in the court.

Time period is not the essence in case of right of redemption. One such case was decided by the court in *Achaldas Durgaji Oswal v Gangabisan Heda (2003) 3 SCC 614*.

2012 - Dec [2] Comment on the following:

- (iv) Exceptions to the rule that absolute restraint on transfer of property is void (4 marks).

Answer:

According to Section 10 of the Transfer of Property Act, 1882 the right of absolute alienation of property is not to be allowed to the transferor.

Absolute restraint is not allowed as it limits the transferee from freely transferring the property as he thinks fit. The term might also apply to restrictions placed on the enjoyment of acquired property. For example, a condition that the transferee cannot further sell the land except when the price is above a fixed sum comes under this term.

However there are certain exceptions to Section 10.

1. A condition that the lessee cannot further sublet the property is valid.
2. In the case of a woman to whom the Hindu, Buddhist or Muslim personal law does not apply shall not have power to transfer the property as long as her marriage subsists.

2013 - June [4] (c) State the meaning and characteristics of immovable property as per the Transfer of Property Act, 1882. (4 marks)

(d) What do you mean by the rule of *lis pendens*? Write down the essentials of rule of *lis pendens* as provided in the Transfer of Property Act, 1882. (4 marks)

Answer:

(c) **The meaning and characteristics of immovable property:**

The term has not directly been defined under the Transfer of Property Act. However, the act says that it includes everything but the property that is permanently affixed to land, immovable property or attached to the earth. Severing it would result in loss in value or functionality of the property.

The Interpretation clause as per Section 3 of the act provides that unless there is something repugnant in the subject or context,:

" **immovable property**" does not include standing timber, growing crops or grass; " attached to the earth" means:

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached;

Jnan Chand Chugh vs Jugal Kishore Agarwal and Others.

(d) 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.

For example, if Ram and Shyam were fighting a case in the High Court regarding the ownership of land, which Ram transfers to Balram while the suit is still under process, this transfer would not give Balram full rights until and unless Ram gets a clear title in the suit.

2013 - Dec [2] Discuss the following:

- (ii) A person taking the benefit of an instrument must also bear the burden of the instrument.
- (iii) Fraudulent transfer is voidable as per the Transfer of Property Act, 1882.

(4 marks each)

PRACTICAL QUESTIONS

2008 - Dec [7] (b) There was a partition between a Hindu father and his five sons. The deed provided that if any one of the sons wanted to sell his share, he shall sell it to one of his brothers only and not to any stranger. The consideration for that share shall be ₹ 1,000 only. Are these conditions valid? Give reasons. (5 marks)

(c) Ajit transfers to Baljit for valuable consideration his reversionary interest in a property. When Ajit succeeds to the property, Baljit sues for possession of the same. Whether Baljit's suit for possession will succeed? Give reasons. (5 marks)

Answer :

(b) The first condition that if any one of the sons wanted to sell his share, he shall sell it to one of his brothers only and not to any stranger is valid, as the son's share forms part of the HUF's estate. However, the second condition that the consideration for that share shall be ₹ 1,000 only is invalid. Such a transfer would be valid only if the price of the property is freely determined.

This is a case under Section 10 of the Transfer of Property Act, 1882, which says that absolute restraints are not allowed. (Roshier vs. Roshier).

- (c) This transfer is covered under Section 6 of the Transfer of Property Act, 1882, which provides for properties that cannot be transferred. Amongst the categories mentioned is the chance of an heir apparent or 'spes successionis'. In this case, Ajit transfers to Baljit for valuable consideration his reversionary interest in a property. When Ajit succeeds to the property, Baljit sues for possession of the same. Baljit's suit would not be accepted, as the transfer was void ab initio.

2009 - June [7] (a) Ajit, a Hindu, who has separated from his father Baljit, sells to Charanjit three fields X, Y and Z representing that Ajit is authorised to transfer the same. Of these fields, Field-Z does not belong to Ajit, it having been retained by Baljit on the partition of property. But subsequently on Baljit's death, Ajit, as a heir obtains Field-Z. Decide the validity of the sale of the above said fields in a circumstance where Charanjit does not rescind the contract of sale. (6 marks)

Answer :

As per the provisions of Section 43 of the Transfer of Property Act, 1882, when a transferor fraudulently represents that he has the right to transfer a property, such transfer will be operational at the option of the transferee, if the contract still subsists. Hence, in this case, the validity of the sale of the said fields will subsist in a circumstance where Charanjit does not rescind the contract of sale.

2009 - June [8] (c) Arjun transfers his property to Bhanu for life and after Bhanu's death to that of his unborn sons as shall first attain the age of 25 years and if no son of Bhanu shall attain that age, to Chandan who is living at the time of the transfer. Decide the validity of this transfer. (5 marks)

Answer :

As per Section 13 of the Transfer of Property Act, 1882, transfer of property to an unborn person can only take place if before such a transfer; a life estate is transferred to a person existing at the date of transfer. Moreover, it should not be a partial interest, but the entire interest that is transferred to the unborn. The vesting of absolute interest in favour of an unborn person may be postponed until he attains full age. Such an unborn person should get full rights to that property, and no further rights can be created to that property after those of the unborn.

Hence, the transfer is valid till it pertains to the transfer in favour of Bhanu, but the transfer to Chandan is not valid, as he is living at the time of the transfer, while the sons of Bhanu are as yet unborn.

2009 - Dec [7] (b) Anil has two properties - Property-X and Property-Y. He sells Property-Y to Sunil and puts a condition that Sunil should not construct on Property-Y more than one storey so that Anil's Property-X which he retains should have good light and free air. Is such a condition valid ? Give reasons in support of your answer. (5 marks)

- (c) Ajay, a Hindu, who was separated from his father, sells to Chander three fields A, B and C representing that he is authorised to transfer the same. Of these fields, Field-C does not belong to Ajay, as it was retained by his father at the time of partition, but after his father's death Ajay being the heir obtained Field-C. Chander did not rescind the contract of sale and asked Ajay to deliver Field-C to him. Whether Chander will succeed ? Decide. (5 marks)

Answer :

- (b) **Rule :** Section 11 of the Transfer of Property Act provides that where on a transfer of property an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction, i.e., ignoring such direction.

Facts of the case: Anil has two properties X and Y. He sells Property-Y to Sunil and puts a condition that Sunil should not construct on Property-Y more than one storey so that Anil's other property gets good light and free air.

Question involved : Is this condition valid ?

Decision : The condition is valid. Section 11 itself provides an exception by stating that where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.

- (c) **Rule :** Section 43 of the Transfer of Property Act provides that where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration such transfer shall at the option of the transferee, operate on any interest which the transferer may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Facts of the case: A sells three fields, A, B and C to Chander. A represents to B that the three fields belong to him. In fact, fields B and C belong to A's father and he expects to get them after his death. While this transaction is in force A's father dies and A gets fields B and C in inheritance.

Question involved : Can B now compel A to transfer to him fields B and C ?

- 2009 - Dec [8]** (a) The managing clerk of a firm of solicitors, while acting in the ordinary course of business committed fraud, against a lady client by fraudulently inducing her to sign a document transferring her property to him. He had done so without the knowledge of his principal. Whether principal will be liable ? Give reasons.

(6 marks)

Answer :

Section 53 of the Transfer of Property Act, 1882 provides the following provisions regarding fraudulent transfer:

- (a) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.
- (b) This shall not impair the rights of a transferee in good faith and for consideration.
- (c) This shall not affect any law for the time being in force relating to insolvency.
- (d) A suit instituted by a creditor or decree-holder to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of all the creditors.
- (e) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.
- (f) No transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

In terms of the aforesaid provisions the given problems can be decided as under:

- (i) If the transfer has been made with intention to delay the creditors of A, it shall be voidable at the option of any creditor so delayed.
- (ii) If the buyer has bought the property for valuable consideration on good faith nothing would affect the rights of the buyer.
- (iii) If a subsequent transfer is made for consideration whereas the first transfer was made without consideration, it need not be deemed to have been made to defraud the creditors of the transferor.

Here, although he had done so without the knowledge of his principal but his act was on the behalf of principal. His act was the act of principal. So the principal will be liable.

2010 - June [7] (b) Kamal transfers his property worth ₹ 10,000 to Shyam and by the same instrument asked Shyam to transfer his property worth ₹ 5,000 to Manoj. Kamal dies before Shyam made his election. Can Manoj get compensation ? If so, from whom and how much ? (5 marks)

Answer :

'One cannot approbate and reprobate at the same time.' This is the main theme of the Doctrine of Election covered under Section 35 of the Transfer of Property Act, 1882. This doctrine is based upon the principle that anyone taking over some benefit has to shoulder the responsibilities coming with it too; he cannot just choose to take the benefit and reject the rest of the contract.

'Election' implies choice. As per Section 35 of the Transfer of Property Act, 1882, if a person is given a property by a deed, and asked to transfer another property to a

third party by the same deed, he is to choose either to accept both the transactions or to reject both. This implies that a person cannot choose just a benefit; he has to bear the burden that goes along with it.

If suppose the third party who was promised something under the deed is not given the property, the original transferor has to compensate him for his distress or disappointment. Hence the heirs of Kamal have to compensate Manoj for his loss.

2010 - Dec [5] (c) Abhay's agricultural land was purchased by the government for the purpose of construction of a factory but no duty was paid for this transfer by the government. Abhay wanted to take back his land on the ground that the government has not paid the duty and, therefore, no sale deed was executed. Will Abhay succeed? Give reasons. (4 marks)

Answer :

Section 3 of the Indian Stamp Act, 1899 dealing with instruments chargeable with duty provides certain exceptions stating that no duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the Government, in cases where, but for this the Government would be liable to pay the duty chargeable in respect of such instrument.

In this case, Abhay's agricultural land was purchased by the government for the purpose of construction of a factory but no duty was paid for this transfer by the government. Abhay wanted to take back his land on the ground that the government has not paid the duty and, therefore, no sale deed was executed. As per the provisions of the section it appears that the government is not liable to pay duty. Therefore the instrument falls under the exception and it is not void. Abhay cannot take back his land on this ground.

2010 - Dec [8] (a) Ajoy voluntarily makes a gift of his immovable property to Bijoy. Bijoy accepts the gift. The possession of the property was given to Bijoy but the gift deed which required registration under section 123 of the Transfer of Property Act, 1882 was not registered. Whether Ajoy, the donor can revoke the gift ? Decide. (6 marks)

Answer :

This is covered under Section 123 of The Registration Act, 1908. According to this section, a gift of immovable property needs to be made by a registered document that is signed by the donor or by his authorized representative. Moreover, it needs to be attested by at least two witnesses. In addition, it needs to be accepted by the donee during the lifetime of the donor in order to have a binding effect. Non-acceptance will vitiate the gift.

Such a deed can be registered anytime within the period specified under the Act, and even a subsequent registration will have the same effect as if it was registered upon execution. As in the case of Kalyana Sundaram Pillai vs. Karuppa Moppanar,

non-registration of the deed will not render the gift invalid, and if it is presented within the reasonable time, it can be duly registered.

Ajoy can not revoke the gift, as in this case, other than registration, the gift is complete and valid according to the provisions of Section 122 of the Transfer of Property Act, 1882.

2011 - June [7] (b) Ashok intentionally and falsely leads Bikram to believe that certain land belongs to Ashok, and thereby induces Bikram to buy and pay for it. Afterwards, the land becomes the property of Ashok, and Ashok seeks to set aside the sale on the ground that at the time of the sale he had no title to the property. Can he be allowed to prove his want of title ? (5 marks)

Answer :

This is the case of Principle of Estoppel which is explained in chapter - VIII of the Indian Evidence Act, 1872. Section 115 of this Chapter enumerates that when a person declares or impulse others to believe a fact or thing to be true, he must be stopped from denying its words afterwards.

In this Case Ashok will not be allowed as per as the principle of Estoppel, and stop him from denying the contract he entered with Bikram.

2011 - June [8] (b) There was a partition of property between a Hindu father and his five sons. The deed provided that if any one of his sons wanted to sell his share, he shall sell it to one of his brothers only and not to any stranger. The consideration for that share shall be ₹ 1,000 only. Are these conditions valid ? Give reasons. (5 marks)

Answer :

The first condition is valid that if anyone of the sons wanted to sell his share, he shall sell it to one of his brothers, because son's share is a part of the HUF's estate.

But the second condition which is in respect of restrict consideration is not valid. It would be valid only if the price of the property is freely determined.

This is the case of section 10 of the transfer of Property Act, 1882 according to that absolute restraint is not valid, ordered in the Case of Roshier Vs. Roshier.

2011 - Dec [8] (b) Arun, a Hindu, who has separated from his father Bharat, sells three fields X, Y and Z to Chandan representing that Arun is authorised to transfer the same. Of these fields, Field-Z does not belong to Arun, which was retained by Bharat during partition. On the death of Bharat, Arun obtains the possession of Field-Z. What are the rights of Chandan now? (5 marks)

(c) Amit is the resident of Jaipur and Babita is of Delhi. The marriage between two was solemnised at Ajmer. Both Amit, husband and Babita, wife lived together at Udaipur. Amit treated his wife Babita with cruelty. Babita, the wife comes to you as an advocate to file a suit against Amit for divorce on the ground of 'cruelty.' Advise Babita, in which court Babita has the right to file the suit. Decide citing the relevant provisions of law.

(5 marks)

Answer :

- (b) The given problem is an illustration appended to Section 43 of Transfer of Property Act, 1882.

'Doctrine of feeding the grant by estoppel' covers the case of a person who leads another to believe that he is the owner of any property and transfers it to him for value. Later on, he is stopped from denying his ownership of the property and rejecting the transfer if he acquires the rights to that property subsequent to that transfer. This is covered in Section 43 of the Transfer of Property Act, 1882. The pre-requisites for this section to apply are –

The transferor should have led the transferee to believe that he is, in fact, the owner of that property. The rights should have devolved on the transferor subsequently. The transfer was in good faith and for value. The transferee had no notice of the transferor's real position at the time of transfer.

Hence, when the person desires to transfer an interest in property that he does not control at the time of transfer and subsequently acquires rights in that property, the property automatically goes into the hands of the *bona fide* transferee. This situation holds true if the transferee does not rescind the contract before the transferor acquires rights to the property. In this case, Chandan, not having rescinded the contract of sale may require Arun to deliver field Z to him.

- (c) The Civil Procedure Code 1908, Section 20, tells about where suits are to be instituted - where defendants reside or cause of action arises. Subject to the limitations aforesaid, every suit shall be instituted in Court within the local limits of whose jurisdiction-
- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
 - (b) any of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
 - (c) the cause of action, wholly or in part, arises. In this case, both Amit and Babita stayed together as husband and wife at Udaipur. Moreover, the offence of cruelty is committed at Udaipur. Hence, Babita can file the suit for divorce in the court at Udaipur.

2012 - Dec [7] (a) Amrit (*lessor*) grants his immovable property (premises) on lease for 4 years to Sukant (*lessee*) commencing from 1st June, 2001. The lessor gives a notice to the lessee on 1st February, 2008 for vacating the premises on 1st March, 2008:

- (i) Is this notice a valid notice?
- (ii) If the lease is continued after 4 years, will the tenancy be on monthly basis or yearly basis? Decide. (6 marks)
- (b)** The managing clerk of a firm of solicitors, while acting in the ordinary course of business committed fraud against a lady client by fraudulently inducing her to sign documents transferring her property to him. The clerk did so without the knowledge of his principal.
- Who is liable to the lady in this case? Support your answer with reasons, citing case law, if any. (5 marks)

Answer:

- (a)** Under the Transfer of Property Act, 1882, in order to be valid, a notice has to be valid, has to be a proper notice. There are two things to be kept in mind, so that it can be termed as a proper notice

- It has to clearly specify the intention to terminate tenancy.
- The date of termination of tenancy should be mentioned in it.

Moreover, depending on whether it is a monthly or yearly lease, the notice period should be fifteen days and six months respectively.

In this case, the lease is granted by Amrit to Sukant for four years, w.e.f. 1st June, 2001. This lease ends on 1st June, 2005. Since the tenant has continued residing in the property after this period, we can safely assume that the lease after 1st June, 2005 continues as a monthly lease, for which a fifteen day notice suffices.

Hence,

- (i) The notice is a valid notice.
- (ii) The tenancy is a monthly tenancy.
- (b)** This case pertains to the Law of Torts, i.e. the law pertaining to vicarious liability. Under these rules, the principal is liable for the wrongs of his agents, based on the maxim – *Qui facit per alium facit per se* (He who acts through an agent acts himself, i.e. even if someone is acting through an agent, and the agent is acting as per the principal's directions, it can be assumed that the principal is acting himself.).

In this case, however, the agent acted without the knowledge of the principal and defrauded the lady client, inducing her to sign the documents transferring her property to him. Even though the principal had no knowledge of the agent's acts, he is 'vicariously' liable, since the agent acted in the course of employment.

A leading case that supports this decision is the case of *Lloyd vs. Grace, Smith & Co. (UKHL)* and *Sitaram Motilal Kalal vs Santanuprasad Jaishankar Bhatt (1966)*.

- 2013 - Dec [7]** (b) Anuj orally grants the rights to catch and carry away fish from his lake to Barun for ₹ 700. Is the grant valid? Give your answer under the relevant provisions of the Transfer of Property Act, 1882. Also cite an appropriate case law. (5 marks)

CS Inter Gr. I

SHORT NOTES

2005 - Dec [3] (c) Write short notes on the following:

(ii) Actionable claims.

(3 marks)

Answer :

Actionable claims are defined in Section 3 of the Transfer of Property Act, 1882. They are debts that are not secured by any assets, and therefore only recoverable by a suit. It includes only specified sums; payable either in the present or in the future, i.e. it can be an accrued debt or an accruing one. It can even be a contingent or conditional debt. For example, bills receivable or debts due from a customer.

2006 - June [3] Write notes on the following :

(iii) Doctrine of holding out.

(4 marks)

Answer :

This is also known as the Doctrine of 'Transfer by ostensible owner'. According to this 'Doctrine of Holding Out', if a person leads another to believe that he is the owner of some immovable property and deals in it, the transfer shall not become voidable subsequently on the argument that the transferor was not entitled to deal in that property. For this to happen, there are certain prerequisites –

- The transferor has to hold himself out as the owner, and this has to be done with the knowledge of the real owner.
- The transfer should not be a gratuitous one.
- The transferee has to make the basic checks before purchasing the property, and should buy it in good faith. (Section 41 of the Transfer of Property Act, 1882)

2007 - Dec [5] Write short notes on the following :

(iv) Transfer for benefit of unborn person

(4 marks)

Answer :

As per Section 13 of the Transfer of Property Act, 1882, transfer of property to an unborn person can only take place if before such a transfer; a life estate is transferred to a person existing at the date of transfer. Moreover, it should not be a partial interest, but the entire interest that is transferred to the unborn. The vesting of absolute interest in favour of an unborn person may be postponed until he attains full age. Such an unborn person should get full rights to that property, and no further rights can be created to that property after those of the unborn. For example –

- If A wishes to transfer his entire estate to his unborn son, he has to transfer it first to some living person who will get the entire interests in that property and after his death, it can go to the son.
- In case an estate is given to a living person 'A' for life, then to a living person 'B' for life and then to the unborn son of 'B', then the son of 'B' must be in existence on or before the date of expiry of the life estate in favour of 'B'.

DISTINGUISH BETWEEN

2007 - June [3] Distinguish between the following :

- (i) 'Mortgage' and 'charge'.

(4 marks)

Answer :

Please refer 2008 - Dec [4] (vi) on page no. [151](#)

2007 - Dec [3] Distinguish between the following:

- (i) 'Sub-mortgage' and 'puisne mortgage'.

(4 marks)

Answer :

Please refer 2008 - Dec [4] (vi) on page no. [151](#)

DESCRIPTIVE QUESTIONS

2005 - June [3] (b) Discuss the concept of *spes successionis* under the Transfer of Property Act, 1882. (4 marks)

Answer :

Properties that cannot be transferred have been defined in Section 6 of the Transfer of Property Act, 1882. According to this, the rights of an heir apparent or someone who has a chance to obtain the rights at a later date, but who has still not obtained them, are known as the chances of an heir apparent or '*spes successionis*'.

For example, A, in the hope that since he is the only child of his parents, will be the heir of the entire estate, has entered into a contract with B, for the sale of a house that he hopes to get. This transfer is not valid till the will takes effect upon the father's death, and A actually obtains the property.

2005 - Dec [2] (c) Discuss the law embodied in the doctrine of feeding the grant by estoppel under the Transfer of Property Act, 1882. (6 marks)

Answer :

'Doctrine of feeding the grant by estoppel' covers the case of a person who leads another to believe that he is the owner of any property and transfers it to him for value. Later on, he is stopped from denying his ownership of the property and rejecting the

transfer if he acquires the rights to that property subsequent to that transfer. This is covered in Section 43 of the Transfer of Property Act, 1882. The pre-requisites for this section to apply are –

- The transferor should have led the transferee to believe that he is, in fact, the owner of that property.
- The rights should have devolved on the transferor subsequently.
- The transfer was in good faith and for value.
- The transferee had no notice of the transferor's real position at the time of transfer.

2007 - Dec [4] (b) Explain the doctrine of part-performance under the Transfer of Property Act, 1882. (4 marks)

Answer :

According to Section 53A (Chapter II) of the Transfer of Property Act, 1882, if a person contracts to buy land or property from another, and pays part of the consideration and hence continues in or obtains possession, his right cannot be taken away by the transferor or any person claiming under him. This can only be done if the contract so provides. This is known as part-performance, i.e. part of the contract has been performed and the transferee has not indicated his unwillingness to complete the remaining half of the contract. The protection is available even if the transferee takes possession without the transfer being registered. This section shall not cover a transferee who has purchased the property for value and without notice of the previous contract or of the fact that it had been partly performed.

The Specific Relief Act, 1963, Section 27A provides that the benefit of part performance will be allowed to a party if he is able to prove that there is a contract in writing that evidences the terms of transfer of property. Under this contract, if the transferee had taken possession of the property in full or otherwise, in part performance of the pre-decided contract, or if he was in possession before the contract and continues so, the doctrine of part performance would apply and be sufficient proof of the contract.

According to Section 49 of the Indian Registration Act, 1908, a document that needs to be registered under Section 17 of the Act, will not have effect if it is not registered. Moreover, it cannot be received as evidence. However, a document shall not be treated thus if it under part performance of a contract.

2008 - June [2] (c) Mention the properties which cannot be transferred under the Transfer of Property Act, 1882. (5 marks)

Answer :

Properties that cannot be transferred have been defined in Section 6 of the Transfer of Property Act, 1882. According to this, the following properties cannot be transferred –

- The easements that go along with a property cannot be transferred separately.
- A right to present and future maintenance.

- The right of re-entry cannot be exercised in favor of anyone other than the owner.
- The rights of an heir apparent or of a person who has obtained the rights after the death of a family member.
- Rights to property the enjoyment of which is restricted only to its owner.
- Rights to sue, for example (i) a person was defrauded by a seller; he himself has the right to sue the seller, and this right cannot be transferred. (ii) A stranger to a contract cannot sue; only those who are a party to that contract can sue on that contract.
- Officers of the navy, military, air force or army personnel, and those received by civil pensioners.
- The right to a public post and to the salary derived from it.

2008 - June [6] (b) Attempt of the following :

- (i) Attestation is an important formality in connection with the execution of the transfer as per the Transfer of Property Act, 1882. Comment. (4 marks)

Answer :

This is covered by Section 3 of the Transfer of Property Act, 1882. According to it, for attestation to be valid, two witnesses have to sign the transfer deed. The signing signifies the authenticity of the signatures of the executant(s). The valid mode of attestation is that the persons attesting the signatures on a document have to see the document being signed in their presence. At least two witnesses have to attest a document of mortgage or gift. For sale deeds and lease deeds, attestation is not required. The key points are –

- It can be attested at any time after execution.
- The persons attesting have to see the signatures being put to the document in front of them. Alternatively, they can attest it on the assurance of the authenticity of the signatures being given by the executant himself.
- The person attesting should have signed the document with the intention of attesting it.

PRACTICAL QUESTIONS

2004 - June [6] (a) A property is given to Anil for life and afterwards to Bimal. Bimal transfers this interest to Chandan. Bimal dies during the life-time of Anil. Chandan claims the property. Decide. (6 marks)

(b) Discuss the validity of the following transfers:

- (i) X, a Hindu widow, transfers her right to future maintenance.
- (ii) X, a Hindu widow, transfers her arrears of past maintenance.
- (iii) Transfer of right of easement apart from the dominant heritage.

(2 marks each)

- (c) Rohit, a Hindu who has his self-earned property, dies leaving his widow Priya and brother Bidur. Bidur's succession to the property is dependent upon two factors, viz., (i) his surviving the widow Priya; and (ii) Priya leaving the property intact. Bidur transfers his right of succession. Is it a valid transfer? Explain. (4 marks)

Answer :

- (a) In this case, Anil is given a property for life, which is afterwards given to Bimal for life. The interest of Bimal is a vested interest as per the Transfer of Property Act, 1882. Such an interest is both heritable and transferable. Bimal transfers this interest to Chandan, and he dies during the lifetime of Anil. Chandan claims this property. His claim is justifiable, although he can take the property only after the lifetime of Anil comes to an end. He cannot get more benefits than what the original transferor had, in this case, Bimal was to get the property after the lifetime of Anil, and so, Chandan gets the same rights.
- (b) Properties that cannot be transferred have been defined in Section 6 of the Transfer of Property Act, 1882. According to this, the following properties cannot be transferred –
- The easements that go along with a property cannot be transferred separately.
 - A right to present and future maintenance.
 - The right of re-entry cannot be exercised in favor of anyone other than the owner.
 - The rights of an heir apparent or of a person who has obtained the rights after the death of a family member.
 - Rights to property the enjoyment of which is restricted only to its owner.
 - Rights to sue, for example (i) a person was defrauded by a seller; he himself has the right to sue the seller, and this right cannot be transferred. (ii) A stranger to a contract cannot sue; only those who are a party to that contract can sue on that contract.
 - Officers of the navy, military, air force or army personnel, and those received by civil pensioners.
 - The right to a public post and to the salary derived from it.
 - (i) Any rights as to future maintenance cannot be transferred, as they are of a personal nature, and accrue only to the person they are given to and hence, are not transferable.
 - (ii) Arrears of past maintenance are transferable, since they are already accrued and due in favor of the transferor, in this case, the Hindu widow. Whatever has already become an individual right can be transferred. Hence, she can transfer the arrears of past maintenance.
 - (iii) Easements are meant to enhance the enjoyment of the property they are attached to, and are hence, not transferable separately. Hence, the transfer of a right of easement apart from the dominant heritage is invalid.

- (c) In this case, Rohit leaves his property to his widow Priya and after her, if the property remains intact and if his brother Bidur survives her, he is to succeed to the property. Bidur, meanwhile, transfers his right of succession. It is not a valid transfer as per the Transfer of Property Act, 1882, as the right that Bidur seeks to transfer is a right or property that cannot be transferred, as per Section 6 of the Act. His right is also conditional upon his succeeding Rohit's widow.

2004 - Dec [6] (b) While a suit relating to a bungalow is pending between Ram and Shyam, Gita transferred the bungalow in favour of Sita. The court passes a decree in favour of Ram. Ram starts proceedings for execution of the decree against Sita. Will Ram succeed? (5 marks)

Answer :

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 were transferred, then the transferee would acquire the property subject to the decision of the suit (Section 52 of the Transfer of Property Act, 1882).

In this case, while a suit related to a bungalow is pending between Ram and Shyam, Gita transferred the bungalow to Sita. The court subsequently passed a decree favouring Ram. However, a decree is not binding on third parties, and hence Ram will not be able to enforce the decree against Sita.

2004 - Dec [8] (c) Arjun owed money to Bheem. Bheem transferred the debt by deed of gift to Chander, Subsequently, Bheem transferred it for value to Deepak. Who is entitled to the amount? (5 marks)

Answer :

This case is under Section 130 of the Transfer of Property Act, 1882, which covers Actionable Claims. These have been defined as unsecured debts, which give the creditor the right to sue. In this case, Arjun owes money to Bheem, who transfers the debt by giving it to Chander as a gift. Later on, Bheem transferred it for value to Deepak. In this case, as the previous transfer is perfectly valid and since no subsequent transfer can have effect if the previous transfer is valid, only Chander is entitled to the amount recoverable under the debt. It is immaterial whether such transfer is for value or not.

2005 - June [6] (b) Ajoy transfers his house under a written contract of sale to Bijoy for ₹ 10,00,000. Bijoy pays ₹3,00,000 to Ajoy and takes possession of one of the four rooms of the house. No registration of documents of the contract of sale is made. After six months of the said contract, Ajoy sells the same house to Chander for ₹ 20,00,000. Chander has no knowledge of the previous transaction between Ajoy and Bijoy. When Chander claims the house, Bijoy takes protection of part-performance of the contract. Will Bijoy succeed? (5 marks)

Answer :

In this case, Ajoy contracts in writing to sell his house to Bijoy for ₹ 10,00,000. Bijoy makes him a part payment of ₹ 3,00,000, taking possession of one room, and promises to make the balance payment later. The sale deed is not registered. However, Ajoy sells the same house again to Chander after six months for ₹ 20,00,000, who pays in good faith without notice of prior purchase of the house.

Chander, as a bonafide purchaser, will have full rights of possession of the property. According to Section 53A (Chapter II) of the Transfer of Property Act, 1882, if a person contracts to buy land or property from another, and pays part of the consideration and hence continues in or obtains possession, his right cannot be taken away by the transferor or any person claiming under him. This can only be done if the contract so provides. This is known as part-performance, i.e. part of the contract has been performed and the transferee has not indicated his unwillingness to complete the remaining half of the contract. The protection is available even if the transferee takes possession without the transfer being registered. This section shall not cover a transferee who has purchased the property for value and without notice of the previous contract or of the fact that it had been partly performed. Since Chander falls in this category, it will safeguard him, and Bijoy will not succeed.

2005 - Dec [7] (b) On the occasion of birthday of Rajat, his father Govind gives a plot of land to him for life and after his death to his wife Sujata for life. He stipulates that after the death of both Rajat and Sujata, their eldest unborn son will get the property for life. After the death of eldest son, the land will be enjoyed by their younger son absolutely. Decide the validity of the transfer. (5 marks)

Answer :

As per Section 13 of the Transfer of Property Act, 1882, transfer of property to an unborn person can only take place if before such a transfer; a life estate is transferred to a person existing at the date of transfer. Moreover, it should not be a partial interest, but the entire interest that is transferred to the unborn. The vesting of absolute interest in favour of an unborn person may be postponed until he attains full age. Such an unborn person should get full rights to that property, and no further rights can be created to that property after those of the unborn.

In this case, Govind gives a plot of land to Rajat for life, and after his death, to his wife Sujata for life, and after her death, to their eldest unborn son for life, and after him to the younger son absolutely. The transfer would be valid only if the first unborn son gets absolute rights, as a transfer cannot exceed the life of the unborn person to whom a property is transferred by it.

2006 - June [6] (a) Angad transfers his property worth ₹ 50,000 to Bheem and by the same document asks Bheem to transfer his property worth ₹ 25,000 to Chander. Bheem refuses to accept the gift of such property. Meanwhile, Angad dies before Bheem exercises his option. Decide the rights of Chander. (6 marks)

Answer :

This is covered under Section 35 of the Transfer of Property Act, 1882, which covers the Doctrine of Election, under which a transferee has to choose one option over another, and both cannot be chosen, as they are mutually exclusive. However, when the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer, and in all cases where the transfer is for consideration, the disappointed transferee has to be compensated for the amount or value of the property that was to be transferred to him.

In this case, Angad transfers his property worth ₹ 50,000 to Bheem and by the same deed asks Bheem to transfer his property worth ₹ 25,000 to Chander. Before Bheem can accept the property, Angad expires. Bheem now refuses to accept the property that was to be transferred by Angad. Chander has to be compensated to the extent of ₹ 25,000, the value of the property that was intended for him by Angad.

2006 - Dec [7] (c) Amit transfers his property worth ₹ 50,000 to Rohit and by the same deed asks Rohit to transfer his property worth ₹ 25,000 to Sumit. Before Rohit accepts the property, Amit dies. Rohit refuses to accept the property transferred by Amit. Discuss the rights of Sumit. (6 marks)

Answer :

This is covered under Section 35 of the Transfer of Property Act, 1882, which covers the Doctrine of Election, under which a transferee has to choose one option over another, and both cannot be chosen, as they are mutually exclusive. However, when the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer, and in all cases where the transfer is for consideration, the disappointed transferee has to be compensated for the amount or value of the property that was to be transferred to him.

In this case, Amit transfers his property worth ₹ 50,000 to Rohit and by the same deed asks Rohit to transfer his property worth ₹ 25,000 to Sumit. Before Rohit can accept the property, Amit expires. Rohit now refuses to accept the property that was to be transferred by Amit. Sumit has to be compensated to the extent of ₹ 25,000, the value of the property that was intended for him.

2006 - Dec [8] (c) Which of the following are moveable or immovable properties under the Transfer of Property Act, 1882 :

- (i) a right to way;
- (ii) a factory;
- (iii) a right to collect lac from trees;

- (iv) hereditary offices;
- (v) growing crops; and
- (vi) standing timber.

(6 marks)

Answer :

- (i) A right of way – It is immovable as it goes along with the property to which it is attached, and cannot be transferred singly.
- (ii) A factory - It is immovable as it is attached to the land.
- (iii) A right to collect lac from trees - It is immovable since the trees are attached to the land and the benefit will be received so long as they continue to be so attached.
- (iv) Hereditary offices – These are not transferable in the same way as other movable assets; they go along the family lines, and are hence immovable.
- (v) Growing crops – They are moveable since they gain value when they are severed from the land where they were grown, and are sold.
- (vi) Standing timber – It is of value only when it is cut from the trees and sold off, hence, it is movable.

Repeatedly Asked Questions		
No.	Question	Frequency
1	Explain the doctrine of part-performance under the Transfer of Property Act, 1882. 07 - Dec [4] (b), 08 - Dec [3] (a) (ii)	2 Times
2	Distinguish between 'Vested interest' and 'contingent interest'. 09 - June [3] (ii), 09 - Dec [3] (ii), 12 - June [5] (i)	3 Times
3	Distinguish between 'Mortgage' and 'charge'. 07 - June [3] (i) 08 - Dec [4] (vi), 09 - Dec [3] (iii), 10 - Dec [3] (ii), 12 - Dec [3] (v)	5 Times
4	Discuss briefly the doctrine of part-performance embodied in section 53A of the Transfer of Property Act, 1882. 08 - Dec [3] (ii), 09 - Dec [4] (a)	2 Times
5	State the circumstances in which a property may be transferred in favour of an unborn person. 07 - Dec [5] (iv), 10 - June [2] (i)	2 Times
6	Explain the rule of <i>lis pendens</i> as provided in the Transfer of Property Act, 1882. 10 - June [2] (ii), 13 - June [4] (d)	2 Times
7	Practical Question 08 - Dec [7] (b), 11 - June [8] (b)	2 Times
8	Practical Question of 09 - Dec [7] (b), 09 - June [7] (a) & 11 - Dec [8] (b)	3 Times

Star Rating

On the basis of Maximum marks from a chapter

Nil

On the basis of Questions included every year from a chapter

☆☆

On the basis of Compulsory questions from a chapter

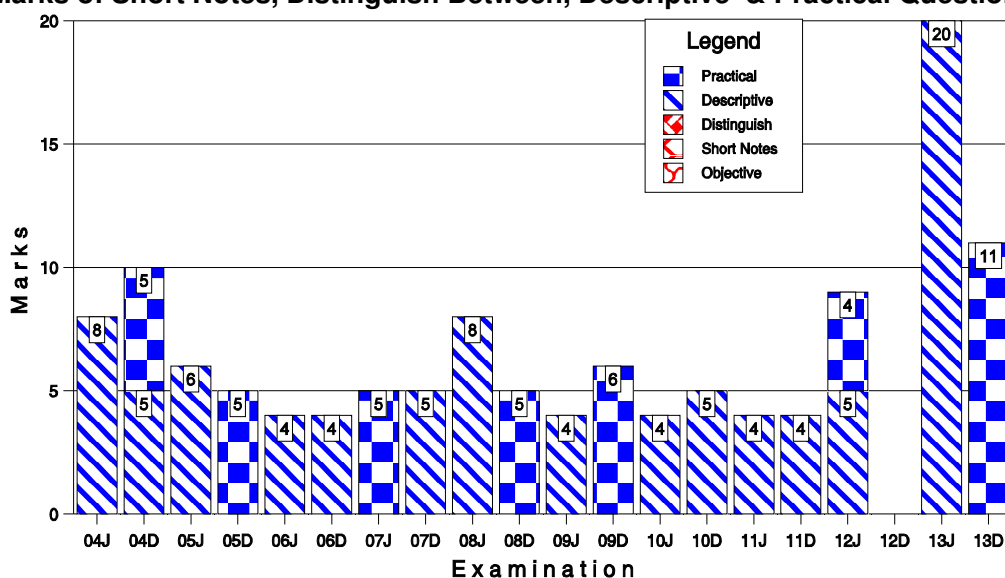
Nil

5

Law Relating to Stamps

This Chapter Includes : Instruments chargeable with duty, Valuation for Duty Apportionment, Method of stamping, Denoting Duty, Time of stamping, Adjudication, Investment not duty stamped, Impounding, prosecution, Allowance and Refund, Criminal Offence, etc.

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



CS Executive Programme (Module I)

OBJECTIVE QUESTIONS

2008 - Dec [1] {C} (c) Re-write the following sentences after filling-up the blank spaces with appropriate word(s)/figure(s) :

- (i) An instrument chargeable with duty executed out of India may be stamped within _____ month(s) after it has been first received in India. (1 mark)

- (ii) Alam owes Balu ₹ 1,000. Alam sells a property to Balu, the consideration being ₹ 500 and the release of the previous debt of ₹ 1,000. Stamp duty would be payable on ₹ _____. (1 mark)

Answer :

- (i) An instrument chargeable with duty executed out of India may be stamped within **three** month(s) after it has been first received in India.
- (ii) Alam owes Balu ₹ 1,000. Alam sells a property to Balu, the consideration being ₹ 500 and the release of the previous debt of ₹ 1,000. Stamp duty would be payable on ₹ **1,500**.

2009 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (v) Only the principal instrument shall be chargeable under section 4 of the Indian Stamp Act, 1899 with the duty prescribed for the conveyance, mortgage or settlement and each of other instruments shall be chargeable with the duty of ₹ _____. (1 mark)

Answer :

one

2011 - June [6] State, with reasons in brief, whether the following statements are true or false :

- (viii) An instrument not 'duly stamped' can be accepted in evidence by an arbitral tribunal. (2 marks)

Answer :

True: An instrument not 'duly stamped' can be accepted in evidence by an arbitral tribunal, but only after having paid the requisite penalty.

2012 - June [6] (b) Write the most appropriate answer from the given options in respect of the following:

- (v) The duty of the Collector under section 31 of the Indian Stamp Act, 1899 is only to determine the stamp duty payable upon the instrument where he concludes that the instrument is not sufficiently stamped. He is not authorised to —
- (a) Impound the instrument
(b) Impose any penalty
(c) Both (a) and (b)
(d) Either (a) or (b). (1 mark)

Answer:

- (c) Both (a) and (b)

2012 - Dec [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (ii) An instrument in writing containing an unconditional order signed by the maker is called—
- (a) Cheque
 - (b) Bill of exchange
 - (c) I.O.U.
 - (d) Promissory note.
- (1 mark)

Answer:

- (b) Bill of exchange

2012 - Dec [6] State, with reasons in brief, whether the statement is true or false:

- (i) Ram sells a property to Shyam for ₹ 10,00,000 which is subject to mortgage to Mohan for ₹ 20,00,000 and unpaid interest of ₹ 4,00,000. Stamp duty is payable on ₹ 34,00,000. (2 marks)
- (viii) A collector is not authorised to impound the instrument or to impose any penalty if he comes to the conclusion that the instrument is not sufficiently stamped. (2 marks)

Answer:

- (i) **True:** This is as per Section 24 of the Indian Stamp Act, 1899, which provides that in case of property subject to mortgage or any other encumbrances, the assessee is to treat as part of consideration any unpaid amount due on the mortgage and is to pay stamp duty on the total amount.
- (viii) **True:** As per Section 31 of the Indian Stamp Act, 1899, the Collector is to determine the stamp duty payable upon the instrument, but he cannot impound the instrument or impose any penalty.

2013 - June [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (ii) There are two types of stamping namely, adhesive stamping and _____ stamping.

Answer:

impressed

2013 - Dec [5](a) Re- write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (vii) In case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, only the _____ instrument shall be chargeable with the prescribed duty as per section 4 of the Indian Stamp Act, 1899. (1 mark)

2013 - Dec [5](b) Write the most appropriate answer from the given options in respect of the following:

- (viii) As per section 18 of the Indian Stamp Act, 1899, an instrument not duly stamped can be properly stamped within a period of —
- (a) One month
 - (b) Three months
 - (c) Four months
 - (d) Six months.
- (1 mark)

2013 - Dec [6] State, with reasons in brief, whether the following statements are true or false:

- (i) An instrument not properly stamped is not accepted as evidence in the court of law.
 - (vi) Bills of exchange and promissory notes drawn or made out of India may be stamped with adhesive stamp.
- (1 mark)

DESCRIPTIVE QUESTIONS

2009 - June [4] Attempt the following :

- (i) State the modes of cancellation of adhesive stamps. (4 marks)

Answer :

Section 11 of the Indian Stamp Act provides for the use of adhesive stamps, and states for which instruments it can be used.

Section 12 provides for the method of canceling stamps, so that they cannot be reused. This has to be done either at the time of execution or before it. The commonly acceptable method of stamping is by writing across the face of the stamp.

2010 - June [2] Attempt the following :

- (v) Explain the consequences of the instruments which are not duly stamped under the Indian Stamp Act, 1899. (4 marks)

Answer :

Section 35 of the Indian Stamp Act, 1899 covers instruments not duly stamped, whereas Chapter IV (Sections 35-48) gives the consequences in case an instrument is not duly stamped. It provides the following –

- An instrument insufficiently stamped will not be admitted as evidence or recognized as valid by any government official unless it is duly stamped.
- It can, subsequently, be stamped with stamps of proper amount, and be rendered duly stamped according to the Indian Stamp Act, 1899.

- An agreement or contract that is made up of various parts contained in separate letters would be deemed to be properly stamped if any one part of all the documents bears stamps of proper description and value.
- The exclusion of insufficiently stamped instruments shall not apply to criminal proceedings.
- The Collector of Stamps can be presented with such an instrument and the proper stamp duty paid on it, so that it becomes a proper and valid instrument.

2010 - Dec [4] (b) List any ten instruments which are chargeable with duty under the Indian Stamp Act, 1899. (5 marks)

Answer :

Instruments chargeable with duty as specified under Section 3 of the Indian Stamp Act, 1899 and as indicated in Schedule I annexed to the Act, are as under -

1. Mortgage deeds
2. Share warrants
3. Trust deeds
4. Instruments of partnership
5. Certificate of sale
6. A memorandum of agreement
7. Power of attorney
8. Lease agreements
9. Partition award
10. Protest of bill or note

2011 - June [3] (a) Mention the circumstances under which refund of stamp duty or penalty may be made by revenue authorities. (4 marks)

Answer :

As per the provisions of sections 49, 50, 52, 53 and 54, Stamp Duty can be refunded under the following circumstances:

1. Spoiled Stamps;
2. Misused Stamps;
3. Stamps used in excess of the value required; and
4. Stamps not required for use.

The stamps purchased and not used for intended purpose are entitled for refund after deduction of certain charges, if lodged for refund within six months from the date of purchase

2011 - Dec [4] Attempt the following:

- (i) State the instruments which are chargeable with duty under the Indian Stamp Act, 1899. (4 marks)

Answer :

Instruments chargeable to stamp duty - Instrument includes every document by which any right or liability, is, or purported to be created, transferred, limited, extended, extinguished or recorded [section 2(17) of Indian Stamp Act]. Any instrument mentioned in Schedule I to Indian Stamp Act is chargeable to duty as prescribed in the schedule [section 3]. The list includes all usual instruments like affidavit, lease, memorandum and articles of company, bill of exchange, bond, mortgage, conveyance, receipt, debenture, share, insurance policy, partnership deed, proxy, shares etc. Thus, if an instrument is not listed in the schedule, no stamp duty is payable. 'Instrument' does not include ordinary letters. Similarly, an unsigned draft of an agreement is not an 'instrument'.

Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore-

- (a) Every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July. 1899;
- (b) Every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after that day and accepted or paid or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and
- (c) Every instrument (other than a bill of exchange or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day relates to ally property situate, or to any matter or thing done or to be done in India and is received in India.

2012 - June [2] (c) What are the modes of cancellation of adhesive stamps?

(5 marks)

Answer :

Section 12 of the Indian Stamp Act, 1899, provides for the method of canceling stamps, so that they cannot be reused. This has to be done either at the time of execution or before it. The commonly acceptable method of stamping is by writing across the face of the stamp. Unless the stamp has already been cancelled, one who executes an instrument on stamp paper has the duty of cancelling it. If the stamp on an instrument is not so cancelled, as in a manner rendering the stamp unusable again, the instrument will be deemed to be unstamped.

Acceptable ways of cancelling a stamp are as follows –

- Writing of the executant's initials or his name or the name of the firm on or across the face of the stamp, along with the date of doing so, at the time of executing such an instrument. [*Nuddea Tea Co. Ltd. vs Asok Kumar Saha and Ors.*]

- When an adhesive stamp affixed to an instrument was cancelled by a third person on a date subsequent to the date on which the instrument was drawn, by putting the date across the stamps, there was no proper cancellation of the stamp. [*Dayaram v. Chandulal*]
- Drawing lines across the adhesive stamp, extending onto the instrument.
- Drawing of two parallel lines across adhesive stamps.
- Drawing of two lines crossing each other across the face of the stamp.

While there is no fixed format of a valid cancellation of a stamp, the true test for determining the same is whether after the cancellation, the stamp is capable of being used again. The true test, therefore for determining whether an adhesive stamp has been effectually cancelled is whether an ordinary man would, on seeing the stamp, believe that it had already been used so as to preclude him from using it again. [*A. Narayana Reddy vs Dr. J. Sarojini Devi And Anr. 1962*]

2013 - June [2] (a) What do you mean by 'promissory note'? State the requisites of a promissory note with the help of some illustrations. (5 marks)

Answer:

Promissory note: A promissory note is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or the bearer of the instrument. A promissory note is a written promise to pay a debt. It is an unconditional promise to pay on demand or at a fixed or determined future time a particular sum of money to or to the order of a specified person or to the bearer.

Essentials of a promissory note.

The promissory note:-

1. must be in writing;
2. must be signed by a maker;
3. must contain an undertaking to pay;
4. must be a promise to pay unconditionally on demand or at a fixed or determinable future time;
5. payee must be certain;
6. maker must be certain;
7. sum payable must be certain;
8. must contain a promise to pay money and money only;
9. must be payable to or to the order of a certain person or to the bearer.

Indian Stamp Act, 1899 has also defined the word Promissory note. Promissory note means a promissory note as defined by the Negotiable Instruments Act, 1881.

"It also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen."

2013 - June [4] (a) Discuss the evidentiary value of an instrument not duly stamped under the Indian Stamp Act, 1899. (4 marks)

Answer:

Evidentiary value of an instrument not duly stamped:

Section 35 of the Indian Stamp Act, 1899 covers instruments not duly stamped. It provides the following:

- An instrument insufficiently stamped will not be admitted as evidence or recognized as valid by any government official unless it is duly stamped.
- It can, subsequently, be stamped with stamps of proper amount, and be rendered duly stamped according to the Indian Stamp Act, 1899.
- An agreement or contract that is made up of various parts contained in separate letters would be deemed to be properly stamped if any one part of all the documents bears stamps of proper description and value.
- The exclusion of insufficiently stamped instruments shall not apply to criminal proceedings.
- The Collector of Stamps can be presented with such an instrument and the proper stamp duty paid on it, so that it becomes a proper and valid instrument.

2013 - June [7] (a) An instrument bears a stamp of sufficient amount, but of improper description. Can it be certified as duly stamped? How the instrument can be rectified and what would be the date of its execution? (6 marks)

(b) Achal gives an instrument to Basu which is unstamped. This instrument is also not registered –

- (i) Will the instrument be admitted in evidence?
- (ii) Will the situation change if the instrument is stamped but not registered before passing to Basu and Basu gets it registered subsequently? (5 marks)

Answer:

(a) As per Section 37 of the Indian Stamp Act, 1899, an instrument that is stamped with the proper amount but wrong description of stamps, may, by the State Government Rules, be certified as duly stamped on payment of the right duty.

The date of execution of this instrument will be deemed to be the date of actual execution, and not the date of proper stamping. The reason behind this is that there is no revenue loss to the government and if the mistake is bona fide, the right description of stamps can be subsequently put to use.

(b) Section 17 of the Transfer of Property Act, 1882, provides a list of instruments that are compulsorily registrable. Section 49 of the Registration Act, 1908 provides that no such instrument shall be admitted as evidence or put to any use unless registered.

- (i) Since the instrument is unstamped, it cannot be used as evidence. However, if the same is duly stamped and registered, it can be so admitted subsequently.
- (ii) Such an instrument can be admitted as evidence, as per Section 49 as mentioned above.

PRACTICAL QUESTIONS

2008 - Dec [8] (b) Abhay's agricultural land was purchased by the government for the purpose of construction of a factory but no duty was paid for this transfer by the government. Abhay wanted to take back his land on the ground that government has not paid the duty and, therefore, no sale deed was executed. Will Abhay succeed? Give reasons. (5 marks)

Answer :

Section 54 of the Transfer of Property Act, 1882 provides for the process for transfer of immovable property, which mandates a registered sale deed as well. However, as per Section 90 of the Indian Registration Act, 1877, certain documents filed by the government are exempted from registration. The above-mentioned transaction is not of a category to be exempted though. The sale deed should be registered within four months of the execution however. Hence, there is a good chance that Abhay will succeed.

2009 - Dec [7] (a) Four adhesive stamps were used on an instrument. First adhesive stamp had a single line drawn across the face of the stamp. On the second stamp, there were two parallel lines. The third stamp had three parallel lines, and the fourth stamp had two lines crossing each other. What are the provisions for cancellation of adhesive stamps and which adhesive stamps referred to above will be considered to have been properly cancelled? (6 marks)

Answer :

Section 12 of the Indian Stamp Act, 1899 provides that the following:

- (a) Whoever affixes any adhesive stamp to any instrument which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again,
- (b) Whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution cancel the same so that it cannot be used again unless such stamp has been already cancelled.
- (c) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

In Re: Coronation Tea Company Ltd 'AIR 1961 Cal 528, the Calcutta High Court held that the transfer deed is not duly stamped in case the adhesive stamp affixed on the deed has not been cancelled.

In *Tara Prasad Chakraborty v. Orissa Textile Mills* (1970), the Company Law Board held that unless the stamp is properly cancelled, the share transfer deed is not legally duly stamped.

Mode of cancelling - As per section 12 of the Indian Stamp Act, 1899, the person required to cancel an adhesive stamp may cancel it by writing on across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.

Case laws:

1. A stamp may be treated as cancelled by drawing a line across it.
2. Stamp may be treated as effectively cancelled by drawing diagonal lines across the stamp extending on the paper on which the stamp is affixed.

Here the 1st and fourth line will be considered to have been properly cancelled.

2012 - June [6] (c) Amit mortgages a house of the value of ₹ 25,000 to Bimal for ₹ 10,000. Bimal afterwards buys the house from Amit. Whether the stamp duty already paid is deductible from the stamp duty payable on ₹ 25,000 ? (4 marks)

Answer :

In this case, the mortgage deed would already be stamped, since it is a prior contract. Hence, the stamp duty already paid on it can be deducted from the duty payable now on the deed of sale. So, only the balance duty is to be paid, i.e. the duty paid on mortgage would be less, and that required on sale would naturally be more, so the assessee now needs to pay the balance duty on the sale. For such a ruling, however, the Act specifies the condition that the entire property should be sold.

2013 - Dec [8] (a) A document, which is apparently an agreement granting a franchise, is produced in the court, but is not stamped.

Examine, citing the relevant provisions of the Indian Stamp Act, 1899, whether —

- (i) the document is void;
- (ii) the document can be admitted on payment of penalty; and
- (iii) the parties are liable to be prosecuted. (6 marks)

(c) Atul, executed in favour of his brother, Bimal, a gift of all his property. By another deed, Bimal made provision for the living expenses of his brother Atul and hypothecated in favour of Atul, a part of the property included in the above mentioned gift deed in order to secure the payment of the living expenses.

Decide, whether the gift made by Atul and making a hypothecation in his favour by Bimal are one and the same transaction or more than one transaction. Further, is it a case of 'settlement' under the Indian Stamp Act, 1899? (5 marks)

CS Inter Gr. I

DESCRIPTIVE QUESTIONS

2004 - June [4] (a) Define the term 'instrument' under the Indian Stamp Act, 1899. (4 marks)

- (b) Are the following 'instruments' under the Indian Stamp Act, 1899:
- (i) A letter which acknowledges receipt of a certain sum as having been borrowed at a particular rate of interest and for a particular period of time and that it will be repaid with interest on the due date?
 - (ii) An unsigned draft document ? (2 marks each)

Answer :

- (a) An 'instrument' under Section 2(14) of the Indian Stamp Act, 1899 implies and includes any document that create, diminishes or alters any right, interest or liability in property. For example, a lease deed is an instrument. A valid instrument needs to be signed in order to be complete and functional. Moreover, it need not be a separate deed; it can even be in the form of an entry in a register, or of a letter or communication evidencing receipt of an amount. Under the Indian Stamp Act, 1899, an instrument is chargeable to duty.
- (b) (i) This is an 'instrument' under Section 2(14) of the Indian Stamp Act, 1899, as it creates a right in favour of the creditor and acknowledges a liability to the detriment of the debtor.
- (ii) This is not an 'instrument' under Section 2(14) of the Indian Stamp Act, 1899, as it is unsigned, and an unsigned document cannot purport to create or extinguish any right or liability.

2004 - Dec [4] (c) Which party is responsible for payment of duty on different kinds of instruments under the Indian Stamp Act, 1899? (5 marks)

Answer :

Section 29 of the Indian Stamp Act, 1899 describes the parties liable to pay duty on various instruments. They are as follows –

- On instruments mentioned in Schedule I to the Act, the person who is drawing, executing or making the instrument is liable for the stamp duty. For example, on bills of exchange or promissory notes it is the duty of the maker to get it stamped.
- In case of insurance policies, it is the person getting the policy who is liable for the stamp duty. The only exception is fire insurance, in which case, it is the insurance company that bears the stamp duty.
- In case of mortgage or lease, it is the mortgagee or the lessee who is responsible.

- In the case of a sale deed, it is the liability of the purchaser of the property mentioned in the deed.
- In the case of a deed of partition, all the people benefiting from the partition have to bear the stamp duty in the proportion in which they are benefiting from the partition.

2005 - June [5] (b) Discuss the provisions relating to valuation of instruments chargeable with *ad valorem* duty in cases where the value of the subject matter is indeterminate under the Indian Stamp Act, 1899. (6 marks)

Answer :

Section 26 of the Indian Stamp Act, 1899 provides for cases where the value of the subject matter mentioned in the deed is indeterminate; in this case, the executant has the right to determine it as per his wish, but if any shortfall or excess is found to exist, it shall be adjusted accordingly.

In case the executant has paid insufficient stamp duty, he can pay the balance and the effect of the instrument would be the same as if it was properly stamped from the date it should have been so stamped. This power has been given to the Collector of Stamps under the Indian Stamp Act, 1899, under Section 31. As instruments insufficiently stamped will be inadmissible as evidence, unless the person responsible for paying the duty renders the duty payable upon it (Section 35). Moreover, an instrument unduly stamped by mistake can be brought to the notice of the Collector and the default corrected. Upon receiving the amount of duty and the amount of penalty prescribed under the Act, the document can be accepted as a duly stamped instrument.

2006 - June [4] (b) Discuss the evidentiary value of an instrument not duly stamped under the Indian Stamp Act, 1899. (4 marks)

Answer :

Section 35 of the Indian Stamp Act, 1899 covers instruments not duly stamped. It provides the following –

- An instrument insufficiently stamped will not be admitted as evidence or recognized as valid by any government official unless it is duly stamped.
- It can, subsequently, be stamped with stamps of proper amount, and be rendered duly stamped according to the Indian Stamp Act, 1899.
- An agreement or contract that is made up of various parts contained in separate letters would be deemed to be properly stamped if any one part of all the documents bears stamps of proper description and value.
- The exclusion of insufficiently stamped instruments shall not apply to criminal proceedings.
- The Collector of Stamps can be presented with such an instrument and the proper stamp duty paid on it, so that it becomes a proper and valid instrument.

2006 - Dec [2] (b) Within what period different kinds of instruments chargeable with stamp duty but executed out of India may be stamped? (4 marks)

Answer :

Section 18 of the Indian Stamp Act, 1899 provides for stamping of instruments made out of India. According to this section, any such instrument has to be duly stamped within three months of reaching India. If it cannot be so rectified, then it has to be taken to the Collector of Stamps, who, upon payment of the requisite amount, shall declare the instrument duly stamped.

If however, the above-mentioned options have not been exercised in due time, the Collector can, on sufficient cause being shown, allow it to be stamped as if it is so stamped within the normal time allowed.

2007 - Dec [6] (b) Explain the methods of stamping under the Indian Stamp Act, 1899. (5 marks)

Answer :

There are two methods of stamping provided in the Indian Stamp Act, 1899. Sections 10 to 15 cover the two modes of stamping - adhesive stamps and impressed stamps.

Section 10 of the Act provides for the kinds of stamps needed for different types of instruments, how much the amount of stamps should be and the mode of writing certain instrument so that they can be properly stamped. Section 11 provides for the use of adhesive stamps, and states for which instruments it can be used.

Section 12 provides for the method of cancelling stamps, so that they cannot be reused. This has to be done either at the time of execution or before it. The commonly acceptable method of stamping is by writing across the face of the stamp.

Section 13 provides for how instruments are to be created on papers having impressed stamps. Care has to be taken that the stamp cannot be reused for any other purpose after that.

Section 14 states that only one instrument shall be there on one stamp paper, so if an instrument has already been created, nothing else shall be written on the same paper. Lastly, Section 15 provides that every instrument created otherwise than in the prescribed mode shall be deemed not to have been stamped at all.

2008 - June [3] Explain of the following :

(iv) Denoting duty.

(4 marks)

Answer :

Section 16 of the Indian Stamp Act, 1899 deals with denoting duty. The object of this section is to spare parties to an instrument, the inconvenience of having to produce (in cases in which the duty payable on an instrument depends upon the duty already paid on another instrument), the original or principal instrument in order to prove that the

second instrument has been duly stamped. Section 16 provides that where the duty with which, an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last mentioned duty, shall, if application is made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first mentioned instrument, by endorsement under the hand of the Collector of Stamps or in such other manner as the rules of the States Government may provide.

2008 - June [4] Attempt of the following :

- (i) State the legal remedies available to the officer concerned for an unstamped receipt under the Indian Stamp Act, 1899. (4 marks)

Answer :

The legal remedies available to the officer concerned for an unstamped receipt under the Indian Stamp Act, 1899 are given in Section 34 of the Act. It provides that the officer before whom such an unstamped receipt is produced has the powers either to impound the same or to cause the receipt to be properly stamped. Section 30 of the Act requires that receipts of money exceeding Rupees twenty in amount or through any negotiable instrument, or an amount exceeding Rupees five hundred have to be acknowledged by a duly stamped receipt.

PRACTICAL QUESTIONS

2004 - Dec [7] (b) Rajesh mortgages a building of the value of ₹ 70,000 to Suresh for ₹ 50,000. Rajesh, subsequently, sells the building to Suresh. An unpaid amount of ₹ 5,000 against interest is also outstanding at the time of sale. Determine the value on which the stamp duty is payable in this transfer of property. (5 marks)

Answer :

According to Section 24 of the Indian Stamp Act, 1899, in case of transfer of any property as consideration for an existing debt, it is the consideration that is the amount chargeable to stamp duty. If any part of the stamp duty has already been paid by the person who is in debt or who has created the mortgage, that part shall be deducted from the total amount while calculating such stamp duty. In this case, the value on which the duty amount is payable is Rupees 25,000, i.e the value of the property less the amount of loan, plus the unpaid interest amount of Rupees 5,000.

2005 - Dec [6] (b) Arjun executed a power of attorney both in his personal capacity and in the capacity as an executor, trustee, manager and liquidator in favour of Bheem. Decide the liability of duty payable on the instrument. (5 marks)

Answer :

Section 5 of the Indian Stamp Act, 1899 covers this case. It states that when an instrument relates to several distinct matters, it shall be chargeable with the aggregate of the duties payable on all these.

In the present case, Arjun executes powers of attorney in various capacities, each distinct from the other. Hence, in this case, Arjun has to pay duty on each of his power of attorneys, i.e. in the capacities of an individual, an executor, a trustee, a manager and a liquidator. The duties will be aggregated and the entire sum has to be paid as stamp duty.

2007 - June [6] (c) A document, which is apparently an agreement granting a franchise, is produced in the Court, but is not stamped. Examine, citing relevant provisions of the Indian Stamp Act, 1899 whether —

- (i) the document is void; or
- (ii) the document can be admitted on payment of penalty; or
- (iii) the parties are liable to be prosecuted ? (5 marks)

Answer :

- (i) As per Section 35 of the Indian Stamp Act, 1899, an instrument not duly stamped is inadmissible as evidence. However, it does not become void.
- (ii) Upon payment of duty with the penalty amount, the unstamped instrument becomes valid and admissible as evidence. (Section 35)
- (iii) As per Section 43 of the Indian Stamp Act, 1899, a party responsible for improperly or unstamped instruments will be liable to be prosecuted only if the Collector of Stamps is of the opinion that he/she/they has/have done so with calculated intent, and not because of some genuine mistake. If, however, there is valid reason, he may impound the instrument or even initiate criminal proceedings against the party.

Repeatedly Asked Questions		
No.	Question	Frequency
1	List any ten instruments which are chargeable with duty under the Indian Stamp Act, 1899. 04 - Dec [4] (c), 10 - Dec [4] (b), 11 - Dec [4] (i)	3 Times
2	What are the modes of cancellation of adhesive stamps? 09 - June [4] (i), 12 - June [2] (c)	2 Times
3	Discuss the evidentiary value of an instrument not duly stamped under the Indian Stamp Act, 1899. 06 - June [4] (b), 10 - June [2] (v) 13 - June [4] (a)	3 Times

Star Rating

On the basis of Maximum marks from a chapter

Nil

On the basis of Questions included every year from a chapter

☆

On the basis of Compulsory questions from a chapter

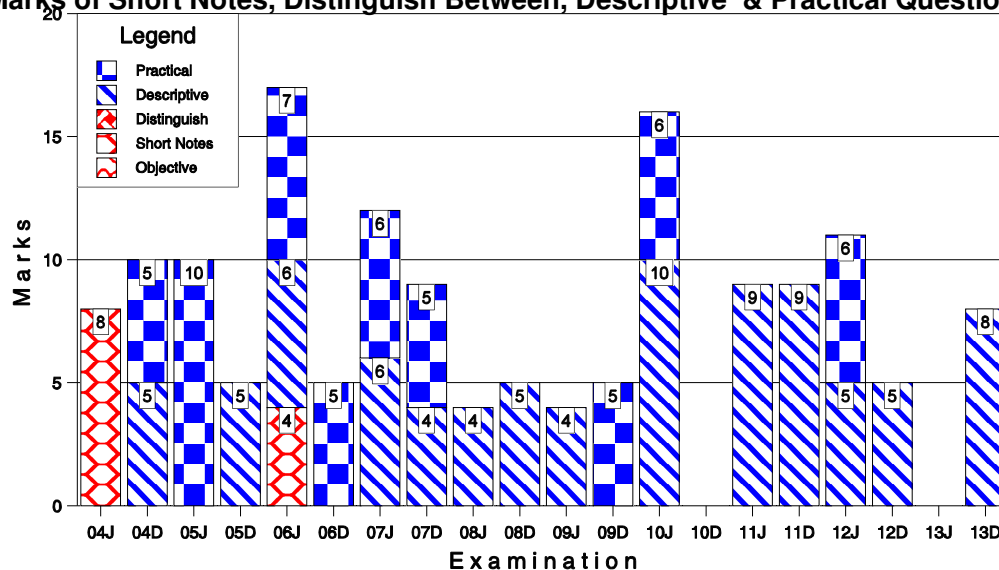
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6

Law Relating to Registration of Documents

This Chapter Includes : Registrable documents - compulsory and optional; time and place of registration; consequences of non-registration; certificate of registration , procedure for registration, Appeal to registrar.

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



CS Executive Programme (Module I)

OBJECTIVE QUESTIONS

2009 - June [5] State, with reasons in brief, whether the following statements are correct or incorrect :

- (ii) A document executed by several persons at different times may be presented for registration and re-registration within six months from the date of each execution. (2 marks)
- (iii) Anubhav sells a property to Balwant for ₹ 5 lakh which is subject to a mortgage to Charu for ₹ 10 lakh and unpaid interest of ₹ 2 lakh. Stamp duty is payable on ₹ 17 lakh. (2 marks)

Answer :

- (ii) **Incorrect :** As per Section 24 of The Registration Act, 1908, in case there are several executants, operating at various times to execute a document, the document can be presented for registration and re-registration within four months from the date of each execution.
- (iii) **Correct :** As per Section 24 of The Registration Act, 1908.

2010 - Dec [5] (b) Choose the most appropriate answer from the given options in respect of the following :

- (iv) As per the Registration Act, 1908 a testator may deposit with any Registrar his will in a sealed cover with the name of the testator —
 - (a) Personally
 - (b) Through an agent
 - (c) Through any person
 - (d) Either (a) or (b). (1 mark)

Answer :

- (d) either (a) or (b)

2011 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (vi) A document executed outside India is not valid unless it is _____ (1 mark)

Answer :

A document executed outside India is not valid unless it is Registered in India.

2012 - June [6] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (v) A document executed by several persons at different times may be presented for registration and re-registration within _____ months from the date of each execution. (1 mark)

Answer:

- (v) four.

2012 - Dec [6] State, with reasons in brief, whether the following statements are true or false:

- (vii) A document executed by several persons at different times may be presented for registration and re-registration within six months from the date of each execution. (2 marks)

Answer:

False: A document executed by several persons at different times may be presented for registration and re-registration within four months from the date of each execution. (Section 24, Indian Registration Act, 1908).

2013 - June [6] State, with reasons in brief, whether the following statements are true or false:

- (v) Under section 24 of the Registration Act, 1908 a document executed by several persons at different times may be presented for registration and re-registration within six months from the date of each execution. (2 marks)

Answer:

False: The time prescribed for this purpose within the Registration Act, 1908 is four months counting from the date of each execution.

2013 - Dec [6] State, with reasons in brief, whether the following statements are true or false:

- (vii) A testator has to deposit with any Registrar his 'will' in person. (2 marks)

DESCRIPTIVE QUESTIONS

2008 - Dec [8] (c) A document was executed by several persons at different times. The person in whose favour such execution was made, presented the document for re-registration after expiry of three months. Whether such documents can be registered and if yes, within what period? (5 marks)

Answer :

Section 23A of the Indian Registration Act, 1908 provides for re-registration, which is to be done when the original registration was done by a person was not duly authorized to begin with. Registration is to be done within four months, but this period can be extended by four more months in case of exigencies.

2009 - June [4] Attempt the following :

- (ii) State the documents of which registration is optional. (4 marks)

Answer :

- (ii) Section 18 of The Registration Act, 1908 provides for those documents whose registration is optional. These are as under –

- Instruments that create, extinguish or alter any right or interest in immovable property not exceeding rupees one hundred in value.
- Instruments that recognize the receipt of any recompense for the above.
- Instruments that create, extinguish or alter any right or interest in movable property.
- Leases for which registration is exempted and the period of which is less than a year.
- Wills
- Instruments that create, extinguish or alter any right or interest in immovable property for less than rupees hundred.

2010 - June [2] Attempt the following :

- (iv) State the documents which are required to be compulsorily registered under the Registration Act, 1908. (4 marks)

Answer :

The following instruments are to be compulsorily registered –

- Instruments that make a gift of immovable property.
- Any instrument that creates or alters any right in or to immovable property, where the value involved is of more than hundred rupees.
- Receipts for sum paid for creation or alteration of any right in or to immovable property, where the value involved is of more than hundred rupees.

The effects of non-registration of documents that require registration are detailed in Section 49 of The Registration Act, 1908. It provides for the following effects –

- The document cannot cause any changes in the rights to or interest in any immovable property.
- It will not be admitted as evidence of any transaction mentioned in the document, as per the Indian Evidence Act, 1872.

Any document covered under Section 17, if not registered, will not have the same effect as it would have had if it had been registered.

2010 - June [5] (a) A document was executed outside India and it was presented for registration after a lapse of four months from the date of its arrival in India. Whether the document may be accepted for registration by the Registrar ? Decide. (6 marks)

Answer :

Since the instrument is made out of India and presented for registration after four months, it may not be accepted for registration.

Section 26 of The Registration Act, 1908 provides that an instrument made out of India may be presented for registration in India within four months of it having reached India. If it is not so presented, the Registrar has the right to refuse registration.

2011 - June [3] (b) State the documents whose registration is optional under the Registration Act, 1908. (4 marks)

Answer :

Section 18 of the Registration Act, 1908 provides for those documents whose registration is optional. These are as under –

Instruments that create, extinguish or alter any right or interest in immovable property exceeding rupees one hundred in value.

Instruments that recognize the receipt of any recompense for the above. Instruments that create, extinguish or alter any right or interest in movable property.

Leases for which registration is exempted and the period of which is less than a year.

Wills Instruments create, extinguish or alter any right or interest in immovable property for less than rupees hundred.

2011 - June [7] (c) A document was executed by several persons at different times. The person in whose favour such execution was made, presented the document for re-registration after expiry of three months. Can such document be registered and if so, within what period ? (5 marks)

Answer :

Under the Registration Act, 1908, if a document is executed by several persons at different times, it may be presented for registration within 4 months from date of each execution [section 24].

Moreover, regarding re-registration, if a person finds that a document has been filed for registration by a person who is not empowered to do so, he can present the document for re-registration within 4 months from the date he became aware of the fact that registration of document is invalid [section 23A].

In this case, the document was executed by several persons at different times. The person in whose favour such execution was made presented the document for re-registration after expiry of three months. Hence, it can be registered within a period of 4 months from the date he became aware of the fact that registration of document is invalid.

2011 - Dec [4] Attempt the following:

- (ii) Mention the documents which are required to be registered compulsorily under the Registration Act, 1908. (4 marks)

Answer :

Section 17 of the Indian Registration Act 1908, deals with the documents that are compulsory to be registered. The section runs as follows:

Section 17 - Indian Registration Act, 1908

The following documents shall be registered, if the properties to which they relate is situate in a district in which, and if they have been executed on or after the date on

which, Act No. XVI of 1864, of the Indian Registration Act 1866, or the Indian Registration Act 1871, or the Indian Registration Act 1877, or the Act came or comes into force, namely:-

- (a) instruments of gift of immovable property;
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immovable property;
- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
- (e) non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.

2011 - Dec [6] (c) Discuss the remedies available to a person who has been refused to register a document by a sub-registrar. Can registration of documents be refused on the ground of under-valuation of stamp duty? (5 marks)

Answer :

Section 72 of The Registration Act, 1908 gives the person aggrieved with the order of the Sub-Registrar the right to appeal to the Registrar to whom the Sub-Registrar reports. This can be done in situations where the Sub-Registrar has refused to register the document that has been presented within the proper time limit of thirty days. Upon such an appeal being made, the Registrar has the right to modify or annul the original order. The Registrar can then, order that the document be duly registered, and it shall be deemed to be registered from the date it would have originally been registered if the Sub-Registrar had not refused registration. This would be the date of presentation of the document to the Sub-Registrar. Under valuation of stamp duty is not a valid ground for refusing the registration of a document. In such a case, the Sub-Registrar can guide the person to affix proper stamps before he can register the documents presented. If the Sub-Registrar is doubtful as to the proper value of stamps affixed, he can refer the case to the Collector to be adjudicated.

2012 - June [2] (b) State the places where documents relating to immovable property may be presented for registration under the Registration Act, 1908. (5 marks)

Answer :

Sections 28 and 29 of The Registration Act, 1908 cover the provisions for the place of registration of documents related to land and other property.

According to Section 17 of the Act, documents relating to creation, diminution or alteration of rights related to immovable property, if not registered, will not have the same effect as it would have had if it had been registered.

Section 28 provides that all documents mentioned in Section 17 as compulsorily registrable would be registered in the office of the sub-registrar in whose jurisdiction or sub-district the property or a part of it is located. Any other document would be registered in the office of the Sub-Registrar within whose jurisdiction the document was executed, or where the persons who are executing the document want it to be registered.

Section 29 provides for all other documents, for example, a decree or court order needs to be presented in the office of the sub-registrar where the decree or order was executed, or at the place where the persons in whose favor the decree has been passed want it to be registered.

2012 - Dec [8] (b) Rohit executes a sale deed of a house in favour of Prem. The house is situated at NOIDA (Uttar Pradesh), but the transferor (Rohit) and transferee (Prem) want the sale deed to be registered at Lucknow, which is capital of the State. Can they do so? Discuss. (5 marks)

Answer:

Sections 28 and 29 of The Registration Act, 1908 cover the provisions for the place of registration of documents related to land and other property.

According to Section 17 of the Act, documents relating to creation, diminution or alteration of rights related to immovable property, if not registered, will not have the same effect as it would have had if it had been registered.

Section 28 provides that all documents mentioned in Section 17 as compulsorily registrable would be registered in the office of the sub-registrar in whose jurisdiction or sub-district the property or a part of it is located. Any other document would be registered in the office of the Sub-Registrar within whose jurisdiction the document was executed, or where the persons who are executing the document want it to be registered.

Hence, in this case, the sale deed of the property shall be registered at Noida where the property is situated. Registration done elsewhere would be void. [*Harendra Lal Roy Chowdhuri vs Srimati Hari Dasi Debi on 25 March, 1914*].

2013 - Dec [4] Attempt the following:

- (iii) What is the effect of non-registration of documents required to be registered?
- (iv) What is the remedy available to a person, if the document presented by him for registration is refused to be registered by the Registrar ? (4 marks each)

PRACTICAL QUESTIONS

2009 - Dec [8] (c) Gautam executed a document on 20th October, 2007 in favour of Thomas. Thereafter, Gautam executed another document on 1st December, 2007 in favour of Peter in respect of the same property. The document between Gautam and Thomas was registered on 15th January, 2008 whereas the document between Gautam and Peter was registered on 15th December, 2007. Which document gets priority and why ? (5 marks)

Answer :

Rule: As per section 47 of the Registration Act of the two registered documents executed by the same person in respect of the same property to two different persons at two different times, the one which is executed first has priority over the other, although the former deed is registered subsequently to the later one.

Facts of the case: A executes a sale deed in respect of his house in favour of B on January 5, 1992. He then executes a deed of gift in respect of the same property in favour of C on February 1, 1992 and gets it registered on February 15, 1992. The sale deed is registered on March 15, 1992.

Question involved: Which of the two transfers will come into force?

Decision: The deed which is executed first will get the first priority.

2010 - June [7] (a) Ashok sells a house to Vinay by a written document and delivers possession to Vinay, but the document is not registered. After one year, Ashok sues Vinay to take back the possession of the property on the ground that non-registration of a document has no validity. Will Ashok succeed? Which doctrine of law can be invoked by Vinay in his defence ? (6 marks)

Answer :

Any document covered under Section 17, if not registered, will not have the same effect as it would have had if it had been registered.

However, under Section 53A of the Transfer of Property Act, 1882, an unregistered document may be admitted as evidence in a case where the document is proof of part performance of a contract, and a proof also of the fact that the plaintiff has performed or is willing to perform his part of the deal. Hence, Ashok will not succeed.

2012 - June [8] (c) Shyam executes a sale deed of a house in favour of Krishna. The house is situated in Faridabad, but the transferor and the transferee want the sale deed to be registered at Gurgaon, which has also a District Court of Haryana State. Can they do so ? Given reasons. (6 marks)

Answer :

Sections 28 and 29 of The Registration Act, 1908 cover the provisions for the place of registration of documents related to land and other property.

According to Section 17 of the Act, documents relating to creation, diminution or alteration of rights related to immovable property, if not registered, will not have the same effect as it would have had if it had been registered.

Section 28 provides that all documents mentioned in Section 17 as compulsorily registrable would be registered in the office of the sub-registrar in whose jurisdiction or sub-district the property or a part of it is located. Any other document would be registered in the office of the Sub-Registrar within whose jurisdiction the document was executed, or where the persons who are executing the document want it to be registered.

Section 29 provides for all other documents, for example, a decree or court order needs to be presented in the office of the sub-registrar where the decree or order was executed, or at the place where the persons in whose favor the decree has been passed want it to be registered.

In this case, since the property is situated in Faridabad, not in Gurgaon, the parties can only get it registered in Faridabad.

CS Inter Gr. I

SHORT NOTES

2004 - June [4] (c) Write short notes on the following:

- (i) Documents of which registration is optional. (4 marks)
- (ii) Registration of a document executed out of India. (2 marks)
- (iii) Time limit for presentation of a document for registration. (2 marks)

Answer :

- (i) Section 18 of The Registration Act, 1908 provides for those documents whose registration is optional. These are as under –
 - Instruments that create, extinguish or alter any right or interest in immovable property exceeding rupees one hundred in value.
 - Instruments that recognize the receipt of any recompense for the above.
 - Instruments that create, extinguish or alter any right or interest in movable property.
 - Leases for which registration is exempted and the period of which is less than a year.
 - Wills.
 - Instruments create, extinguish or alter any right or interest in immovable property for less than rupees hundred.

- (ii) Registration of documents executed outside India is covered under Section 26 of The Registration Act, 1908. The following points need to be kept in mind in this regard –
- The document has to be presented for registration within four months after having reached India. In case of some exigency, the period can be prolonged upto eight months.
 - If such a document is not duly registered under the Act, it will not be operational in India, i.e. it cannot seek to effect any change in the rights or interests in any movable or immovable property.
- (iii) The time limit for presentation of a document for registration is four months, as per Section 23 included in Chapter IV of the Act. This period can be prolonged upto eight months in cases of need, where proper justification is provided. The same period applies in the case of re-registration of documents found to be invalidly registered.

2006 - June [3] Write notes on the following :

- (iv) Effect of non-registration of documents required to be compulsorily registered.
(4 marks)

Answer :

The effects of non-registration of documents that require registration are detailed in Section 49 of The Registration Act, 1908. It provides for the following effects –

- The document cannot cause any changes in the rights to or interest in any immovable property.
- It will not be admitted as evidence of any transaction mentioned in the document, as per the Indian Evidence Act, 1872.

Any document covered under Section 17, if not registered, will not have the same effect as it would have had if it had been registered.

However, nothing in this section shall affect the inclusion as evidence in a suit for specific performance. Such a document can be subsequently stamped and be treated as an instrument valid ab initio.

DESCRIPTIVE QUESTIONS

2004 - Dec [2] (c) What are the documents of which registration is not compulsory under the Registration Act, 1908?
(5 marks)

Answer :

Section 18 of The Registration Act, 1908 provides for those documents whose registration is optional. These are as under –

- Instruments that create, extinguish or alter any right or interest in immovable property exceeding rupees one hundred in value.

- Instruments that recognize the receipt of any recompense for the above.
- Instruments that create, extinguish or alter any right or interest in movable property.
- Leases for which registration is exempted and the period of which is less than a year.
- Wills
- Instruments create, extinguish or alter any right or interest in immovable property for less than rupees hundred.

2005 - Dec [5] (b) Briefly explain the law relating to the place for registering documents pertaining to land and other documents. (5 marks)

Answer :

Sections 28 and 29 of The Registration Act, 1908 cover the provisions for the place of registration of documents related to land and other property.

According to Section 17 of the Act, documents relating to creation, diminution or alteration of rights related to immovable property, if not registered, will not have the same effect as it would have had if it had been registered.

Section 28 provides that all documents mentioned in Section 17 as compulsorily registrable would be registered in the office of the sub-registrar in whose jurisdiction or sub-district the property or a part of it is located. Any other document would be registered in the office of the Sub-Registrar within whose jurisdiction the document was executed, or where the persons who are executing the document want it to be registered.

Section 29 provides for all other documents, for example, a decree or court order needs to be presented in the office of the sub-registrar where the decree or order was executed, or at the place where the persons in whose favor the decree has been passed want it to be registered.

2006 - June [4] (a) State the places where documents effecting immovable property may be presented for registration under the Registration Act, 1908. (6 marks)

Answer :

Section 28 of The Registration Act, 1908 provides that all documents mentioned in Section 17 as compulsorily registrable would be registered in the office of the sub-registrar in whose jurisdiction or sub-district the property or a part of it is located. According to Section 17 of the Act, documents relating to creation, diminution or alteration of rights related to immovable property, if not registered, will not have the same effect as it would have had if it had been registered.

Section 2(6) of the Registration Act, 1908 defines the term "immovable property" as including: "land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to any thing which is attached to the earth, but not standing timber, growing crops nor grass."

2007 - June [6] (a) Discuss the remedies available of a person who has been refused to register a document by a Sub-Registrar. Can registration of documents be refused on the ground of under-valuation for stamp duty ? (6 marks)

Answer :

Section 72 of The Registration Act, 1908 gives the person aggrieved with the order of the Sub-Registrar the right to appeal to the Registrar to whom the Sub-Registrar reports. This can be done in situations where the Sub-Registrar has refused to register the document that has been presented within the proper time limit of thirty days. Upon such an appeal being made, the Registrar has the right to modify or annul the original order. The Registrar can then, order that the document be duly registered, and it shall be deemed to be registered from the date it would have originally been registered if the Sub-Registrar had not refused registration. This would be the date of presentation of the document to the Sub-Registrar. Under valuation of stamp duty is not a valid ground for refusing the registration of a document. In such a case, the Sub-Registrar can guide the person to affix proper stamps before he can register the documents presented. If the Sub-Registrar is doubtful as to the proper value of stamps affixed, he can refer the case to the Collector to be adjudicated.

2007 - Dec [1] {C} Comment on the following :

(iii) Registration of documents relates back to the date of their execution.

(4 marks)

Answer :

Section 47 of The Registration Act, 1908 clarifies that a document is operational from the date when it should have become operational, without the need for registration being considered, even if it is subsequently registered. However, in case of subsequent registration, the execution will not be deemed invalid. It simply means that when a document is duly registered, it has the same effect as if it registered at the time of execution.

2008 - June [4] Attempt the following :

(ii) Under the Registration Act, 1908, certain documents are not required to be registered compulsorily. Name them. (4 marks)

Answer :

Section 18 of The Registration Act, 1908 provides for those documents whose registration is optional. These are as under –

- Instruments that create, extinguish or alter any right or interest in immovable property exceeding rupees one hundred in value.
- Instruments that recognize the receipt of any recompense for the above.
- Instruments that create, extinguish or alter any right or interest in movable property.

- Leases for which registration is exempted and the period of which is less than a year.
- Wills.
- Instruments create, extinguish or alter any right or interest in immovable property for less than rupees hundred.

PRACTICAL QUESTIONS

2004 - Dec [7] (c) Ajit sells a house to Baljit by a written document in 1997 and delivers possession thereof to Baljit. But the document is not registered.

After one year, Ajit sues Baljit to take back possession of the house on the ground that because of non-registration, the document has no validity. Will Ajit succeed?

(5 marks)

Answer :

According to Section 49 of The Registration Act, 1908, if any document is required to be registered and is not registered, it shall not be admitted as evidence under the Indian Evidence Act, 1872. However, under Section 53A of the Transfer of Property Act, 1882, an unregistered document may be admitted as evidence in a case where the document is proof of part performance of a contract, and a proof also of the fact that the plaintiff has performed or is willing to perform his part of the deal.

In this case, Ajit sells to Baljit a house by a written document in 1997, and hands over the possession to Baljit. The document, however, remained unregistered. A year later, Ajit sues Baljit for repossession of the house, claiming that as the document was unregistered, it had no validity. This claim of Ajit would be unfounded, as this case comes under Section 53A of the Transfer of Property Act, 1882. Hence, Ajit will not succeed.

2005 - June [7] (c) Rohit executes a sale deed of a house in favour of Prem. The house is situated at NOIDA, but the transferor and transferee want the sale deed to be registered at Lucknow, which is the capital of the State. Can they do so? (5 marks)

Answer :

According to Section 17 of the Registration Act, 1908, documents relating to creation, diminution or alteration of rights related to immovable property, if not registered, will not have the same effect as it would have had if it had been registered. Section 28 of The Registration Act, 1908 provides that all documents mentioned in Section 17 as compulsorily registrable would be registered in the office of the sub-registrar in whose jurisdiction or sub-district the property or a part of it is located.

Hence, in this case, Rohit, who wants to sale deed of the house located at Noida to be registered in Lucknow, will not be allowed to do so. He will need to get the deed registered in Noida, where the property is located.

2005 - June [8] (b) Amrit executed a gift deed in his life time in favour of Bhanu. The gift deed was not registered during the life time of Amrit. Bhanu, after death of Amrit, presented the gift deed before the Registrar for its registration. Rakshit, brother of Amrit raised an objection for the registration of gift deed on the ground of fake signatures of Amrit. But the witnesses to the gift deed contended that the signatures were made before them by the donor at the time of execution of gift deed. Whether the gift deed will be treated valid for registration under the Registration Act, 1908? (5 marks)

Answer :

Section 17 of the Registration Act, 1908 provides for those documents the registration of which is compulsory under the Act. It includes a gift of immovable property. However, it is not mandatory that the deed be registered during the life of the donor; even if subsequently registered, it will have the same effect as if it had been registered from the date of execution.

In this case, Amrit executed a gift deed in favor of Bhanu, who failed to get it registered during the lifetime of Amrit. Later, after Amrit's death, it was Presented to the Registrar for registration. Amrit's brother, Rakshit, raised an objection, contending that Amrit's signatures were fake. However, the witnesses maintained that Amrit signed the deed before them. Hence, the gift deed would be valid for registration and the objection made by Rakshit will not stand.

2006 - June [4] (d) Akhilesh executes a sale deed of a house in favour of Brijesh. The house is situated at Patna. Akhilesh wants to get the sale deed registered at Delhi. Can he do so ? (2 marks)

Answer :

Section 28 provides that all documents mentioned in Section 17 as compulsorily registrable would be registered in the office of the sub-registrar in whose jurisdiction or sub-district the property or a part of it is located. Any other document would be registered in the office of the Sub-Registrar within whose jurisdiction the document was executed, or where the persons who are executing the document want it to be registered. However, according to Section 30 of the Act, a property located elsewhere can be registered in presidency towns or at Delhi.

Hence, Akhilesh, who transferred a house located in Patna to Brijesh by a sale deed, has the option to get it registered either in Delhi or in Patna.

2006 - June [8] (b) By an agreement, Anamika transferred to Bipasha a decree of a court by which she was entitled to possess 500 bighas of land. Is it necessary to register such a transfer under the Registration Act, 1908 ? (5 marks)

Answer :

Under Section 17 (d) of The Registration Act, 1908, the transfer of any decree by which an interest of rupees hundred or upwards in immovable property is created, altered or diminished needs to be registered to have effect.

Hence, the agreement by which Anamika transfers to Bipasha a court decree that entitles her to possess five hundred bighas of land is required to be registered. Only then it can create any acceptable rights in favor of Bipasha.

2006 - Dec [8] (a) Ajoy has executed a gift deed in favour of Bijoy. But prior to the registration of gift deed, Ajoy dies. Ajoy has already given the delivery of possession to Bijoy. The heirs of Ajoy wished to register the gift. Bijoy's brother objected on the ground that it being a non-registered gift in the life-time of Ajoy, it cannot be registered after the death of donor. Decide the validity of gift on the ground of non-registration of gift deed. (5 marks)

Answer :

Section 17 of the Registration Act, 1908 provides for those documents the registration of which is compulsory under the Act. It includes a gift of immovable property. However, it is not mandatory that the deed be registered during the life of the donor; even if subsequently registered, it will have the same effect as if it had been registered from the date of execution.

In this case, Ajoy executed a gift deed in favor of Bijoy, who failed to get it registered during the lifetime of Ajoy. Later, after Ajoy's death, it was presented to the Registrar for registration. Bijoy's brother, raised an objection, contending that since the gift was unregistered during the lifetime of Ajoy, it cannot subsequently be registered validly. However, it is provided in the Act that a gift deed can be registered anytime within the period specified under the Act, and even a subsequent registration will have the same effect as if it was registered upon execution. As in the case of Kalyana Sundaram Pillai vs. Karuppa Mopnar, non-registration of the deed will not render the gift invalid, and if it is presented within the proper time frame, it can be duly registered.

2007 - June [7] (a) Bijoy executed a contract for purchasing a piece of land in Delhi from Ajoy. Just after the execution of contract, Bijoy proceeded to England and he is not expected to return to India before six months. Chirag, a good friend of Ajoy who has general power of attorney to act on behalf of Bijoy, gets the said sale deed registered. Is this registration valid ? (6 marks)

Answer :

According to Section 32 of the Registration Act, 1908, a document may be presented for registration by the executant(s) or persons claiming under him, or by the legal representative or assignee or by their appointed agent, who has been authorized to do so by a special power of attorney. Hence, a general power of attorney is not acceptable. Such a power of attorney needs to be executed before and authenticated by the Registrar within whose jurisdiction the person giving it resides. (Section 33)

Therefore, the registration described in this case is not valid, as it is effected by Chirag who does not hold a special power of attorney but only a general one.

2007 - Dec [8] (c) Ankur has made a gift of a house to Bhaskar. Ankur has signed on the gift deed and handed over the possession of the house to Bhaskar. Ankur did not want gift deed to be registered. After sometime, Ankur dies. There was a long delay in the registration of the gift deed. Whether the period of delay may be condoned by the Registrar for the registration of gift deed even after the death of the donor under the Registration Act, 1908. (5 marks)

Answer :

Section 17 of the Registration Act, 1908 provides for those documents the registration of which is compulsory under the Act. It includes a gift of immovable property. However, it is not mandatory that the deed be registered during the life of the donor; even if subsequently registered, it will have the same effect as if it had been registered from the date of execution.

In this case, Ankur executed a gift deed in favor of Bhaskar, who failed to get it registered during the lifetime of Ankur, who did not want it registered. However, he had already given the possession to Bhaskar. Later, after Ankur's death, it was presented to the Registrar for registration. There occurs a long delay in the registration of the gift deed. Section 23 of the Act provides for a time limit of four months from execution for getting a document registered. This time can extend to eight months in cases of urgent necessity. Hence, in this case, the period of delay can be condoned by the Registrar, but only upto eight months and upon proving sufficient cause for the delay.

Repeatedly Asked Questions		
No.	Question	Frequency
1	Short notes on Documents of which registration is optional. 04 - June [4] (c)(i), 09 - June [4] (ii), 2011 - June [3] (b)	3 Times
2	Practical questions of 05 - June [8] (b) and 06 - Dec [8] (a).	2 Times
3	Practical question of 04 - Dec [7] (c), 10 - June [7] (a)	2 Times
4	Descriptive Question on 08 - Dec [8] (c), 11 - June [7] (c)	2 Times
5	Mention the documents which are not required to be registered compulsorily under the Registration Act, 1908. 04 - Dec [2] (c), 11 - Dec [4] (ii)	2 Times

Star Rating

On the basis of Maximum marks from a chapter

Nil

On the basis of Questions included every year from a chapter

☆☆

On the basis of Compulsory questions from a chapter

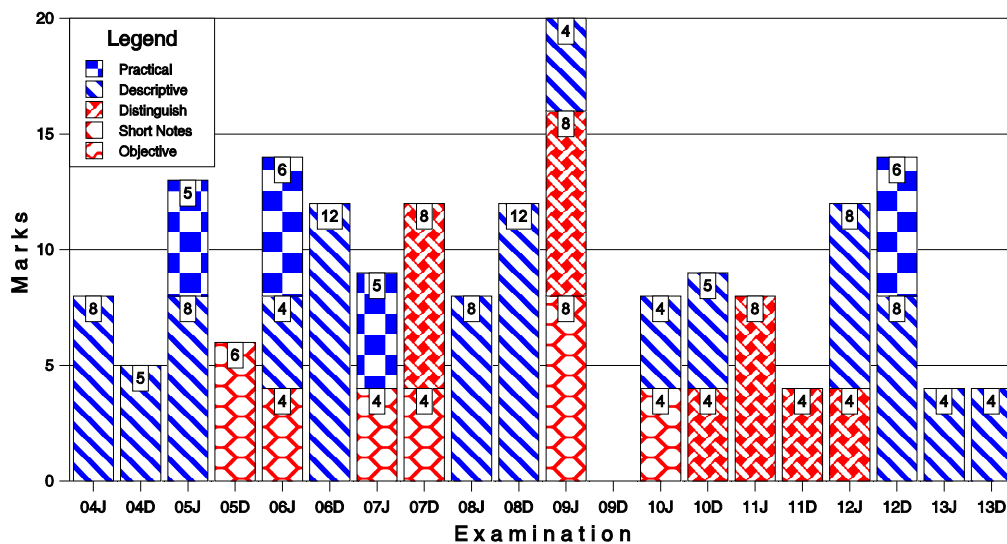
Nil

7

Law Relating to Information Technology

This Chapter Includes : Important terms under Information technology legislation; digital signatures; electronic records; certifying authority: digital signature certificate; Cyber Regulation Appellate Tribunal; offences and penalties. Domain Name passing off.

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



CS Executive Programme (Module I)

OBJECTIVE QUESTIONS

2009 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (iv) Adjudicating Authority under section 43 of the Information Technology Act, 2000 can impose damages by way of compensation an amount not exceeding ₹ _____ . (1 mark)

Answer :

1 Crore

2009 - Dec [5] (b) Choose the most appropriate answer from the given options in respect of the following :

- (vi) Any person aggrieved by any decision or order of the Cyber Regulations Appellate Tribunal may appeal to the –
(a) Civil Judge
(b) District Judge
(c) District Magistrate
(d) High Court. (1 mark)

Answer :

(d) High Court.

2011 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (ii) Cyber Appellate Tribunal is to be presided over by a person who is or has been qualified to be a _____. (1 mark)
(vii) Whoever commits 'hacking' shall be punished with _____. (1 mark)
(viii) Digital signature is recognised as a valid method of _____. (1 mark)

Answer :

- (ii) Cyber Appellate Tribunal is to be presided over by a person who is or has been qualified to be a Judge of a High Court.
(vii) Whoever commits 'hacking' shall be punished with Imprisonment upto three years or fine which may extend to ₹ 2 lakh or with both.
(viii) Digital signature is recognised as a valid method of Authentication of an instrument.

2012 - June [6] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (vi) Verification of the electronic record is done by the use of a _____ of the subscriber under section 3(3) of the Information Technology Act, 2000. (1 mark)

Answer:

- (vi) Public Key

2012 - Dec [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (iii) Section 46 of the Information Technology Act, 2000 deals with—
(a) Hacking
(b) Tampering
(c) Contravention of a rule
(d) The appointment of adjudicating officer. (1 mark)

Answer:

- (d) The appointment of adjudicating officer.

2012 - Dec [6] State, with reasons in brief, whether the following statements are true or false:

- (vi) Under the Information Technology Act, 2000, 'addressee' is a person who is supposed to receive information sent by the originator of the message through an intermediary. (2 marks)

Answer:

Under Section 2 (1) (b) of the Information Technology Act, 2000, "addressee" means a person who is intended by the originator to receive the electronic record but does not include any intermediary.

2013 - June [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (iii) 'Private key' means the key of a key pair used to create a _____ as given under section 2 (1)(zc) of the Information Technology Act, 2000. (1 mark)

Answer:

digital signature

2013 - June [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (vi) Any person aggrieved by an order of the Controller of Certifying Authorities or of the Adjudicating Officer can appeal to the Cyber Appellate Tribunal within—
(a) 30 days
(b) 45 days
(c) 60 days
(d) 90 days.

- (viii) 'Computer network' means the interconnection of one or more computers through the use of –
- (a) Satellite
 - (b) Microwave
 - (c) Terminals
 - (d) All of the above.
- (1 mark each)

Answer:

- (vi) (b) 45 days
(viii) (d) All of the above.

2013 - Dec [5](b) Write the most appropriate answer from the given options in respect of the following:

- (vii) 'Computer network' means the interconnection of one or more computers through the use of —
- (a) Satellite
 - (b) Microwave
 - (c) Terrestrial line
 - (d) All of the above.
- (1 mark)

2013 - Dec [6] State, with reasons in brief, whether the following statements are true or false:

- (viii) Certain wrongful acts concerning computers, etc., are adjudicated not before courts but before Adjudication Officer.
- (2 marks)

SHORT NOTES

2009 - June [2] Write short notes on the following :

- (iv) E-governance
 - (v) Adjudicating officer.
- (4 marks each)

Answer :

- (iv)** Section 4 of the Information Technology Act, 2000 provides that information provided in electronic form, including but not limited to data, images, databases, texts etc., will be given the same importance and legal recognition as is given to written, printed or typewritten information. This Act provides for e-governance or control and safety of information contained in electronic form. It is also known as digital governance.
- (v)** It is the officer who has a right to look into the case in hand, examine the evidence and the witnesses and to pass an order regarding the matter. An adjudicating officer has the powers of a Civil Court under most Indian acts, for example, under the Information Technology Act, 2000.

2010 - June [4] Write notes on the following :

- (i) E-governance

(4 marks)

Answer :

Under Section 4 of the Information Technology Act, 2000, the Central Government has been given the responsibility to provide for a procedure for assuring the security of electronic records. Accordingly, it has prescribed the usage of digital signatures for verification of electronic records.

The digital signature ensures that the record cannot be created by a spurious source, as without the signature being attached to a document, it cannot be said to be created by an authorized source. Moreover, since the authorized person can use the digital signature only after getting it registered with the Certifying Authority established under the Act, it is safe to presume that any document having the signature is secure.

The Act prescribes the appointment of an adjudicating officer for deciding on cases that come under the Information Technology Act. He has the right to decide on matters like the occurrence of offences, amount of penalty or compensation to be paid by the wrongdoer, the corrective actions required etc.

DISTINGUISH BETWEEN

2009 - June [3] Distinguish between the following:

- (i) 'Public key' and 'private key'.
(v) 'Computer' and 'computer network'.

(4 marks each)

Answer :

- (i) 'Asymmetric crypto system', according to the definition of Section 2(1)(f) of the Information Technology Act, 2000, means a key pair that provides safety and authenticity to the electronic records being transmitted. The key pair consists of a public and a private key, both of which are needed to 'sign' an electronic document digitally. Digital signatures, a form of electronic signatures, are created and verified using Public Key Cryptography that is based on the concept of a key pair generated by a mathematical algorithm, the public and private keys. The private key, which is used to digitally attach a signature to a document, is securely held by the owner, while the public key is made known to everyone for verifying the digital signature, together, they form the key pair.
- (v) According to Section 2(1)(i) of the Information Technology Act, 2000, "Computer System" implies a gadget or a collection of gadgets that are programmable and support external files and data, instructions etc., and are capable of responding to instructions by giving the output as data, images or in any other desired form or format. It performs all the functions from accepting data and information, to storing it, to presenting it in a different mode of output.

Section 2(1)(j) defines 'Computer network' as the connection or linkage between two or more computer systems with the help of any mode – connecting wire or optical media, satellite or remote terminals.

2010 - Dec [3] Distinguish between the following :

- (v) 'Electronic form' and 'electronic record'. (4 marks)

Answer :

As per the Information Technology Act, 2000 electronic form with reference to information, means "any information generated, sent, received or stored in media, magnetic, optical, computer memory, microfilm, computer generated micro fiche or similar device". [Section 2(1)(r)]. Electronic record means "data, recorded or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer generated micro fiche". [Section 2(1)(t)]

2011 - June [4] (b) Distinguish between the following :

- (ii) 'Hacking' and 'passing off'. (4 marks)
(iii) 'Computer network' and 'computer system'. (4 marks)

Answer :

(ii) **Hacking:** Section 66 of the information Technology Act, 2000 deals with "hacking" with computer system. The term "hacking" with respect of computer terminology denotes the act of obtaining unauthorized access to a computer system. Section 66 of the Information Technology Act, 2000, provides that:

1. Whoever with intent to cause or knowing that he is likely to cause, wrongful loss or damage to the public or any person, destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hacking.
2. Whoever commits hacking, shall be punished with imprisonment up to three years or with fine which may extent upto two lakh rupees or with both.

The Section imputes intention as per knowledge to the hacker. Modification of the contents of a computer will also be an offence. Modification includes addition, alteration and erasure. As is evident, the maximum punishment prescribed for hacking with computer system under Section 66(2) is imprisonment upto three years or with fine upto two lakh rupees or both.

Passing Off: The Information Technology Act does not contain a specific provision, declaring illegal any fraudulent use, by one person, of other person's domain name. However, even in the absence of specific legislation on the subject, such conduct can become actionable under the law of torts. In fact, judicial decisions, both in India and elsewhere, amply demonstrate the potency of the law of torts in this context. The tort of "passing off" is wide enough to afford legal redress (in damages) to a person who is

the holder of a particular domain name and who suffers harm as a result of the fraudulent use of his domain name by another person. Such conduct has been regarded as falling under the tort of "passing off".

The crux of the action of "passing off" lies in actual or possible or probable deception. The principles relating to "passing off" were held to be applicable to domain names in Rediff Communication Ltd. v. Cyberbooth, (2000) 1 Recent Arbitration Judgements, 562 (Bombay High Court).

The domain name "Rediff" (of the plaintiff) and the domain name "Rediff" (of the defendant) were held to be deceptively similar and capable of causing deception, as the fields of business activity of both the parties were similar. The grant of a temporary injunction, restraining the defendant from using the name in question, was held to be proper.

A similar view has been taken in Yahoo Inc. v. Akash Arora, (1999) 2 Recent Arbitration Judgements, 176 (Delhi).

(iii) Please refer 2009 - June [3] (v) on page no. [214](#)

2011 - Dec [3] Distinguish between the following:

- (v) 'Computer' and 'computer system'. (4 marks)

Answer :

Please refer 2009 - June [3] (v) on page no. [214](#)

2012 - June [5] Distinguish between the following:

- (v) 'Public key' and 'private key' (4 marks)

Answer :

Please refer 2009 - June [3] (i) on page no. [214](#)

DESCRIPTIVE QUESTIONS

2008 - Dec [2] Attempt the following :

- (v) Describe the offence of 'hacking' with computer system as provided under the Information Technology Act, 2000. (4 marks)

Answer :

'Hacking' means causing or attempting to cause loss or damage to anyone by removing or changing any information stored in a computer system or allied resources. This is done by unauthorized access of the information. The punishment for hacking is imprisonment upto three years, or fine upto rupees two lacs, or both. (Section 66 of the Information Technology Act, 2000).

2008 - Dec [3] Explain the following :

- (iv) Domain name and passing-off.
- (v) Digital signature.

(4 marks each)

Answer :

- (iv) 'Domain name' is a unique address pertaining to a website. This is where all communications using the net will be addressed. It helps to register the domain name as the address then becomes exclusive and identifies the company or person whose website it is. It also makes finding the company online easier.

'Passing off', although not defined in the Act, means using the domain name registered by someone else in his name. This is punishable as a tort, as it might result in financial and other losses to the person who is the original owner of the domain name. For example, a company opening a website to market its products might face losses if another company uses a similar name to market similar products. People will buy products of the second company thinking they are buying products of the first one. The Marks and Spencer case is a good example of passing off, in which it was judged that any person who deliberately uses a domain name similar to another name for using its popularity to sell its own products is subject to an injunction and is punishable for a tort.

- (v) 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. This is done with the help of a signature in electronic form, which is registered with the Certifying Authority under the Act.

It is deemed to be secure when it is as per the requirements of Section 15 of the Information Technology Act, 2000. They are as under –

- If the signature is unique and controlled by the person affixing it.
- It distinguishes the subscriber, i.e. the person affixing or using it.
- It is so linked with the electronic record to which it is attached that if the record was changed in any way, doing so would nullify the authenticity or veracity of the signature.

2009 - June [4] Attempt the following :

- (iv) What are the cyber offences under the Information Technology Act, 2000?

(4 marks)

Answer :

- (iv) Hacking and passing off are the main offences under the Act. 'Hacking' means causing or attempting to cause loss or damage to anyone by removing or changing any information stored in a computer system or allied resources. This is done by unauthorized access of the information. The punishment for hacking is imprisonment upto three years, or fine upto rupees two lacs, or both. (Section 66 of the Information Technology Act, 2000).

'Passing off', although not defined in the Act, means using the domain name registered by someone else in his name. This is punishable as a tort, as it might result in financial and other losses to the person who is the original owner of the domain name. For example, a company opening a website to market its products might face losses if another company uses a similar name to market similar products. People will buy products of the second company thinking they are buying products of the first one. The Marks and Spencer case is a good example of passing off, in which it was judged that any person who deliberately uses a domain name similar to another name for using its popularity to sell its own products is subject to an injunction and is punishable for a tort.

2010 - June [2] Attempt the following :

- (iii) What are 'cyber offences' under the Information Technology Act, 2000 ?
(4 marks)

Answer :

The cyber offences are described in Section 43 of Chapter IX titled Penalties and Adjudication of the Information Technology Act, 2000. Chapter XI (Section 65-78) mentions the offences related to cyber crimes, i.e. crimes related with computers.

They are as under and are caused if anyone does the following acts with reference to a computer, computer system or computer network in an unauthorized manner, without permission of the relevant authority who controls the resource –

- If someone hacks into a computer resource.
- If the information contained in the resource is accessed without permission, and copied or altered in any way.
- If the resource is infected with a computer virus or bug.
- If the resource or its functioning is disordered in any way, or it is damaged in any way, either by altering the settings or programmes or in any other manner.
- If the regular and authorized users are denied entry into or access to the resource.
- If aid is provided to anyone for doing any of the above-mentioned acts.
- If someone pays or hires someone to do any of the above-mentioned works.

All of these offences are punishable with a maximum penalty to pay damages upto rupees one crore.

2010 - Dec [4] (c) What are 'cyber offences' under the Information Technology Act, 2000 ?
(5 marks)

Answer :

Please Refer 2010 - June [2] (iii) on page no. [218](#)

2012 - June [4] Explain the following:

- (ii) 'Cyber Regulations Appellate Tribunal' under the Information Technology Act, 2000 (4 marks)
- (v) 'Digital signature' under the Information Technology Act, 2000. (4 marks)

Answer :

- (ii) Cyber Appellate Tribunal has been established under the Information Technology Act under the aegis of Controller of Certifying Authorities (C.C.A.). The first and the only Cyber Appellate Tribunal in the country have been established by the Central Government in accordance with the provisions contained under Section 48(1) of the Information Technology Act, 2000. The Tribunal initially known as the Cyber Regulations Appellate Tribunal (C.R.A.T.), started functioning from October 2006 in a portion of the D.I.T. building at C.G.O. Complex, Lodhi Road, New Delhi. At present the Tribunal is functioning at the Jeevan Bharti (L.I.C.) Building, Connaught Place, New Delhi.

Anyone who is unable to accept the decision of the adjudicator can apply to the Cyber Appellate Tribunal. The Tribunal can be approached even against the decision of the Controller of Certifying Authorities, who regulates all Certifying Authorities. This appeal has to be filed within 45 days from the date of receipt of the order against which the appeal is being filed.

The High Court has the power to hear appeals regarding any order of the Cyber Appellate Tribunal. The limitation period for this is 60 days.

As per CHAPTER X of the Information Technology Act, 2000:

“ THE CYBER REGULATIONS APPELLATE TRIBUNAL

1. Establishment of Cyber Appellate Tribunal
 - (1) The Central Government shall, by notification, establish one or more appellate tribunals to be known as the Cyber Regulations Appellate Tribunal.
 - (2) The Central Government shall also specify, in the notification referred to in sub-section (1), the matters and places in relation to which the Cyber Appellate Tribunal may exercise jurisdiction.
2. Composition of Cyber Appellate Tribunal

A Cyber Appellate Tribunal shall consist of one person only (hereinafter referred to as the Presiding Officer of the Cyber Appellate Tribunal) to be appointed, by notification, by the Central Government.
3. Qualifications for appointment as Presiding Officer of the Cyber Appellate Tribunal

A person shall not be qualified for appointment as the Presiding Officer of a Cyber Appellate Tribunal unless he-

 - (a) is, or has been, or is qualified to be, a Judge of a High Court; or
 - (b) is or has been a member of the Indian Legal Service and is holding or has held a post in Grade I of that Service for at least three years.”

- (v) Please refer 2008 Dec [3] (v) on page no. [217](#)

2012 - Dec [4] Attempt the following:

- (i) The law looks into the substance and effect (or intended effect) of the text of the instrument and not the physical medium through which it is recorded. Comment. (4 marks)
- (ii) The majority of legal problems in the information technology relate to the machine, the medium and the message. Discuss. (4 marks)

Answer:

- (i) An 'instrument' under Section 2(14) of the Indian Stamp Act, 1899 implies and includes any document that create, diminishes or alters any right, interest or liability in property. For example, a lease deed is an instrument. A valid instrument needs to be signed in order to be complete and functional. Moreover, it need not be a separate deed; it can even be in the form of an entry in a register, or of a letter or communication evidencing receipt of an amount. Under the Indian Stamp Act, 1899, an instrument is chargeable to duty.

Moreover, any instrument has to be seen in entirety, in its spirit rather than its form, in order to judge the incidence and quantum of stamp duty. One cannot determine duty incidence simply by looking at the form and ignoring the substance that might be camouflaged to reduce or counter the incidence of duty.

Andhra High Court -Bahadurrinisa Begum vs Vasudev Naick And Ors. on 16 December, 1965

- (ii) It is true that the majority of problems in information technology relate to the machine, the medium and the message.

The machine – This includes the instruments used in IT; if these are not foolproof, the machine and consequently the data or information contained therein might be endangered. Additional safety measures like password locking, data encryption should be used.

The message – There are copyright and hacking issues. Moreover, different countries address these issues differently, so there is no standardization and hence, very less chance of any dispute being properly addressed.

The medium - Unless the information is encrypted, or saved in a format that cannot be tampered with, the information may be endangered.

All these problems are compounded by the information available on the internet, which can be freely copied and creates copyright issues and other problems.

2013 - June [4] (b) Describe the offence of 'hacking' the computer system as provided under the provisions of the Information Technology Act, 2000. (4 marks)

Answer:

The offence of hacking

'Hacking' means done by unlawful access of a computer resource or system owned or controlled by another and altering, deleting or adding unauthorized information. Such

a change might result in the lessening or loss of the value of the original information contained in the system. The punishment for this offence as per the Information Technology Act, 2000 is three years of imprisonment and/or fine upto rupees two lakhs. (Section 66)

Hacking definitely affects the financial returns of a company, since the hacker takes a large slice of the profits. It might also cause loss of reputation to the company whose Id is hacked, or it may even cause company secrets to be brought out into the open if the confidential information of the company is accessed.

Section 43 of the IT Act defines hacking:

- If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,- accesses or secures access to such computer, computer system or computer network downloads, copies or extracts any data, computer data base information from such computer, computer system or computer network including information or data held or stored in any removable storage medium.
- introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;
- damages or causes to be damaged and computer, computer system or computer network, data, computer database or any other programmes residing in such computer, computer system or computer network;
- disrupts or causes disruption of any computer, computer system or computer network;
- denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;
- provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder;
- charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system or compute network he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected.

2013 - Dec [2] Discuss the following.

- (v) Liability of network service provider under section 79 of the Information Technology Act, 2000. (4 marks)

PRACTICAL QUESTIONS

2012 - Dec [8] (a) One morning, scientists at an atomic research centre found a rude-nuclear message splashed across their computer screens. Someone had breached the atomic research centre's advanced security system and sensitive e-mail.

What offence has been committed in the atomic research centre? Decide with reference to the provisions of the relevant statute. (6 marks)

Answer:

This is the offence of 'hacking' as per Section 66 under the Information Technology Act, 2000. This Section provides that if any person deliberately or knowingly causes destruction or deletion in information stored in a computer resource, or causes its value or importance to be reduced, or otherwise harms it, he is committing the offence of hacking. The punishment for which he might be liable will be imprisonment upto three years or fine extending upto two lakh rupees or with both.

CS Inter Gr. I

SHORT NOTES

2005 - Dec [5] (c) Explain the following terms under the Information Technology Act, 2000:

- (i) Digital signatures.
- (ii) Originator.
- (iii) Asymmetric crypto system. (2 marks each)

Answer :

- (i) '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. This is done with the help of a signature in electronic form, which is registered with the Certifying Authority under the Act.
- (ii) 'Originator' means a person who sends or initiates an electronic message. This excludes all intermediaries who just act as a link between the sender and recipient of messages. [Section 2(1)(za)] This definition helps to judge the authenticity of messages, i.e. if a message has been sent by a known originator, then it can be deemed to be authentic.
- (iii) 'Asymmetric crypto system', according to the definition of Section 2(1)(f) of the Information Technology Act, 2000, means a key pair that provides safety and

authenticity to the electronic records being transmitted. The key pair consists of a public and a private key, both of which are needed to 'sign' an electronic document digitally.

2006 - June [3] Write notes on the following :

- (v) Network service providers. (4 marks)

Answer :

'Network service providers' have been defined in Section 2(1)(w) of the Information Technology Act, 2000. These are intermediaries who do not initiate the creation or passing off a message but help in providing facilities for the same. They can help in the receiving or sending of a message on behalf of another. Section 79 exempts them from liability they might incur for the actions of third parties making use of their services and doing something that is expressly prohibited under the Act. The standard defenses of network service providers would be that they exercised due care and the contravention did not occur with their knowledge or negligence.

2007 - June [4] (a) Write short notes on the following :

- (iii) Digital signature. (4 marks)

Answer :

'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. This is done with the help of a signature in electronic form, which is registered with the Certifying Authority under the Act.

2007 - Dec [5] Write short notes on the following :

- (v) Domain name. (4 marks)

Answer :

'Domain name' is a unique address pertaining to a website. This is where all communications using the net will be addressed. It helps to register the domain name as the address then becomes exclusive and identifies the company or person whose website it is. It also makes finding the company online easier.

DISTINGUISH BETWEEN

2007 - Dec [3] Distinguish between the following:

- (iii) 'Hacking' and 'passing off'. (4 marks)
(iv) 'Computer network' and 'computer system'. (4 marks)

Answer :

- (iii) 'Hacking' means causing or attempting to cause loss or damage to anyone by removing or changing any information stored in a computer system or allied resources. This is done by unauthorized access of the information. The punishment for hacking is imprisonment upto three years, or fine upto rupees two lacs, or both. (Section 66 of the Information Technology Act, 2000).

'Passing off', although not defined in the Act, means using the domain name registered by someone else in his name. This is punishable as a tort, as it might result in financial and other losses to the person who is the original owner of the domain name. For example, a company opening a website to market its products might face losses if another company uses a similar name to market similar products. People will buy products of the second company thinking they are buying products of the first one. The Marks and Spencer case is a good example of passing off, in which it was judged that any person who deliberately uses a domain name similar to another name for using its popularity to sell its own products is subject to an injunction and is punishable for a tort.

- (iv) 'Computer network' and 'Computer system' – According to Section 2(1)(l) of the Information Technology Act, 2000, "Computer System" implies a gadget or a collection of gadgets that are programmable and support external files and data, instructions etc., and are capable of responding to instructions by giving the output as data, images or in any other desired form or format. It performs all the functions from accepting data and information, to storing it, to presenting it in a different mode of output.

Section 2(1)(j) defines 'Computer network' as the connection or linkage between two or more computer systems with the help of any mode – connecting wire or optical media, satellite or remote terminals.

DESCRIPTIVE QUESTIONS

2004 - June [5] (b) What amounts to 'hacking' under the Information Technology Act, 2000? (4 marks)

(c) When is a '*digital signature*' deemed to be a secure digital signature? (4 marks)

Answer :

- (b) 'Hacking' means causing or attempting to cause loss or damage to anyone by removing or changing any information stored in a computer system or allied resources. This is done by unauthorized access of the information. The punishment for hacking is imprisonment upto three years, or fine upto rupees two lacs, or both. (Section 66 of the Information Technology Act, 2000).

Hacking definitely affects the financial returns of a company, since the hacker takes a large slice of the profits. It might also cause loss of reputation to the company whose Id is hacked, or it may even cause company secrets to be brought out into the open if the confidential information of the company is accessed.

- (c) '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. This is done with the help of a signature in electronic form, which is registered with the Certifying Authority under the Act.

It is deemed to be secure when it is as per the requirements of Section 15 of the Information Technology Act, 2000. They are as under—

- If the signature is unique and controlled by the person affixing it.
- It distinguishes the subscriber, i.e. the person affixing or using it.
- It is so linked with the electronic record to which it is attached that if the record were changed in any way, doing so would nullify the authenticity or veracity of the signature.

2004 - Dec [2] (b) If one person fraudulently uses the 'domain name' of another, what legal remedy is available to the aggrieved party? (5 marks)

Answer :

'Domain name' is a unique address pertaining to a website. This is where all communications using the net will be addressed. It helps to register the domain name as the address then becomes exclusive and identifies the company or person whose website it is. It also makes finding the company online easier.

'Passing off', although not defined in the Information Technology Act, means using the domain name registered by someone else in his name. This is punishable as a tort, as it might result in financial and other losses to the person who is the original owner of the domain name. For example, a company opening a website to market its products might face losses if another company uses a similar name to market similar products. People will buy products of the second company thinking they are buying products of the first one. The Marks and Spencer case is a good example of passing off, in which it was judged that any person who deliberately uses a domain name similar to another name for using its popularity to sell its own products is subject to an injunction and is punishable for a tort.

2005 - June [3] (c) Explain the term 'computer network' under the Information Technology Act, 2000. (4 marks)

Answer :

Section 2(1)(j) defines 'Computer network' as the connection or linkage between two or more computer systems with the help of any mode – connecting wire or optical media, satellite or remote terminals. It is a group of computers using common physical and other facilities such as printers, scanners, databases etc.

2005 - June [5] (c) Explain the terms 'computer contaminant' and 'computer virus' as defined under the Information Technology Act, 2000. (4 marks)

Answer :

The terms are contained in Section 43 of the Information Technology Act, 2000.

'Computer contaminant' means a program or a series of commands given to a computer that alters, deletes or releases programs within the computer and in doing so alters the ordinary working of the system or network. (Explanation to the section)

'Computer virus' means a program, set of instructions or information set into a computer to affect its functioning in any way. It operates by affixing itself to the computer's resources and replicating itself when a program is run.

Section 43 of the Act provides for penalty for damages inflicted on a computer or computer resource, without the owner's permission or knowledge. The damages are to be paid by way of compensation upto an amount of rupees one crore.

2006 - June [4] (c) What are the grounds of revocation of the 'digital signature certificate' by the certifying authority under the Information Technology Act, 2000 ? (4 marks)

Answer :

According to the Information Technology Act, 2000, Section 38, a digital signature can be revoked by the Certifying Authority under the following circumstances –

- When the person in whose name it has been registered requests, by himself or through an authorized representative, and gives it in writing that he wishes for it to be cancelled.
- When the subscriber expires.
- When he becomes insolvent.
- When the company or firm that is the subscriber is wound up or dissolved.
- When the Certifying Authority is of the opinion that the certificate has been obtained by misrepresentation of a material fact or by fraud.
- When some essential requirement for obtaining the certificate has not been fulfilled.
- When the private key of the certificate has been breached.

In all the cases where the revocation takes place by an action taken suo motu by the Certifying Authority, the subscriber will be given an opportunity of being heard, and upon the revocation of the certificate, the subscriber will be intimated of the fact.

2006 - Dec [4] (c) Define the following under the Information Technology Act, 2000 :
(i) Computer network.
(ii) Intermediary. (3 marks each)

Answer :

- (i) Section 2(1)(j) defines 'Computer network' as the connection or linkage between two or more computer systems with the help of any mode – connecting wire or optical media, satellite or remote terminals. It is a group of computers using common physical and other facilities such as printers, scanners, databases etc.
- (ii) Network service providers' have been defined in Section 2(1)(w) of the Information Technology Act, 2000. These are intermediaries who do not initiate the creation or passing off a message but help in providing facilities for the same. They can help in the receiving or sending of a message on behalf of another. Section 79 exempts them from liability they might incur for the actions of third parties making use of their services and doing something that is expressly prohibited under the Act. The standard defenses of network service providers would be that they exercised due care and the contravention did not occur with their knowledge or negligence.

2006 - Dec [5] (c) Describe the offence of 'hacking' with computer system as provided under the provisions of the Information Technology Act, 2000. Who is the officer competent to investigate an offence under the Information Technology Act, 2000?

(6 marks)

Answer :

'Hacking' means causing or attempting to cause loss or damage to anyone by removing or changing any information stored in a computer system or allied resources. This is done by unauthorized access of the information. The punishment for hacking is imprisonment upto three years, or fine upto rupees two lacs, or both. (Section 66 of the Information Technology Act, 2000).

Hacking definitely affects the financial returns of a company, since the hacker takes a large slice of the profits. It might also cause loss of reputation to the company whose Id is hacked, or it may even cause company secrets to be brought out into the open if the confidential information of the company is accessed.

Under Section 78 of the Information Technology Act, 2000, a police officer of the rank of Deputy Superintendent of Police or above, shall investigate any offence under this Act.

2008 - June [3] Explain of the following :

- (iii) Digital signature.

(4 marks)

Answer :

'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. This is done with the help of a signature in electronic form, which is registered with the Certifying Authority under the Act.

It is deemed to be secure when it is as per the requirements of Section 15 of the Information Technology Act, 2000. They are as under –

- If the signature is unique and controlled by the person affixing it.
- It distinguishes the subscriber, i.e. the person affixing or using it.
- It is so linked with the electronic record to which it is attached that if the record were changed in any way, doing so would nullify the authenticity or veracity of the signature.

2008 - June [4] Attempt the following :

- (iii) “The majority of the legal problems arising in the sphere of information technology relate to (a) the machine; (b) the medium; and (c) the message.”
Illustrate the statement. (4 marks)

Answer :

This is a true statement, as a big majority of the offences or rather, almost all of them occur because of the machine, the medium or the message, or even a combination of all these.

For example, ‘hacking’ is an offence under the Information Technology Act, 2000, under Section 11. ‘Hacking’ means causing or attempting to cause loss or damage to anyone by removing or changing any information stored in a computer system or allied resources. This is done by unauthorized access of the information. The punishment for hacking is imprisonment upto three years, or fine upto rupees two lacs, or both. (Section 66 of the Information Technology Act, 2000). For it to take place, the machine, i.e. the computer, if it is not safeguarded by strong passwords and physical checks, can be accessed by anyone. The medium might be a problem in case of non-secure websites, which can be easily hacked. The message, if the digital signature is accessed by someone, or if it is transferred through unsafe online sites, might be accessed and altered.

PRACTICAL QUESTIONS

2005 - June [6] (c) Abhay downloaded secret data from the computer network of a foreign company engaged in the manufacture of aircrafts. He was prosecuted and fined ₹ 1 lakh by the adjudicating officer under section 43 of the Information Technology Act, 2000. Is any remedy available to Abhay? Advise. (5 marks)

Answer :

Abhay has the right to file an appeal to the Cyber Appellate Tribunal (CAT) against the order passed by the adjudicating officer. The limitation period for filing the appeal is forty-five days. If he is unsatisfied with the order passed by the CAT, he may prefer an appeal to the High Court within a period of sixty days.

However, since under Section 43 of the Act, downloading secret data stored in a computer is liable to be punished with a penalty not exceeding one crore rupees, the remedy will only work in his favor if it is proven that he is not guilty of the offence.

2006 - June [8] (a) One morning, scientists at an atomic research centre found a rude-nuclear message splashed across their computer screens. Someone had breached the atomic research centre's advanced security system and sensitive mail. What offence has been committed in the atomic research centre ? (6 marks)

Answer :

The security system of the atomic research center has been breached and their systems and accounts have been hacked.

'Hacking' means causing or attempting to cause loss or damage to anyone by removing or changing any information stored in a computer system or allied resources. This is done by unauthorized access of the information. The punishment for hacking is imprisonment upto three years, or fine upto rupees two lacs, or both. (Section 66 of the Information Technology Act, 2000).

2007 - June [6] (b) Chanchal sues Indian Online Ltd. (IOL) for allowing a subscriber Rajat to use its chatroom for making video tapes and photographs of child pornography in which Chanchal's minor son appears. The complaint alleged that IOL was negligent *per se* in allowing Rajat to use its facilities for producing obscene materials, therefore, is liable under criminal law and under the Information Technology Act, 2000. IOL contends that it has no knowledge of such transmission of unlawful information. Decide the liability of IOL. (5 marks)

Answer :

'Network service providers' have been defined in Section 2(1)(w) of the Information Technology Act, 2000. These are intermediaries who do not initiate the creation or passing off a message but help in providing facilities for the same. They can help in the receiving or sending of a message on behalf of another. Section 79 exempts them from liability they might incur for the actions of third parties making use of their services and doing something that is expressly prohibited under the Act. The standard defenses of network service providers would be that they exercised due care and the contravention did not occur with their knowledge or negligence.

Hence, IOL, being a network service provider, can prove that the offence did not occur because of their negligence. Hence, they would not be liable for the subscriber and hence not punishable.

1.230

■ **Solved Scanner CS Executive Programme M-I Paper 1**

Repeatedly Asked Questions		
No.	Question	Frequency
1	Write short notes on Digital signature. 05 - Dec [5] (c) (i), 07 - June [4] (a) (iii), 08 - Dec [3] (v)	3 Times
2	Explain the term 'computer network under the information Technology Act, 2000, 05 - June [3] (c), 06 - Dec [4] (c) (i)	2 Times
3	Describe the offence of 'hacking' with computer system as provided under the Information Technology Act, 2000. 06 - Dec [5] (c), 08 - Dec [2] (v), 08 - Dec [2] (v), 13 - June [4] (b)	4 Times
4	What are 'cyber offences' under the Information Technology Act, 2000 ? 09 - June [4] (iv), 10 - June [2] (iii), 10 - Dec [4] (c)	3 Times
5	Write notes on E-governance 09 - June [2] (iv), 10 - June [4] (i)	2 Times
6	Distinguish between on 'Hacking' and 'passing off'. 07 - Dec [3] (iii), 11 - June [4] (b) (ii)	2 Times
7	Distinguish between on 'Computer network' and 'computer system'. 07 - Dec [3] (iv), 09 - June [3] (v), 11 - June [4] (b) (iii)	3 Times
8	'Digital signature' under the Information Technology Act, 2000. 08 - Dec [3] (v), 12 - June [4] (v)	2 Times
9	'Public key' and 'private key' 09 - June [3] (i), 12 - June [5] (v)	2 Times
10	The majority of legal problems in the information technology relate to the machine, the medium and the message. Discuss. 08 - June [4] (iii), 12 - Dec [4] (ii)	2 Times

Star Rating

On the basis of Maximum marks from a chapter ☆☆

On the basis of Questions included every year from a chapter ☆☆☆☆☆

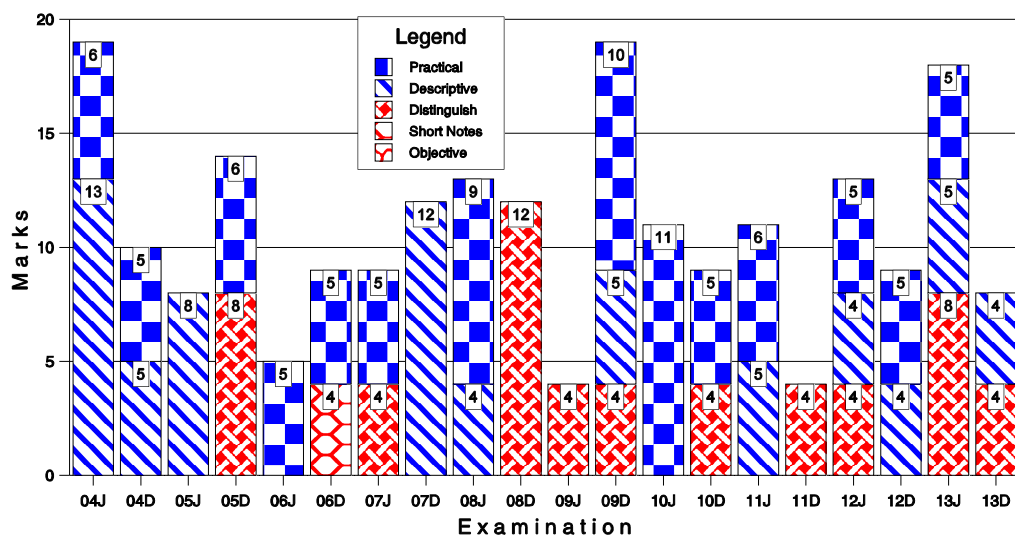
On the basis of Compulsory questions from a chapter ☆☆☆

8

The Code of Civil Procedure, 1908 (C.P.C.)

This Chapter Includes : Introduction; Aim and Scope of Civil Procedure Code, 1908; Important Terms; Structure of Civil Courts; Jurisdiction of Courts and Venue of Suits; Stay of Suits; Place of Suits; Res Judicata; Set-off, Counter claim and Equitable set-off; Temporary Injunctions and Interlocutory Orders; Institutions of Suits; Appeals; Reference, Review and revisions; Suits by or against corporation/minors. summary procedure.

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



CS Executive Programme (Module I)

OBJECTIVE QUESTIONS

2008 - Dec [6] (a) Choose the most appropriate answer from the given options in respect of the following :

(vii) The defendant is entitled to 'leave to defend' in a summary suit if he enters an appearance after service of summons within -

- (a) 30 days
- (b) 10 days
- (c) 60 days
- (d) 15 days.

(1 mark)

Answer :

(b) 10 days

2008 - Dec [6] (b) State, with reasons in brief, whether the following statements are correct or incorrect :

(iv) A declaratory decree is a decree passed to prevent the violation of a negative act. (2 marks each)

Answer :

Incorrect : It is a decree passed to declare the rights of the legal owner or title bearer to a property.

2009 - June [5] State, with reasons in brief, whether the following statements are correct or incorrect :

(viii) Generally orders passed by the court under the Code of Civil Procedure, 1908 are not appealable but there are certain exceptions to it. (2 marks)

Answer :

Correct : There are four types of appeals provided under the Code of Civil Procedure, 1908.

2009 - June [6] (a) Choose the most appropriate answer from the given options in respect of the following :

(vii) The definition of 'decree' as given under section 2 of the Code of Civil Procedure, 1908 includes –

- (a) An 'award' passed by the arbitral tribunal under the Arbitration and Conciliation Act, 1996
- (b) Rejection of plaint under Order 7, Rule 11 of the Code of Civil Procedure, 1908

(c) Adjudication of any question raised by any party to the decree during execution proceedings under section 47 of the Code of Civil Procedure, 1908

(d) An order of which appeal lies like an order. (1 mark)

Answer :

(b) Rejection of plaint under Order 7, Rule 11 of the Code of Civil Procedure, 1908

2009 - June [6] (b) Re-write the following sentences after filling-in the blank spaces with appropriate word (s)/figure (s) :

(i) Temporary injunction is granted under order _____ of the Code of Civil Procedure, 1908.

(iv) _____ means any person against whom a decree has been passed or an order capable of execution has been made.

(vi) A fresh suit is barred for the same cause of action under section (s) _____ of the Code of Civil Procedure, 1908.

Answer :

(i) Temporary injunction is granted under order **XXXIX** of the Code of Civil Procedure, 1908.

(iv) **Judgement debtor** means any person against whom a decree has been passed or an order capable of execution has been made.

(vi) A fresh suit is barred for the same cause of action under section (s) **11** of the Code of Civil Procedure, 1908.

2010 - June [5] (c) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

(v) The application of revision under the provisions of the Code of Civil Procedure, 1908 is made to _____.

Answer :

The High Court. (1 mark)

2010 - June [6] State, with reasons in brief, whether the following statements are correct or incorrect :

(vi) On the same cause of action, a fresh suit is barred by law.

(vii) Decree is a formal expression of an adjudication, whereas an order is the decision of the court.

(viii) The procedure provided under any special or local law is not affected by the procedure given under the Code of Civil Procedure, 1908. (2 marks each)

Answer :

(vi) Correct. As per Sections 10, 11, 12 of the Code of Civil Procedure.

(vii) Correct. As per the definitions given in Sections 2(2) and 2(14) of the Code of Civil Procedure.

(viii) Correct. As per Section 4 of the Code of Civil Procedure.

2010 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (ii) A decree through which the right as to any property or the legal character of a person is judicially ascertained is known as _____ . (1 mark)
- (vi) The statement given by the court on the grounds of a decree or order as defined in section 2(9) of the Code of Civil Procedure, 1908 is known as _____ . (1 mark)

Answer :

- (ii) A decree through which the right as to any property or the legal character of a person is judicially ascertained is known as declaratory decree.
- (vi) The statement given by the court on the grounds of a decree or order as defined in Sec. 2(9) of the Code of Civil Procedure, 1908 is known as judgement.

2010 - Dec [5] (b) Choose the most appropriate answer from the given options in respect of the following :

- (vi) Summary trials will apply to those offences which are not punishable with imprisonment for a term exceeding —
 - (a) Two years
 - (b) One year
 - (c) 60 Days
 - (d) 90 Days. (1 mark)

Answer :

- (a) Two years.

2011 - June [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (ii) A pending suit, action, petition or the like is known as _____ . (1 mark)
- (iii) The doctrine which underlines the general principle that no one shall be vexed twice for the same cause is known as _____ . (1 mark)
- (iv) A statement given by a judge on the grounds of decree or order is known as _____ . (1 mark)

Answer :

- (ii) A pending suit, action, petition or the like is known as lis pendens.
- (iii) The doctrine which underlines the general principle that no one shall be vexed twice for the same cause is known as res judicata.
- (iv) A statement given by a judge on the grounds of decree or order is known as judgement.

2011 - June [5] (b) Write the most appropriate answer from the given options in respect of the following :

- (vi) The right of review has been conferred by the Code of Civil Procedure, 1908. It provides that any person considering himself aggrieved by a decree or order may apply for a review of the judgement to the -
- (a) Appellate Court
 - (b) High Court
 - (c) District Court
 - (d) Court which passed the decree or order. (1 mark)

Answer :

(d) Court which passed the decree or order.

2011 - June [6] State, with reasons in brief, whether the following statements are true or false :

- (v) In a declaratory decree, the right of any person to any property or his legal character is ascertained. (2 marks)

Answer :

True. A declaratory judgment is a judgment of a court which determines the rights of parties without ordering anything be done or awarding damages.

2011 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (i) A 'reference' may be made by the subordinate court to _____ under the provisions of the Code of Civil Procedure, 1908. (1 mark)

Answer :

A 'reference' may be made by the subordinate court to the High Court under the provisions of the Code of Civil Procedure, 1908.

2011 - Dec [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (i) The definition of 'legal representative' under the Code of Civil Procedure, 1908 means —
- (a) A person who represents the deceased
 - (b) A person who represents in law the estate of the deceased
 - (c) A person who intermeddles with the estate of the deceased
 - (d) Both (b) and (c) above. (1 mark)

Answer :

(d) Both (b) and (c) above

2011 - Dec [7] State, with reasons in brief, whether the following statements are true or false:

- (v) Where a suit is pending in the jurisdictional civil court, a fresh suit cannot be proceeded with on the same cause of action between the same parties in another court in India. (2 marks)
- (vi) Questions arising between the parties and the representatives relating to execution, satisfaction and discharge of the decree will be decided by the executing court. (2 marks)

Answer :

- (v) **True:** This is as per Section 10 of the Code of Civil Procedure, 1908 which deals with the doctrine of res sub judice. This doctrine helps in avoiding duplicity of cases, and prevents opposing judgements being reached in same matters (Section 10 of the Code of Civil Procedure, 1908). When such a case arises, generally a stay operates on the second or following suit.
- (vi) **True:** Section 47 Sub-section (1) - Questions to be determined by the Court executing decree -
All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

2012 - June [6] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (i) Any person in whose favour a decree has been passed is known as _____ . (1 mark)

Answer:

- (i) Decree holder.

2012 - Dec [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (vi) Under the provisions of the Code of Civil Procedure, 1908, from the date of the decree or order, an appeal can be made in the High Court within—
 - (a) 60 Days
 - (b) 30 Days
 - (c) 90 Days
 - (d) 120 Days. (1 mark)
- (vii) Under the provisions of the Code of Civil Procedure, 1908, the defendant has to file the written statement of his defence from the date of the service of summons within a period of—

- (a) 40 Days
- (b) 30 Days
- (c) 45 Days
- (d) 60 Days.

(1 mark)

Answer:

- (vi) (c) 90 days
- (vii) (b) 30 days

2012 - Dec [6] State, with reasons in brief, whether the following statements are true or false:

- (v) As per the provisions of the Arbitration and Conciliation Act, 1996 conciliator is bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

(2 marks)

Answer:

False: The Conciliator under the provisions of the Arbitration and Conciliation Act, 1996 shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

2013 - June [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (iv) No court shall take cognizance of an offence after six months, if it is punishable with _____ only. (1 mark)

Answer:

fine

2013 - June [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (ii) Which of the following conditions are required for the principle of *res judicata* to suits as applied by courts *vide* section 11 of the Code of Civil Procedure, 1908—
 - (a) The matter directly and substantially arise in former and later suits
 - (b) The former suit has not been decided
 - (c) The said suit has not been heard and decided
 - (d) All the above are required for the application of *res judicata*. (1 mark)

Answer:

- (a) The matter directly and substantially arise in former and later suits

2013 - Dec [5](a) Re- write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (vi) _____ as set out in section 2(14) of the Code of Civil Procedure, 1908 is the formal expression of any decision of a Civil Court which is not a decree.

(1 mark)

2013 - Dec [5](b) Write the most appropriate answer from the given options in respect of the following:

- (v) A party may refuse to produce the document for inspection —
- (a) When it discloses party's evidence
 - (b) When it enjoys a legal professional privilege
 - (c) When it is injurious to public interest
 - (d) All of the above.

(1 mark)

DISTINGUISH BETWEEN

2008 - Dec [4] Distinguish between the following :

- (i) 'Judgment', 'decree' and 'order'.
- (ii) 'Set-off', 'counter-claim' and 'equitable set-off'.
- (iii) 'Appeal', 'revision' and 'review'.

(4 marks each)

Answer :

- (i) 'Judgement' means the decision given by a court. The grounds for it would already have been laid by the decree or the order on which the court bases its judgement. It is the final ruling given by a court with regard to a case. It helps in deciding the rights and obligations as they are supposed to be between the two litigating parties.

'Decree' means the declaration given by the court as a decision in a suit as to the rights of a litigating party. It can be a preliminary decree or a final one. They are issued to uphold the rights of a party to any property or to some legal recourse.

'Order' means a decision given by a civil court in a case; it is not a decree. It means a proclamation passed by the court that decides upon the legal relationship between parties and their inter se rights and liabilities.

- (ii) 'Set-off', 'counter-claim' and 'equitable set-off' - 'Set off' means a settlement where both the plaintiff and the defendant have some claims to be collected from each other. What one party owes to another might be used to discharge all or a part of the debt he is owed by the other party.

'Counterclaim' means a reverse claim made by one party against the other, where both claims are heard as part of the same proceedings. In set-off proceedings, there is a single judgement, whereas in case of counterclaims, there are separate judgements for each claim.

There are various types of set-offs. One of these is an 'equitable set-off'. It implies the rights of set-off arising from the same transaction instead of from different ones. Hence, the legal action takes the form of a single lawsuit instead of two different ones.

(iii) 'Appeal', 'revision' and 'review' – An 'appeal' is filed to a higher court if either the plaintiff or the defendant is not satisfied with the decision passed by the lower court. Appeals can lie from decrees or orders of the court. Sections 96 to 109 of the Code of Civil Procedure, 1908 cover appeals.

'Revision' is when the High Court calls for the records of a case in which no appeal lies and if it feels that the lower court has passed a judgement which it is not entitled to pass for want of jurisdiction, or did not use its valid jurisdiction, or used it illegally or improperly.

'Review' means a reconsideration of the judgement given by a court in the form of a decree or an order. This is usually done when the person aggrieved with the judgement feels that the court has not given due consideration to the facts of the case, or when new facts are discovered, or when there is some obvious mistake in the records.

2009 - June [3] Distinguish between the following:

(iv) '*Res judicata*' and 'stay of suits'.

(4 marks)

Answer :

(iv) 'Stay of suit' implies the action taken under Section 10 of the Code of Civil Procedure, 1908. It is the Doctrine of *res sub-judice*. The doctrine of *res sub-judice* refers to a matter pending before a judge, or court, or not yet decided. It is a matter under judicial consideration, meaning that a decision regarding the case it pertains to has not been reached yet. The doctrine or rule implies that if a matter is awaiting judicial proceedings and a decision may not be heard in any other court until it has been decided upon in the first court the matter was filed in. This doctrine helps in avoiding duplicity of cases, and prevents opposing judgements being reached in same matters (Section 10 of the Code of Civil Procedure, 1908). When such a case arises, generally a stay operates on the second or following suit.

'The Doctrine of Constructive *Res Judicata*' has been provided in Section 11 of the Code of Civil Procedure, 1908. It prevents further suits being filed for a matter that is at the core of a former suit. The reasons are as below –

- The same party should not be troubled with the same matter again and again.
- There should be a limit to the number of cases filed in a court, i.e. vexatious cases should not be entertained.
- The same matter should not be used for wasting valuable court time repeatedly.

The basic requirement for applying this doctrine is that the matter that is at the core of the former suit should also be the main essence of the latter suit(s).

2009 - Dec [3] Distinguish between the following :

(iv) 'Review' and 'revision' in civil law.

(4 marks)

Answer :

Review: Section 114 of the Civil Procedure Code provides that subject to prescribed provision any person considering himself aggrieved by a decree or order from which an appeal is allowed by this Code but from which no appeal has been preferred, by a decree or order from which no appeal is allowed by this court or by a decision on a reference from a Court of Small Causes, may apply for a review of the judgment to the court which passed the decree or made the order and the court may make such order thereon as it thinks fit.

Revision: Section 115 of the Civil Procedure Code provides that the High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto and if such subordinate court appears to have a jurisdiction not vested in it by law or to have failed to exercise a jurisdiction so vested or to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit. High Court shall not vary or reverse any order made or any order deciding an issue in the course of a suit or other proceeding except where the order if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

2010 - Dec [3] Distinguish between the following :

(iv) 'Set-off' and 'counter-claim'.

(4 marks)

Answer :

Please Refer 2008 - Dec [4] (ii) on page no. [238](#)

2011 - Dec [3] Distinguish between the following:

(i) 'Decree' and 'order'.

(4 marks)

Answer :

Basis	Decree	Order
1. Meaning	Decree is defined under Section 2(2) of the Code of Civil Procedure. It reads "decree means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final....".	An order is defined in Section 2(14) of CPC. It means the formal expression of any decision of a Civil Court which is not a decree.

2. Formal expression of adjudication/decision	Decree is the formal expression of an adjudication.	Order is the formal expression of any decision which is not a decree.
3. Appealability	Decree is appealable.	Orders are not generally appealable.
4. Determination of rights	Decree conclusively determines rights of parties.	Order may or may not finally determine such rights.
5. Origin	Decree comes into being after adjudication of plaint/written statement.	Order generally originates from an application.
6. Preliminary/final	Decree may be either preliminary or final.	Order has no such categories. They may, however, be interim/final.
7. Single/multiple	Final decree may be passed only once in a suit.	Many orders may be passed in a suit.
8. Right to appeal	Appeal generally follows.	Appeal is an exceptional right.
9. Number of appeals	There can be more than one appeal in decree.	Appeal from orders are specifically provided.
10. Second appeal	Second appeal is possible in a decree.	No second appeal from orders is possible.

2012 - June [5] Distinguish between the following:

(iv) 'Legal set-off' and 'equitable set-off'

(4 marks)

Answer :

'Set off' means a settlement where both the plaintiff and the defendant have some claims to be collected from each other. What one party owes to another might be used to discharge all or a part of the debt he is owed by the other party.

There are various types of set-offs. One of these is an 'equitable set-off'. It implies the rights of set-off arising from the same transaction instead of from different ones. Hence, the legal action takes the form of a single lawsuit instead of two different ones. This type of right is allowed only when allowed by court; it is not there inherently.

The differences between the two are as follows –

1. Fixed amount – In legal set off, the amount has to be ascertained, but in equitable set off, it need not be so ascertained.
2. Same/different transaction – An equitable set off needs to originate from the same transaction. But a legal set off can be derived from another transaction.
3. Court's discretion vs. claimant's right – Equitable set off can be claimed only at the court's discretion; it is not inherent, but legal set off is an inherent right.
4. Court fee – Court fee is to be paid mandatorily in case of legal set off, but is not required under equitable set off.
5. Time bar – An equitable claim may be time barred too, but no such facility exists for a legal claim.

2013 - June [3] Distinguish between the following.

(iii) 'Set-off' and 'counter claim'.

(iv) 'Review' and 'revision'.

(4 marks each)

Answer:

(iii) Set off and counter claim

'Set off' means a settlement where both the plaintiff and the defendant have some claims to be collected from each other. What one party owes to another might be used to discharge all or a part of the debt he is owed by the other party.

'Counterclaim' means a reverse claim made by one party against the other, where both claims are heard as part of the same proceedings. In set-off proceedings, there is a single judgement, whereas in case of counterclaims, there are separate judgements for each claim.

There are various types of set-offs. One of these is an 'equitable set-off'. It implies the rights of set-off arising from the same transaction instead of from different ones. Hence, the legal action takes the form of a single lawsuit instead of two different ones.

(iv) Review and revision

'Review' means a reconsideration of the judgement given by a court in the form of a decree or an order. This is usually done when the person aggrieved with the judgement feels that the court has not given due consideration to the facts of the case, or when new facts are discovered, or when there is some obvious mistake in the records.

'Revision' is when the High Court calls for the records of a case in which no appeal lies and if it feels that the lower court has passed a judgement which it is not entitled to pass for want of jurisdiction, or did not use its valid jurisdiction, or used it illegally or improperly.

2013 - Dec [3] Distinguish between the following:

(iii) 'Doctrine of *res sub judice*' and 'doctrine of *res judicata*'.

(4 marks)

DESCRIPTIVE QUESTIONS

2009 - Dec [4] (b) Discuss the doctrine of *res judicata* under section 11 of the Code of Civil Procedure, 1908. (5 marks)

Answer :

Res judicata: Once the suit is decided by court it cannot be filed subsequently between same parties on same cause of action. It restrains the repetition of same litigation. Once a *res is judicata*, it shall not be adjudged again. [Section 11]

Conditions for *res judicata*—

The matter directly and substantially in issue in former suit shall also be directly and substantially in issue in later suit.

The former suit has been decided—former suit means which is decided earlier. The said issue has been heard and finally decided.

Such former suit and the latter suit are between the same parties or litigation under the same title or persons claiming under parties above.

The doctrine of res judicata is based on the following grounds of public policy—

The doctrine of *res judicata* is bar or restraint on repetition of litigation of the same issues.

There should be an end of litigation

The parties to a suit should not be harassed to agitate the same issues or matters already decided between them.

The time of court should not be wasted over the matters that ought to have been and should have been decided in the former suit between the parties.

It is a rule of convenience and not a rule of absolute justice.

2011 - June [5] (c) Define *res judicata* and state the conditions of its application.

(5 marks)

Answer :

'The Doctrine of Constructive Res Judicata' has been provided in Section 11 of the Code of Civil Procedure, 1908. It prevents further suits being filed for a matter that is at the core of a former suit. The reasons are as below –

The same party should not be troubled with the same matter again and again.

There should be a limit to the number of cases filed in a court, i.e. vexatious cases should not be entertained.

The same matter should not be used for wasting valuable court time repeatedly. All reliefs claimed but not given will be deemed to be refused.

The court which tried the previous suit should be competent to try the latter suit.

The basic requirement for applying this doctrine is that the matter that is at the core of the former suit should also be the main essence of the latter suit(s).

2012 - June [4] Explain the following:

- (i) 'Cause of action' under the Code of Civil Procedure, 1908 (4 marks)

Answer :

'Cause of action' as per the Code of Civil Procedure, 1908, includes everything that the plaintiff would have to prove in order to claim the right to file a suit in any court of law. It includes anything that gives the plaintiff the right to file a suit in order to enforce his rights. It presupposes two things –

- Firstly, that there was a right which accrued to the plaintiff.
- Secondly, the right accruing to him was infringed, giving rise to a cause of action, i.e. a right to file a suit for the legal enforcement of his right.

Section 20(c) of the Code of Civil Procedure says that every suit shall be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises. That means that the cause of action entails the right to file a suit in the court within the local limits of which the cause of action arose.

2012 - Dec [4] Attempt the following:

- (iii) Explain the rules relating to delivery of summons by court under the Code of Civil Procedure (Amendment) Act, 2002. (4 marks)

Answer:

As per Rule 9 of the Code of Civil Procedure (Amendment) Act, 2002 –

1. Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.
2. The proper officer may be an officer of a Court other than that in which the suit is instituted, and where he is such an officer, the summons may be sent to him in such manner as the Court may direct.
3. The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:
Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.
4. Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the court in which the suit is instituted, and the Court

directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of Rule 21 shall not apply.

5. When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, ' - the Court issuing the summons shall declare that the summons had been duly served on the defendant:
Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.
6. The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).
7. Mode of service.- Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the court.
8. Service on several defendants.- Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.
9. Service to be on defendant in person when practicable, or on his agent.- Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.
10. Service on agent by whom defendant carries on business.-
 - (i) In a Suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.
 - (ii) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.
11. Service on agent in charge in suits for immovable property.- Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service

cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

12. Where service may be on an adult member of defendant's family.- Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him. Explanation: A Servant is not a member of his family within the meaning of this rule.
13. Person served to sign acknowledgement.- Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgement of service endorsed on the original summons.
14. Procedure when defendant refuses to accept service, or cannot be found.- Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and 'whose presence the copy was affixed.

2013 - June [2] (b) Discuss in brief the main remedies available to a person against whom *ex parte* decree is passed. (5 marks)

Answer:

Remedies available to a person against whom *ex parte* decree has been passed:

An *ex parte* decree is a decree passed in the absence of the defendant (*in absentia*). Where the plaintiff appears and the defendant does not appear when the suit is called out for hearing and if the defendant is duly served, the court may hear the suit *ex parte* and pass a decree against him. Such a decree is neither null and void nor inoperative

but is merely voidable and unless and until it is annulled on legal and valid grounds, it is proper, lawful, operative and enforceable like a *bi parte* decree and it has all the force of a valid decree.

REMEDIES

The defendant, against whom an ex parte decree has been passed, has the following remedies available to him:

- (1) Apply to the court by which such decree is passed to set it aside: Order 9 Rule 13; or
- (2) Prefer an appeal against such decree: Section 96(2) (or to file a revision under Section 115 where no appeal lies);
- (3) Apply for review: Order 47 Rule 1; or
- (4) File a suit on the ground of fraud.

The above remedies are concurrent and they can be prosecuted simultaneously or concurrently. "Where two proceedings or two remedies are provided by a statute, one of them must not be taken as operating in derogation of the other."

2013 - Dec [2] Discuss the following:

- (iv) Summary suit applies to a suit to prevent unreasonable obstruction by a defendant. (4 mark)

PRACTICAL QUESTIONS

2009 - Dec [6] (c) A suit was instituted by the plaintiff company alleging infringement by the defendant company for using trade name of medicine and selling the same in wrapper and carton of identical designs with same colour combination, *etc.*, as that of plaintiff company. A subsequent suit was instituted in a different court by the defendant company against the plaintiff company with similar allegations. In such a situation, advise the plaintiff company the procedure adopted by the courts. (5 marks)

Answer :

Rule: Section 10 of the Civil Procedure Code deals with stay of suit. Stay of suits prevents courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of same matter in issue. The purpose is also to avoid conflict of decision. The institution of second suit is not barred but the trial cannot be proceeded with.

Facts of the case: A suit was instituted by the plaintiff company alleging infringement by the defendant company by using trade name of biscuits and selling the same in the packing of identical design, *etc.*, as that of plaintiff company. A subsequent suit was instituted in a different court by the defendant company against the plaintiff company with the similar allegations.

Question involved: What is the validity of the subsequent suit?

Decision: The institution of subsequent suit as per the rule above is not barred but the trial cannot be proceeded with.

2009 - Dec [8] (b) Aamir effects an insurance policy on his own life with the Life Insurance Corporation of India (LIC) and deposits it with a bank for securing payment of an existing debt. Aamir dies and bank claims the amount from the LIC contrary to the claims of Aamir's heirs. Decide whether the claim of the bank is maintainable.

(5 marks)

Answer :

In the terms of the provisions of the Transfer of Property Act 1882, if Aamir dies, the bank is entitled to receive the amount of the policy and to sue on it without concurrence of Aamir's executors. The aforesaid provisions are :-

Section 130 of the Transfer of Property Act, 1882 provides rules for transfer of actionable claim as under:

- (a) Transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent.
- (b) Such transfer shall be complete and effectual upon the execution of such instrument.
- (c) All the rights and remedies of the transferor, whether by way of damages or otherwise, shall be vested in the transferee, whether such notice of the transfer is given or not.
- (d) Every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would have been entitled to recover or enforce such debt or other actionable claim, shall be valid as against such transfer.
- (e) The transferee of an actionable claim may, upon the execution of such instrument of transfer, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.
- (f) The aforesaid provisions shall not apply to the transfer of a marine or fire policy of insurance. or affects the provisions of section 38 of the Insurance Act, 1938.

2010 - June [8] (a) Anil was a trustee of a trust. After Anil's death, Brij wrongfully takes the possession of the trust property. Chandan, the son of Anil files a suit for recovery of possession of the property against Brij as the legal heir of Anil in his individual capacity. But Chandan did not succeed. Then Chandan files another suit for recovery of trust property against Brij in the capacity of trustee as he was appointed as trustee after the death of Anil. Whether the second suit is barred by the doctrine of constructive *res judicata*? Explain.

(6 marks)

- (b) Mohan filed a suit against Sohan and Rohan for partition of coparcenary property 'P-1'. The suit has been decided. Mohan files another suit against Sohan and Rohan for the partition of coparcenary property 'P-2', which was in existence at the time of filing of the first suit. Decide. (5 marks)

Answer :

- (a) 'The Doctrine of Constructive *Res Judicata*' has been provided in Section 11 of the Code of Civil Procedure, 1908. It prevents further suits being filed for a matter that is at the core of a former suit. The reasons are as below –

- The same party should not be troubled with the same matter again and again.
- There should be a limit to the number of cases filed in a court, i.e. vexatious cases should not be entertained.
- The same matter should not be used for wasting valuable court time repeatedly.

The basic requirement for applying this doctrine is that the matter that is at the core of the former suit should also be the main essence of the latter suit(s).

In this case, the two suits are filed by Chandan in two different capacities. Hence, the second suit is not barred.

- (b) This case is covered by Rule 2 (Order 2) of the CPC, which provides that in a previous suit filed by the plaintiff, the entire claim which he is desirous of obtaining should be included. If it is not so done, inclusion of the claims left out in the previous plaint will not be allowed in a second plaint filed by the same party against the same defendant.

Hence, the second suit filed by Mohan against Sohan and Rohan is not to be allowed.

2010 - Dec [7] (c) Ram and Shyam sell rice for ₹ 25,000 to Sohan and Mohan. Sohan sells cloth worth ₹ 28,000 to Shyam. Sohan files a suit against Shyam for recovery of price of cloth. Shyam claims set-off of the cost of rice in this suit. Will he succeed ?

(5 marks)

Answer :

'Set off' means a settlement where both the plaintiff and the defendant have some claims to be collected from each other. What one party owes to another might be used to discharge all or a part of the debt he is owed by the other party.

In the given case, Sohan is the plaintiff while Shyam is the defendant. The amount of which set-off is claimed by the defendant Shyam is not recoverable from Mohan, who is jointly liable with Sohan to pay it. Mohan is not party to this suit.

In view of the factual situation, Shyam will not be allowed set-off of the amount claimed by him, as set off is allowed only against those parties which are jointly liable in the first place.

2011 - June [7] (a) Alok was running a school at a certain place. Bimal started another school near the school of Alok. As a result of this, most of the students of Alok's school left his school and joined Bimal's school. Due to competition, Alok had to reduce the fees by ₹ 40 per student per quarter thereby suffering huge monetary loss. Alok instituted a suit against Bimal in the court for claiming compensation. Is the suit instituted by Alok maintainable ? (6 marks)

Answer :

In the law of torts there are two types of doctrines under the law of torts – Injuria sine damnum, and damnum sine injuria.

There are many acts which though harmful are not wrongful and give no right of action to him who suffers from their effects. Damage so done and suffered is called Damnum Sine Injuria or damage without injury. Damage without breach of a legal right will not constitute a tort. Such examples would constitute injury but not damage, as per the rules of torts. They are instances of damage suffered from justifiable acts. An act or omission committed with lawful justification or excuse will not be a cause of action though it results in harm to another as a combination in furtherance of trade interest or lawful user of one's own premises. In Gloucester Grammar School Master Case, it had been held that the plaintiff school master had no right to complain of the opening of a new school. The damage suffered was mere damnum absque/sine injuria or damage without injury.

Hence, in this case, the case is not maintainable, as in opening the school; Bimal is merely exercising his legal right.

2012 - June [8] (a) A transport company has its head office at Kolkata and branch offices at Allahabad, Lucknow and Puri. A dispute cropped up between Hassan and the transport company in respect of a transaction through Allahabad office. Hassan files a suit in respect of this dispute against the company in a court at Puri. Is the court at Puri competent to decide this case ? Give reasons. (5 marks)

Answer :

The suit can only be filed in Kolkata or Allahabad, but not in Puri, as per Section 20 of the Code of Civil Procedure.

The Civil Procedure Code 1908, Section 20, tells about where suits are to be instituted - where defendants reside or cause of action arises.

Subject to the limitations aforesaid, every suit shall be instituted in Court within the local limits of whose jurisdiction-

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business,

or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
(c) the cause of action, wholly or in part, arises.

2012 - Dec [8] (c) A suit was instituted by the plaintiff company alleging infringement by the defendant company by using trade name of medicine and selling the same colour combination, etc., as that of plaintiff company. A subsequent suit was instituted in a different court by the defendant company containing the same allegations. Advise the plaintiff company about the steps to be taken by it giving reference to relevant legal provisions and case law. (5 marks)

Answer:

In this case, the plaintiff can file an application for a stay on the subsequent suit. 'Stay of suit' implies the action taken under Section 10 of the Code of Civil Procedure, 1908. It is the Doctrine of res sub-judice. The doctrine of res sub-judice refers to a matter pending before a judge, or court, or not yet decided. It is a matter under judicial consideration, meaning that a decision regarding the case it pertains to has not been reached yet. The doctrine or rule implies that if a matter is awaiting judicial proceedings and a decision may not be heard in any other court until it has been decided upon in the first court the matter was filed in. This doctrine helps in avoiding duplicity of cases, and prevents opposing judgements being reached in same matters (Section 10 of the Code of Civil Procedure, 1908). When such a case arises, generally a stay operates on the second or following suit.

2013 - June [8] (b) The driver of a petrol lorry, while transferring petrol from the lorry to an underground tank at a garage, struck a matchstick in order to light a cigarette and then threw it, still alight on the floor. An explosion and a fire ensued. Who is liable for the damage so caused? Decide giving case law on this point. (5 marks)

Answer:

This case pertains to the Law of Torts, i.e. the law pertaining to vicarious liability. Under these rules, the principal is liable for the wrongs of his agents, based on the maxim – *Qui facit per alium facit per se* (He who acts through an agent acts himself, i.e. even if someone is acting through an agent, and the agent is acting as per the principal's directions, it can be assumed that the principal is acting himself.). In this case, the employer will be liable for the acts of his agent, i.e. the driver. This matches the case of *Century Insurance Co. Ltd. v. Northern Ireland Road Transport Board*, in which it was decided that the driver although doing an authorized work, was doing it in an unauthorized manner. This will not, however, exempt the employer and the employer will be held liable for the wrong of the driver.

CS Inter Gr. I

SHORT NOTES

2006 - Dec [2] (a) Write short note on 'temporary injunctions' and 'interlocutory orders'.
(4 marks)

Answer :

'Temporary injunctions', according to Order XXXIX of the Code of Civil Procedure, 1908, means an order passed by a court to restrain someone from doing something that would result in alienation of property, or its destruction, or when the plaintiff is in danger of being dispossessed altogether. The plaintiff needs to establish to the satisfaction of the court that the losses suffered by him would be irreversible, and of such a nature as cannot be compensated, if the injunction is not granted. Such an injunction is for a short duration of time, normally for the time taken by the court to reach a final decision. It is issued after the suit has been filed and when it remains pending. A prima facie case and balance of convenience in the plaintiff's favor are essential to get a temporary injunction issued.

'Interlocutory orders' are orders passed by a court of law in a case where they feel an order should be given regarding a matter that needs to be resolved as soon as possible, or the value of the property in question would diminish. For example, the court may order sale of movable property even when the suit has not been resolved, if the property is subject to depreciation in value with the passage of time.

DISTINGUISH BETWEEN

2005 - Dec [4] (b) Differentiate between the following in the context of the Code of Civil Procedure, 1908:

- (i) 'Set off' 'counter claim' and 'equitable set off'.
- (ii) 'Reference', 'review' and 'revision'. (4 marks each)

Answer :

- (i) Please refer 2008 - Dec [4] (ii) on Page no. [238](#)
- (ii) 'Reference' implies a case being sent to the High Court for its opinion in the form of an order. This is normally done in case the lower court needs guidance or when the case has the possibility of setting a precedent.

'Review' means a reconsideration of the judgement given by a court in the form of a decree or an order. This is usually done when the person aggrieved

with the judgement feels that the court has not given due consideration to the facts of the case, or when new facts are discovered, or when there is some obvious mistake in the records.

'Revision' is when the High Court calls for the records of a case in which no appeal lies and if it feels that the lower court has passed a judgement which it is not entitled to pass for want of jurisdiction, or did not use its valid jurisdiction, or used it illegally or improperly.

2007 - June [3] Distinguish between the following :

(v) 'Decree' 2008 and 'order'.

(4 marks)

Answer :

'Decree' means the declaration given by the court as a decision in a suit as to the rights of a litigating party. It can be a preliminary decree or a final one. They are issued to uphold the rights of a party to any property or to some legal recourse.

'Order' means a decision given by a civil court in a case; it is not a decree. It means a proclamation passed by the court that decides upon the legal relationship between parties and their inter se rights and liabilities.

A court' judgement may be either by way of an order or a decree.

DESCRIPTIVE QUESTIONS

2004 - June [5] (a) Define '*ex parte decree*' and also mention the time limit and grounds for making an application to set aside an *ex parte decree*. (8 marks)

Answer :

According to Order 9, Rules 3 and 4 of the Code of Civil Procedure, 1908, if the plaintiff to a suit is present and the defendant is absent despite summons being served on him by the court, the court can decide the suit *ex parte*. However, the defendant may want to file an application for setting aside a decree passed *ex parte*. For this, he has to file an appeal for setting aside the decree with the relevant court. However, he shall have to prove that either the summons was not served properly or he had a sufficient cause for not being present on the date of the hearing. Upon being satisfied by his explanation, the court shall set aside the decree and continue with the proceedings.

2004 - June [8] (b) Explain the doctrine of constructive *res judicata*. (5 marks)

Answer :

'The Doctrine of Constructive Res Judicata' has been provided in Section 11 of the Code of Civil Procedure, 1908. It prevents further suits being filed for a matter that is at the core of a former suit. The reasons are as below –

- The same party should not be troubled with the same matter again and again.
 - There should be a limit to the number of cases filed in a court, i.e. vexatious cases should not be entertained.
 - The same matter should not be used for wasting valuable court time repeatedly.
- The basic requirement for applying this doctrine is that the matter that is at the core of the former suit should also be the main essence of the latter suit(s).

2004 - Dec [3] (b) Discuss the doctrine of *res sub-judice*. (5 marks)

Answer :

The doctrine of *res sub-judice* refers to a matter pending before a judge, or court, or not yet decided. It is a matter under judicial consideration, meaning that a decision regarding the case it pertains to has not been reached yet. The doctrine or rule implies that if a matter is awaiting judicial proceedings and a decision may not be heard in any other court until it has been decided upon in the first court the matter was filed in. This doctrine helps in avoiding duplicity of cases, and prevents opposing judgements being reached in same matters (Section 10 of the Code of Civil Procedure, 1908).

2005 - June [4] (a) Discuss the doctrine of *stay of suit* under the Code of Civil Procedure, 1908. How far is it different with that of *res judicata*? Explain. (8 marks)

Answer :

'Stay of suit' implies the action taken under Section 10 of the Code of Civil Procedure, 1908. It is the Doctrine of *res sub-judice*. The doctrine of *res sub-judice* refers to a matter pending before a judge, or court, or not yet decided. It is a matter under judicial consideration, meaning that a decision regarding the case it pertains to has not been reached yet. The doctrine or rule implies that if a matter is awaiting judicial proceedings and a decision may not be heard in any other court until it has been decided upon in the first court the matter was filed in. This doctrine helps in avoiding duplicity of cases, and prevents opposing judgements being reached in same matters (Section 10 of the Code of Civil Procedure, 1908). When such a case arises, generally a stay operates on the second or following suit.

'The Doctrine of Constructive *Res Judicata*' has been provided in Section 11 of the Code of Civil Procedure, 1908. It prevents further suits being filed for a matter that is at the core of a former suit. The reasons are as below –

- The same party should not be troubled with the same matter again and again.
 - There should be a limit to the number of cases filed in a court, i.e. vexatious cases should not be entertained.
 - The same matter should not be used for wasting valuable court time repeatedly.
- The basic requirement for applying this doctrine is that the matter that is at the core of the former suit should also be the main essence of the latter suit(s).

2007 - Dec [1] {C} Comment on the following :

- (ii) A person cannot approbate and reprobate. (4 marks)

Answer :

'A person cannot approbate and reprobate.' This statement is true, as one person cannot have two differing opinions on the same subject. It stems from a Latin maxim 'quod approbo non reprobo'. This is similar to the Doctrine of Election, which says that a person cannot take just the benefit arising out of an instrument and not take the burden; he has to choose either to bear both, or to reject both. For example, a person who wants to enjoy a property willed to him can only enjoy it if he fulfils the condition that he has to transfer his own property to another. He has to either fulfil both conditions or leave his claim to that property. (Soba Ram vs. State of J&K and Another, Copper vs. Copper).

2007 - Dec [1] {C} Comment on the following :

- (vi) No one shall be vexed twice for the same cause of action. (4 marks)

Answer :

This is implicit in the Doctrine of Res Judicata. 'The Doctrine of Constructive Res Judicata' has been provided in Section 11 of the Code of Civil Procedure, 1908. It prevents further suits being filed for a matter that is at the core of a former suit. The reasons are as below –

- The same party should not be troubled with the same matter again and again.
- There should be a limit to the number of cases filed in a court, i.e. vexatious cases should not be entertained.
- The same matter should not be used for wasting valuable court time repeatedly.

The basic requirement for applying this doctrine is that the matter that is at the core of the former suit should also be the main essence of the latter suit(s).

2007 - Dec [4] (a) Briefly discuss the powers of the court to grant temporary injunction. (4 marks)

Answer :

'Temporary injunctions', according to Order XXXIX of the Code of Civil Procedure, 1908, means an order passed by a court to restrain someone from doing something that would result in alienation of property, or its destruction, or when the plaintiff is in danger of being dispossessed altogether. The plaintiff needs to establish to the satisfaction of the court that the losses suffered by him would be irreversible, and of such a nature as cannot be compensated, if the injunction is not granted. Such an injunction is for a short duration of time, normally for the time taken by the court to reach a final decision. It is issued after the suit has been filed and when it remains pending. A prima facie case and balance of convenience in the plaintiff's favor are essential to get a temporary injunction issued.

2008 - June [6] (b) Attempt the following :

- (ii) All orders made by courts are not appealable under the Code of Civil Procedure, 1908. What are the appealable orders under the Code of Civil Procedure, 1908 ?
(4 marks)

Answer :

The Code of Civil Procedure, 1908 provides for an appeal against the following orders, under Section 104 –

- An order for compensatory costs in respect of untrue or vexatious claims or defenses (Section 35A)
- An order for relief under Sections 91 and 92 of the Code of Civil Procedure, 1908, which cover public nuisances and other wrongful acts affecting the public and in the case of any suspected breach of any express or constructive trust of a charitable or religious nature.
- In any suit in which an arrest or attachment has been effected or a temporary injunction granted under Section 95, where the aggrieved feels that he has been arrested on insufficient grounds.
- An order under this Code inflicting a punishment of fine or arrest or detention, except where such arrest or detention is in execution of a decree.

Other than these, any other order that is expressly stated as such in the Code of Civil Procedure, 1908, can be appealed against.

PRACTICAL QUESTIONS

2004 - June [8] (a) A suit was instituted by the plaintiff company alleging infringement by the defendant company by using trade name of biscuits and selling the same in the packing of identical design, etc., as that of plaintiff company. A subsequent suit was instituted in a different court by the defendant company against the plaintiff company with the similar allegations. Discuss the validity of the subsequent suit. (6 marks)

Answer :

The doctrine of res sub-judice refers to a matter pending before a judge, or court, or not yet decided. It is a matter under judicial consideration, meaning that a decision regarding the case it pertains to has not been reached yet. The doctrine or rule implies that if a matter is awaiting judicial proceedings and a decision may not be heard in any other court until it has been decided upon in the first court the matter was filed in. This doctrine helps in avoiding duplicity of cases, and prevents opposing judgements being reached in same matters (Section 10 of the Code of Civil Procedure, 1908).

The doctrine of 'Constructive Res Judicata' that is provided for in Section 11 of the Code of Civil Procedure, 1908. It prevents further suits being filed for a matter that is at the core of a former suit.

Since the parties are the same in both suits and the subject matter of both the suits is also same, the second suit would be res sub-judice, and it will be stayed until the first suit is decided. The judgement of the first suit will then be res judicata for the second one.

2004 - Dec [6] (c) Aman filed a suit against Bhuvan for obtaining a house and land property of Chaman on the ground that Chaman had bequeathed those properties to him by a will. But, Aman failed to prove the will and his suit was dismissed. Now, Aman files a fresh suit to get the properties of Chaman on the ground that he is the only and nearest heir to Chaman. Will Aman succeed? (5 marks)

Answer :

A dismissal of a suit operates as res judicata for suits filed on the same matter between the same parties.

It is covered by the doctrine of 'Constructive Res Judicata' that is provided for in Section 11 of the Code of Civil Procedure, 1908. It prevents further suits being filed for a matter that is at the core of a former suit. The requirements and reasons are as below –

- The same party should not be troubled with the same matter again and again.
- There should be a limit to the number of cases filed in a court, i.e. vexatious cases should not be entertained.
- The same matter should not be used for wasting valuable court time repeatedly.

The basic requirement for applying this doctrine is that the matter that is at the core of the former suit should also be the main essence of the latter suit(s). Since this is not the case here, the subsequent suit will not be maintained and Aman will not succeed. (Mukunda Jana vs. Kanta Mandal)

2005 - Dec [8] (c) Anubhav owes ₹ 10,000 to the partnership firm of Bose and Chander. Bose dies leaving Chander surviving. Anubhav sues Chander for a debt of ₹ 15,000 due in his individual capacity. Can Chander set off the debt of ₹ 10,000? (6 marks)

Answer :

This is covered by the terms of set-off provided for in the Code of Civil Procedure, 1908. 'Set off' means a settlement where both the plaintiff and the defendant have some claims to be collected from each other. What one party owes to another might be used to discharge all or a part of the debt he is owed by the other party.

In this case, after the death of Bose, only Chander survives in the partnership firm, to which Anubhav owes ₹ 10,000. Anubhav later on sues Chander for an individual debt of ₹ 15,000. Since the situation fulfils all the demands of a valid set-off, it is permissible.

2006 - June [6] (b) Ajeet resides at Bhopal, Baljeet at Indore and Charanjeet at Lucknow. Ajeet, Baljeet and Charanjeet being together at Kolkata, Baljeet and Charanjeet make a joint promissory note payable on demand and deliver it to Ajeet. Where can Ajeet sue Baljeet and Charanjeet for the amount of the promissory note ? (5 marks)

Answer :

According to Section 20 of the Code of Civil Procedure, 1908, in case of a dispute arising, the plaintiff can sue the defendants in a court within whose jurisdiction they reside or carry on business or work for gain. Alternatively, they can be sued in the place where the cause of action arose.

Hence, in this case, Ajeet can sue Baljeet and Charanjeet at Indore, Lucknow or Kolkata.

2006 - Dec [4] (a) ABC Ltd. is a pharmaceutical company having its corporate office in Mumbai. XYZ Ltd., another pharmaceutical company, is carrying on pharmaceutical business at Nagpur. XYZ Ltd. published an advertisement at Bangalore constituting infringement of the registered trade mark of ABC Ltd. ABC Ltd. intends to institute a suit for damages against XYZ Ltd. Advise where ABC Ltd. should institute the suit.

(5 marks)

Answer :

According to Section 20 of the Code of Civil Procedure, 1908, in case of a dispute arising, the plaintiff can sue the defendants in a court within whose jurisdiction they reside or carry on business or work for gain. Alternatively, they can be sued in the place where the cause of action arose.

Hence, ABC Ltd. can institute a suit against XYZ Ltd. at Nagpur or Bangalore.

2007 - June [8] (b) Avinash, residing in Delhi, requests his friend Bishnoy, residing in Lucknow, for a loan of ₹ 10 lakh. Bishnoy asks Avinash to come to Lucknow and collect the cheque for the said amount. Accordingly, Avinash collects the cheque at Lucknow. Avinash has failed to repay the loan. Bishnoy wants to institute a suit for the recovery of loan against Avinash. Mention the place where Bishnoy can file a suit against Avinash. Give reasons in support of your answer.

(5 marks)

Answer :

According to Section 20 of the Code of Civil Procedure, 1908, in case of a dispute arising, the plaintiff can sue the defendants in a court within whose jurisdiction they reside or carry on business or work for gain. Alternatively, they can be sued in the place where the cause of action arose, in part or completely.

Bishnoy can, hence, sue Avinash in Lucknow, as the cause of action arose there. Moreover, Avinash came to Lucknow to collect the loan amount, so he can be sued there.

2008 - June [7] (a) A suit was instituted by Rosy Pvt. Ltd. dealing in cosmetics alleging infringement by Sunder Pvt. Ltd. by using trade name 'Monica' and selling the same in wrappers and cartons of identical design and colour used by the plaintiff company. A subsequent suit was instituted in different court by the defendant company (Sunder Pvt. Ltd.) against the plaintiff company with the same allegation. Decide, whether the subsequent suit will be allowed to continue. Give reasons and support your answer with case law.

(4 marks)

Answer :

A suit was instituted by Rosy Pvt. Ltd. dealing in cosmetics alleging infringement by Sunder Pvt. Ltd. by using trade name 'Monica' and selling the same in wrappers and cartons of identical design and colour used by the plaintiff company. A subsequent suit was instituted in different court by the defendant company (Sunder Pvt. Ltd.) against the plaintiff company with the same allegation.

This case is covered by the Doctrine of Res Judicata. 'The Doctrine of Constructive Res Judicata' has been provided in Section 11 of the Code of Civil Procedure, 1908. It prevents further suits being filed for a matter that is at the core of a former suit. The reasons are as below—

- The same party should not be troubled with the same matter again and again.
- There should be a limit to the number of cases filed in a court, i.e. vexatious cases should not be entertained.
- The same matter should not be used for wasting valuable court time repeatedly.

The basic requirement for applying this doctrine is that the matter that is at the core of the former suit should also be the main essence of the latter suit(s).

Hence, in this case, the subsequent suit will not be allowed to continue. This was also observed in the case of Ramdas Nayak v. Union of India, where the court observed: It is a repetitive litigation on the very same issue coming up before the courts again and again in the grab of public interest litigation. It is high time to put an end to the same.

2008 - June [8] (c) A transport company has its head office at Mumbai and branch offices at Allahabad, Patna and Bhopal. A dispute cropped up between Sameer and the company in respect of a transaction through Allahabad office. Sameer files a suit in respect of this dispute against the company in a court at Patna. How will the court decide ? (5 marks)

Answer :

According to Explanation II appended to Section 20 of the Code of Civil Procedure, "a corporation shall be deemed to carry on business at its sole or principal office in India, or in respect of any cause of action arising at any place where it has also a subordinate office at such place".

in this view of the given facts of the case as well as the legal provisions mentioned above, the court at Patna has no jurisdiction to try the suit as the cause of action in respect of the transaction has not arisen through Patna Branch Office.

1.260

■ *Solved Scanner* CS Executive Programme M-I Paper 1

Repeatedly Asked Questions		
No.	Question	Frequency
1	Distinguish between 'order' and 'decree'. 07 - June [3] (v), 08 - Dec [4] (i)	2 Times
2	Practical Questions of 06 - June [6] (b), and 06 - Dec [4] (a)	2 Times
3	'Set-off', 'counter-claim' and 'equitable set-off'. 05 - Dec [4] (b) (i), 08 - Dec [4] (ii), 10 - Dec [3] (iv), 13 - June [3] (iii)	4 Times
4	Discuss the doctrine of <i>res judicata</i> under section 11 of the Code of Civil Procedure, 1908. 04 - June [8] (b), 09 - Dec [4] (b), 11 - June [5] (c)	3 Times
5	Distinguish between 'Review' and 'revision'. 09 - Dec [3] (iv), 13 - June [3] (iv)	2 Times

Star Rating

On the basis of Maximum marks from a chapter

☆

On the basis of Questions included every year from a chapter

☆☆☆

On the basis of Compulsory questions from a chapter

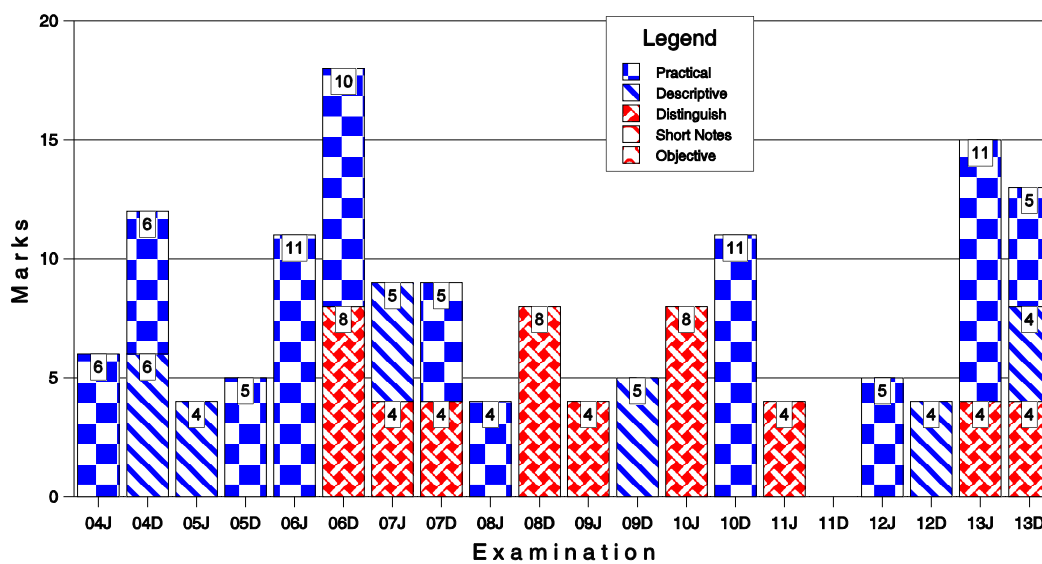
Nil

9

The Code of Criminal Procedure, 1973

This Chapter Includes : Introduction; Important Definitions; Classes of Criminal Courts; Power of Courts; Summons & Warrants; Power of Magistrate; Limitations for taking cognizance, Summary Trials.

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



CS Executive Programme (Module I)

OBJECTIVE QUESTIONS

2008 - Dec [1] {C} (c) Re-write the following sentences after filling-up the blank spaces with appropriate word(s)/figure(s) :

- (iv) No sentence of imprisonment for a term exceeding _____ shall be passed in any case or instance in a summary trial. (1 mark)
- (vi) A person who refuses to receive a registered letter is deemed to have _____ notice of its contents. (1 mark)
- (vii) Doctrine which underlines the general principle that no one shall be vexed twice for the same cause in civil cases is called _____. (1 mark)

Answer :

- (iv) No sentence of imprisonment for a term exceeding **three** months shall be passed in any case or instance in a summary trial.
- (vi) A person who refuses to receive a registered letter is deemed to have **constructive** notice of its contents.
- (vii) Doctrine which underlines the general principle that no one shall be vexed twice for the same cause in civil cases is called **Constructive Res** Judicata

2008 - Dec [6] (a) Choose the most appropriate answer from the given options in respect of the following :

- (viii) A Magistrate of the first class may pass a sentence of -
 - (a) imprisonment for a term not exceeding 10 years or of fine upto ₹ 10,000 or of both
 - (b) imprisonment for a term not exceeding 5 years or of fine upto ₹ 20,000 or of both
 - (c) imprisonment for a term not exceeding 7 years or of fine upto ₹ 15,000 or of both
 - (d) imprisonment for a term not exceeding 3 years or of fine upto ₹ 5,000 or of both. (1 mark)

Answer :

- (viii) (d).

2009 - June [6] (a) Choose the most appropriate answer from the given options in respect of the following :

- (vi) The Chief Judicial Magistrate is empowered to pass –
 - (a) Any sentence authorised by law
 - (b) Any sentence except a sentence of death

- (c) Any sentence except a sentence of death, life imprisonment or imprisonment for a term exceeding seven years
- (d) Any sentence except a sentence of death and life imprisonment. (1 mark)
- (viii) A magistrate may take cognizance of any offence upon –
 - (a) His own knowledge
 - (b) The information of police officer
 - (c) The information of any person other than police officer
 - (d) His own knowledge, police report and complaint or information received from any person other than police officer. (1 mark)

Answer :

- (vi) (c) Any sentence except a sentence of death, life imprisonment or imprisonment for a term exceeding seven years
- (viii) (d) His own knowledge, police report and complaint or information received from any person other than police officer.

2009 - June [6] (b) Re-write the following sentences after filling-in the blank spaces with appropriate word (s)/figure (s) :

- (iii) A police officer may arrest any person without warrant if he has committed _____ offence. (1 mark)

Answer :

- (iii) A police officer may arrest any person without warrant if he has committed **cognizable** offence.

2009 - Dec [5] (b) Choose the most appropriate answer from the given options in respect of the following :

- (iv) Who may pass any sentence authorised by law —
 - (a) District Magistrate
 - (b) Chief Judicial Magistrate
 - (c) Sessions Judge
 - (d) Magistrate of the First Class. (1 mark)

Answer :

- (iv) (b)

2010 - June [5] (c) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (ii) A police officer may arrest an accused without warrant in case of _____. (1 mark)
- (iii) The Court of a Judicial Magistrate of the First Class is authorised to pass a sentence of _____. (1 mark)
- (iv) The right to maintenance under section 125 of the Code of Criminal Procedure, 1973 is available to _____. (1 mark)

Answer :

- (ii) cognizable offences.
- (iii) imprisonment upto three years or with fine or with both.
- (iv) dependants unable to maintain themselves (spouse, children both legitimate and illegitimate and parents).

2010 - Dec [6] State, with reasons in brief, whether the following statements are true or false :

- (iv) The limitation for taking cognizance of certain offences has been prescribed by the Code of Criminal Procedure, 1973. (2 marks)
- (viii) A judicial proceeding under the Code of Criminal Procedure, 1973 includes inquiry, trial and investigation. (2 marks)

Answer :

- (iv) **Correct** : Chapter XXXVI of the Cr.P.C prescribes limitation period for taking cognizance of certain offences.
- (viii) **Incorrect** : The term judicial proceeding includes inquiry and trial but does not include investigation. [Section 2(i)] of the Cr.P.C]

2011 - June [6] State, with reasons in brief, whether the following statements are true or false :

- (iv) A complaint in a criminal case is what a plaint is in a civil case. (2 marks)

Answer :

- (iv) **True.** A complaint in CrPC means a complaint made to a magistrate. It is defined in Section 2(d) of CrPC. As per the section it means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

2011 - Dec [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (v) Where warrant remains unexecuted, the Code of Criminal Procedure, 1973 provides the remedy(ies) of —
 - (a) Issuing a proclamation
 - (b) Attachment and sale of property
 - (c) Sale of the property
 - (d) Both (a) and (b) above. (1 mark)
- (vi) Any magistrate of the first class and of the second class is specially empowered to take cognizance of an offence upon —
 - (a) His own knowledge that such offence has been committed
 - (b) Receiving a complaint of facts constituting such offence
 - (c) Information received from a police officer
 - (d) Both (a) and (b) above. (1 mark)

Answer :

- (v) (d) Both (a) and (b) above.
- (vi) (d) Both (a) and (b) above.

2011 - Dec [7] State, with reasons in brief, whether the following statements are true or false:

- (iv) The limitation for taking cognizance of certain offences has been prescribed by the Code of Criminal Procedure, 1973. (2 marks)
- (viii) Under the provisions of the Code of Criminal Procedure, 1973, the magistrate is empowered to issue search warrant for searching a document, parcel or other things in the custody of the postal or telegraph authority. (2 marks)

Answer :

- (iv) **True:** Section 468 in The Code Of Criminal Procedure, 1973 as quoted, says that – there is a bar to taking cognizance after lapse of the period of limitation.
 1. Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.
 2. The period of limitation shall be-
 - (a) six months, if the offence is punishable with fine only
 - (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
 - (c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.
- (viii) **False:** As per Section 93 Sub-Section (3), nothing contained in this section shall authorize any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority. It might however, be issued by a magistrate other than a District Magistrate or Chief Judicial Magistrate.

2012 - June [6] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (ii) A private person may arrest or cause to be arrested any person who is a _____ . (1 mark)
- (iii) A police officer may conduct investigation without a Magistrate's order in _____ . (1 mark)

Answer:

- (ii) Proclaimed offender
- (iii) Cognizable offence

2012 - June [7] State, with reasons in brief, whether the following statements are true or false :

- (vii) Anil is tried for the murder of Sunil. The fact that before the death of Sunil, Anil procured poison similar to that which was administered to Sunil is not relevant. (2 marks)
- (viii) A search warrant can be issued in cases where the court has reason to believe that a person summoned to produce any document or other thing will not produce it. (2 marks)

Answer:

- (vii) **False:** The fact is relevant as per Section 8 of the Indian Evidence Act.
- (viii) **True:** The court may issue such a warrant to recover/inspect the object/document required, which the person might not produce willingly.

2012 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (v) In every criminal offence, _____ is an essential ingredient. (1 mark)
- (vi) A complaint in criminal case must be made to _____. (1 mark)
- (vii) A private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence or who is a _____. (1 mark)

Answer:

- (v) *mens rea*
- (vi) magistrate
- (vii) proclaimed offender.

2012 - Dec [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (viii) Under the Code of Criminal Procedure, 1973, a search warrant can be issued under—
- (a) Section 91
- (b) Section 92
- (c) Section 92(2)
- (d) Section 93. (1 mark)

Answer:

- (d) Section 93.

2012 - Dec [6] State, with reasons in brief, whether the following statements are true or false:

- (ii) Every copy of the summons issued must be signed by the Judge or an authorised officer of the court. (2 marks)

- (iii) Under the Code of Criminal Procedure, 1973, summary trial is conducted in those offences which are not punishable with imprisonment for a term exceeding two years. (2 marks)

Answer:

- (ii) **True:** As per Order 5 of The Civil Procedure Code, 1908, summons need to be signed by the judge from whose court it is issued, and sealed with the seal of the Court in order to be valid.
- (iii) **True:** Section 260 Clause 2 of the Code lists certain offences which may be summarily tried by any Chief Judicial Magistrate, any Metropolitan Magistrate or any Judicial Magistrate First Class. The offences that may be tried summarily under this Section are: offences not punishable with death, life imprisonment, or imprisonment for a term exceeding two years.

2013 - June [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (iii) Which of the following are the different classes of criminal courts —
- (a) High Courts
 - (b) Sessions Courts
 - (c) Judicial Magistrates
 - (d) All of the above.
- (iv) Which of the following judicial authorities shall not conduct a summary trial —
- (a) Any Judge of a High Court
 - (b) Any Chief Judicial Magistrate
 - (c) Any Metropolitan Magistrate
 - (d) Any first class Magistrate specifically empowered by a High Court.
- (1 mark each)

Answer:

- (iii) (d) All of the above.
- (iv) (a) Any Judge of a High Court

2013 - Dec [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (vi) Death sentence can be passed by the court of a —
- (a) Chief Judicial Magistrate
 - (b) Metropolitan Magistrate
 - (c) Magistrate of the First Class
 - (d) None of the above.
- (1 mark)

DISTINGUISH BETWEEN

2008 - Dec [4] Distinguish between the following :

- (iv) 'Cognizable offence' and 'non-cognizable offence'.
- (v) 'Inquiry', 'investigation' and 'trial'. (4 marks each)

Answer :

- (iv) 'Cognizable offence' means an offence for which no bail is available. It is an offence for which anyone can be arrested without a warrant. This is as per the Code of Criminal Procedure, 1973, Section 2. These are outlined in the First Schedule to the Code. An example of a cognizable offence would be murder. These are generally non-bailable offences.

A 'non-cognizable offence', on the other hand, is an offence for which the perpetrator cannot be arrested without a warrant. These are bailable as they are not of as serious a nature as the cognizable offences, an example of which is petty theft.

If there are multiple offences, and even one is cognizable, all of them would be handled as cognizable offences.

- (v) 'Inquiry', as per Section 2(g) of the Code of Criminal Procedure, 1973 means "every inquiry, other than a trial, conducted under this Code by a Magistrate or court". It can be said to be the query a court conducts to decide whether or not a matter is fit for further proceedings.

'Investigation', on the other hand, implies "all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf." [Section 2(h) of the Code]. It is helpful in reaching to the main facts of a case. After an investigation, the officer conducting it is required to submit a report of his findings to the Magistrate who ordered such the investigation.

'Trial' means judicial proceedings in the Court of Sessions or the High Court. Such a process involves examining witnesses on oath. They can result in the accused being discharged, acquitted or convicted.

2009 - June [3] Distinguish between the following :

- (iii) 'Complaint' and 'FIR'. (4 marks)

Answer :

- (iii) An 'FIR' or 'First Information Report' is the primary report of an offence having been committed. It takes the form of a formal complaint being lodged by the aggrieved or victim, or by someone else acting for him. This can be done either orally or in writing. This report is to be made to the police. The police start the

proceedings on the basis of this report. An FIR can be filed by anyone who knows of the commission of a cognizable offence, not just by the aggrieved. Hence, it can even be filed by a police officer or a third party.

A 'complaint', on the other hand, is a report to the Magistrate. This can be in writing or even oral. It does not include the FIR. The intention of making such a report should be to obtain redressal with the aid of the procedures specified under law.

2010 - June [3] Distinguish between the following :

- (i) 'Summons cases' and 'warrant cases'. (4 marks)
- (ii) 'Bailable offences' and 'non-bailable offences'. (4 marks)

Answer :

- (i) A 'summons case' is one that is punishable with imprisonment upto and including two years. The procedure for the trial of these cases is as per Chapter XX of the Code of Criminal Procedure, 1973. They normally relate to minor offences, and are heard or resolved not through the normal route but using the summary procedure. This remains, as of today, the judge's discretionary power though.

'Warrant cases' are those punishable with an imprisonment of more than two years or with a life sentence or a death sentence. Chapter XIX of the Code of Criminal Procedure, 1973, covers the trial of warrant cases.

- (ii) All the offences included in the list of bailable given in the First Schedule of the Code of Criminal Procedure are termed as bailable. Other acts can also provide for bailable offences. These are relatively non-serious offences, against which an individual can be let off on bail. All bailable offences are non-cognizable, i.e. no arrests can be made for such offences unless a warrant has been issued for that purpose.

Non-bailable offences are those that are not included in the First Schedule of the Code of Criminal Procedure. These are cognizable; arrest can be afforded without a warrant. In this list are included all serious offences.

2011 - June [4] (b) Distinguish between the following :

- (i) 'Cognizable offence' and 'non-cognizable offence'. (4 marks)

Answer :

Please refer 2008 - Dec [4] (iv) on Page no. [268](#)

2013 - June [3] Distinguish between the following.

- (v) 'Summons' and 'warrant of arrest'. (4 marks)

Answer:

Summons and warrant of arrest

The summons is issued by the Court to compel the accused or the witness to appear before it or produce the necessary evidence. Every summons issued by the Court shall

be in writing, in duplicate and it must be signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court.

Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant. The summons shall be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons. Every person on whom a summons is so served shall sign a receipt on the back of the other duplicate, if so required by the serving officer. When a person sought to be summoned is employed abroad the Court can send summons to the concerned embassy for the official purpose.

A 'summons case' is one that is punishable with imprisonment upto and including two years. The procedure for the trial of these cases is as per Chapter XX of the Code of Criminal Procedure, 1973. They normally relate to minor offences, and are heard or resolved not through the normal route but using the summary procedure. This remains, as of today, the judge's discretionary power though.

A written order issued by a judicial officer or other authorized person commanding a law enforcement officer to perform some act for the administration of justice.

Warrants are recognized in many different forms and for a variety of purposes in the law. Most commonly, police use warrants as the basis to arrest a suspect and to conduct a search of property for evidence of a crime. Warrants are also used to bring those persons to court that have ignored a summons or a court appearance.

'Warrant cases' are those punishable with an imprisonment of more than two years or with a life sentence or a death sentence. Chapter XIX of the Code of Criminal Procedure, 1973, covers the trial of warrant cases.

2013 - Dec [3] Distinguish between the following:

(ii) 'Complaint' and 'FIR'.

(4 marks)

DESCRIPTIVE QUESTIONS

2009 - Dec [4] (c) Discuss the powers of various courts under the Code of Criminal Procedure, 1973. (5 marks)

Answer :

Different courts have different powers as stated below to pass sentence:

- (a) By High Courts: Section 28: A high Court may pass any sentence authorized by law.
- (b) By Sessions Judges: Section 28 :
 - (1) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death shall be subject to confirmation by High Court.

- (2) An Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death or of imprisonment for life or imprisonment for a term exceeding 10 years.
- (c) By Magistrates: Section 29 :
- (1) The Court of a Chief Judicial Magistrate may pass any sentence authorized by law except a sentence of death or of imprisonment for life or imprisonment for a term exceeding 7 years.
 - (2) The Court of a Magistrate of the First Class may pass a sentence of imprisonment for a term not exceeding 3 years, or a fine not exceeding ₹5,000 or both.
 - (3) The Court of a Magistrate of the Second Class may pass a sentence of imprisonment for a term not exceeding 1 year, or a fine not exceeding ₹ 1,000 or both.
 - (4) The Court of a Chief Metropolitan Magistrate shall have the powers of the Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of First Class.
- (d) Imprisonment in default of fine: Section 30 :
- (1) The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law provided that the term is not in excess of the powers of the Magistrate under section 29.
 - (2) Where imprisonment has been awarded as part of the substantive sentence, it shall not exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.
 - (3) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awarded by a Magistrate under section 29.

2012 - Dec [4] Attempt the following:

- (v) When can the Magistrate take cognizance of an offence? (4 marks)

Answer:

Section 190 of the Code of Criminal Procedure, 1973 covers taking of cognizance of offences by magistrates. It can be done when he receives an intimation of the fact in any of the following ways –

- Upon complaint of the offence
- When a police officer reports the happening of such an offence
- When he come to know of such an offence being committed
- When information regarding such an offence is received from someone other than the police

The magistrate takes cognizance only when the required procedure is followed. In case the case is initiated other than by the magistrate acting *suo motu*, the accused can apply for an inquiry to be held.

Section 191. Transfer on application of the accused.

When a Magistrate takes cognizance of an offence under clause (c) of sub-section (1) of section 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf.

Section 192. Making over of cases to Magistrates.

Any Chief Judicial Magistrate (CJM) may, after taking cognizance, hand over the case for inquiry or trial to and competent Magistrate subordinate to him. Likewise, any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial.

2013 - Dec [4] Attempt the following:

- (i) State any four categories of cases in which a police officer may arrest a person without an order from a Magistrate and without a warrant. (4 mark)

PRACTICAL QUESTIONS

2010 - Dec [7] (a) A Magistrate of the first class passed a sentence of imprisonment for a term of three years with a fine of ₹ 4,000 and in lieu of non-payment thereof an additional imprisonment for another one year. Has the aggrieved person any right to appeal against this sentence? (6 marks)

Answer :

Section 29 of the Code of Criminal Procedure, 1973 specifies the sentencing powers of Magistrates. So far as the Magistrate of the first class is concerned, as per Section 29 of the Code, a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years or of a fine not exceeding five thousand rupees or of both.

Section 30 of the Code specifies the limits of Magistrate's powers. It provides that the Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law provided the terms:

- (i) is not in excess of the powers of the Magistrate under Section 29; and
- (ii) where imprisonment has been awarded as part of the substantive sentence, it should not exceed 1/4th of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

The Aggrieved person has a right to appeal against the sentence of the First Class Magistrate, as the sentence awarded by him for default of payment of fine exceeds the limit stipulated under Section 30 of the Code (1/4th of three years, i.e. the period for which the magistrate may pronounce punishment, is less than one year).

2010 - Dec [8] (c) Angad is charged for murder of Binod. The charge sheet is filed in the court of Chief Judicial Magistrate, who passed an order of sentence of imprisonment for life. Angad engages you as an advocate. Advise the course of action to Angad giving reasons. (5 marks)

Answer :

According to Section 29 (1) of the Code of Criminal Procedure, the court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years. In this case, the Chief Judicial Magistrate passed an order of sentence of imprisonment for life. He has exceeded the limit of his powers provided under Section 29 of the Code. Angad would be advised to file an appeal in the High Court against the order of the Chief Judicial Magistrate.

2012 - June [8] (b) Sohan is tried summarily by the Metropolitan Magistrate on the charge of committing theft and is sentenced to undergo imprisonment for a period of six months. Can Sohan challenge this decision? If so, on what grounds? (5 marks)

Answer :

Sohan can challenge the decision of the court.

A 'summary trial' is a fast-track procedure that provides for speedy trial of cases. Under Section 260 of the Code of Criminal Procedure, 1973, any Magistrate of First Class or a Metropolitan Magistrate or a Chief Judicial Magistrate can hear cases of offences not punishable with death, life imprisonment or even imprisonment of more than two years in a summary trial. Included would be offences like petty theft (where the value of the stolen property does not exceed rupees two hundred), assisting in such theft or in keeping its proceeds hidden, acquiring or keeping such stolen property, trespass, breaking into a house, insulting someone with the intention of provoking him to a violent act, and helping anyone in the performance of these crimes.

Section 261 covers the conduct of a summary trial by a Magistrate of second class. Section 262 provides the procedure involved in a summary trial. These cases are also known as summons cases, since they do not normally make use of warrants. Moreover, the maximum punishment that can be pronounced in such cases is of imprisonment upto three months.

2013 - June [7] (c) Ragini told Rajendra in the year 2007 that she had committed theft of the jewellery of her neighbour Asha. Thereafter, Ragini and Rajendra were married in the year 2008. In the year 2009, criminal proceedings were instituted against Ragini in respect of the theft of the said jewellery. Rajendra is summoned to give evidence in the said criminal proceedings.

Decide whether Rajendra can disclose the communication made to him by Ragini in the year 2007, in the criminal proceedings in respect of the theft of the jewellery.

(5 marks)

Answer:

Section 122 of the Indian Evidence Act, 1872 says that no one can be compelled to disclose private conversations with his/her spouse that took place during marriage, as the information is privileged information. This can be done with the consent of the spouse.

According to the case of Nagaraj vs. State of Karnataka, Section 120 allows a spouse to bear witness against a spouse if the case is not between them, or does not arise out of criminal prosecutions. However, the privilege under Section 122 of the Indian Evidence Act extends to all communications made to a spouse during subsistence of marriage; the communication need not be confidential. Moreover, the privilege is not accorded to the witness, but to the spouse.

In *M.C. Verghese v. T J. Ponnamm* it was said that if the marriage was subsisting at the time when the communications were made, the bar prescribed by Section 122 will operate. In *Moss v. Moss* 15 it was held that in criminal cases, subject to certain common law and statutory exceptions, a spouse is incompetent to give evidence against the other, and that incompetence continues after a decree absolute for divorce or a decree of nullity.

Hence, such a communication cannot be treated as privileged information, and Rajendra can disclose such communication made to him by Ragini.

2013 - June [8] (c) Shyam, a police officer comes to know from reliable sources that four persons are staying in a house and planning to kidnap and murder Rajan. They are equipped with automatic weapons. The police officer apprehends that they will commit the crime at any moment. He directly goes to that house and, without any warrant or order from the Metropolitan Magistrate, arrests all the four persons along with weapons in their possession. Is the arrest of all the four persons valid? Decide with reasons.

(6 marks)

Answer:

Section 151 of the Code of Criminal Procedure, 1973 says that an arrest made by a police officer to prevent cognizable offences is valid. Such an act does not require any orders from the Magistrate or any warrants.

Such powers have been provided to prevent the happening of serious or cognizable offences.

2013 - Dec [7] (c) 'X' is charged for murder of 'Y'. The chargesheet is filed in the court of Chief Judicial Magistrate, who passed the order of sentence of life imprisonment. 'X' engages you as an Advocate. What shall be your advice in the matter? (5 marks)

CS Inter Gr. I

DISTINGUISH BETWEEN

2006 - Dec [2] (c) Distinguish between the following :

- (i) 'Summons cases' and 'warrant cases'.
- (ii) 'Pleader' and 'public prosecutor'. (4 marks each)

Answer :

- (i) Please refer 2010 - June [3] (i) on Page no. [269](#)
- (ii) According to Section 2(q) of the Code of Criminal Procedure, 1973, a 'pleader' is one who is authorized to be present in a court and to practice as a lawyer or take part in court proceedings. It is not essential to be a lawyer to take part in court proceedings; anyone who is authorized can take part in them.
A 'public prosecutor' is an officer of the Court. There is one such person with every High Court. Their work is to conduct prosecutions, appeals or other proceedings for the Central or State government whichever has appointed them.

2007 - June [3] Distinguish between the following :

- (iii) 'Cognizable offence' 'non-cognizable offence'. (4 marks)

Answer :

Please refer 2008 - Dec [4] (iv) on Page no. [268](#)

2007 - Dec [3] Distinguish between the following:

- (v) 'Inquiry' and 'investigation'. (4 marks)

Answer :

Please refer 2008 - Dec [4] (v) on Page no. [268](#)

DESCRIPTIVE QUESTIONS

2004 - Dec [3] (a) "Mens rea is generally necessary for liability in criminal law." Discuss. (6 marks)

Answer :

'Mens rea' provides a basis for all cases under the Code of criminal Procedure, 1973. It is derived from the Latin maxim 'actus non facit reum nisi mens sit rea', the literal

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meaning of which is 'the act does not make a person guilty unless the mind is also guilty'. Under the Code, an offence is punishable only if and when it is done with the intention of committing it, and premeditation was involved in the act. To judge upon the intention behind an act is difficult, hence the circumstances surrounding the case help in giving a clearer picture of the accused intentions.

2005 - June [4] (b) Explain the term 'offence' under the Code of Criminal Procedure, 1973? (4 marks)

Answer :

An 'offence' implies an act the doing of which a penal law forbids to be done, or omitting to do what it commands. It might be said to be nearly synonymous with crime.

Under the Code of Criminal Procedure, 1973, an 'offence' has been defined as some act that is punishable because it is prohibited under any law for the time being in force. [Section 2 (n)]

2007 - June [5] (c) When can the magistrate take cognizance of an offence ? (5 marks)

Answer :

Section 190 of the Code of Criminal Procedure, 1973 covers taking of cognizance of offences by magistrates. It can be done when he receives an intimation of the fact in any of the following ways –

- Upon complaint of the offence
- When a police officer reports the happening of such an offence
- When he comes to know of such an offence being committed
- When information regarding such an offence is received from someone other than the police

The magistrate takes cognizance only when the required procedure is followed. In case the case is initiated other than by the magistrate acting suo motu, the accused can apply for an inquiry to be held.

PRACTICAL QUESTIONS

2004 - June [7] (c) An information is given to the in-charge of police station against Rahul, a small trader, that he has committed a non-cognizable offence of fraudulent use of false weights and measures. The in-charge of police station, after entering the substance of the information in the Daily Diary kept at the police station, commences investigation without the order of the magistrate. Rahul objects to this action of the police. Will the objection of Rahul be sustained? (6 marks)

Answer :

Yes, Rahul's objection will be sustained, as under Section 155 of the Code of Criminal Procedure, 1973, if the police officer in charge of a police station receives information of the commission of a non-cognizable offence within the jurisdiction of such station, he can enter or cause to be entered the substance of the information in a register maintained by such and refer the informant to the Magistrate. However, he cannot investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

2004 - Dec [6] (a) A requisition was received by the sub-inspector of a police station from another police-station to arrest one Sameer in connection with the commission of a non-cognizable offence. Can the sub-inspector arrest Sameer? (6 marks)

Answer :

As per the Code of Criminal Procedure, 1973, Section 2, a 'non-cognizable offence' is an offence for which the perpetrator cannot be arrested without a warrant. These are bailable as they are not of as serious a nature as the cognizable offences, an example of which is petty theft.

In this case, the requisition says that Sameer is to be arrested for the commitment of a non-cognizable offence. Hence, the sub-inspector cannot arrest Sameer without a warrant.

2005 - Dec [7] (a) Sohan is tried summarily by the metropolitan magistrate on the charge of committing theft and is sentenced to undergo imprisonment for a period of four months. Can Sohan challenge the decision? If so, on what grounds? (5 marks)

Answer :

Under Section 260 of the Code of Criminal Procedure, 1973, any Magistrate of First Class or a Metropolitan Magistrate or a Chief Judicial Magistrate can hear cases of offences not punishable with death, life imprisonment or even imprisonment of more than two years in a summary trial. Sub-section 2 of Section 2 of the Code of Criminal Procedure, 1973 says that in case of a summary trial, the magistrate can punish the accused by ordering imprisonment upto three months and not more.

Since in this case Sohan, in a summary trial, is sentenced to undergo imprisonment for four months, he can freely challenge this decision in the next higher court.

2006 - June [5] (a) A tenant had abandoned the disputed house before his death but possession of the said house was not handed over to the landlord. The heirs of the deceased tenant had not paid rent but they had locked the house. The Sub-Divisional Magistrate issued an order under section 144 of the Code of Criminal Procedure, 1973 to unlock the house. The heirs of the deceased tenant resist the order of the Sub-Divisional Magistrate. Will they succeed? What will be your answer, if the said house is in a dilapidated condition and is likely to endanger human life, health or safety?

(6 marks)

Answer :

Under Section 144 of the Code of Criminal Procedure, 1973, where the Executive, District or the Sub-Divisional Magistrate is of the view that immediate prevention or speedy remedy is necessary to prevent, obstruction, annoyance or injury to any person, or where there appears to be a danger to human life, health or safety, or a possibility of public tranquility being disturbed, or a riot, or a scuffle breaking out, he may pass an urgent order. This order can either stop any person from doing something that is disallowed under this act, or cause any foreseeable harm to be avoided. Hence, in this case, the Sub-divisional Magistrate will succeed only if the house is in such a dilapidated condition as to be a potential danger to human life, and not otherwise. Hence, the heirs will succeed in resisting the order only if the house is not a danger to anybody.

2006 - June [7] (b) Manav is tried summarily by the Chief Judicial Magistrate on the charge of committing theft and is sentenced to undergo rigorous imprisonment for six months. Manav wants to challenge this decision. Can he do so ? Discuss. (5 marks)

Answer :

Under Section 260 of the Code of Criminal Procedure, 1973, any Magistrate of First Class or a Metropolitan Magistrate or a Chief Judicial Magistrate can hear cases of offences not punishable with death, life imprisonment or even imprisonment of more than two years in a summary trial. Sub-section 2 of Section 2 of the Code of Criminal Procedure, 1973 says that in case of a summary trial, the magistrate can punish the accused by ordering imprisonment upto three months and not more.

Since in this case Manav, in a summary trial, is sentenced to undergo imprisonment for six months, he can freely challenge this decision in the next higher court.

2006 - Dec [4] (b) Sumesh, a sub-inspector of police, comes to know from a secret source that five persons, staying in a house with deadly weapons in Kanpur, are planning to commit murder of Gabbar, a resident of a nearby house. Sumesh apprehends that those five persons will commit the crime at any moment. Sumesh, sub-inspector of police, goes to that house where those five persons were staying and arrests them along with weapons in their possession, without any warrant or order from the magistrate. Is the arrest of all the five persons valid? Give reasons. (5 marks)

Answer :

A 'cognizable offence' means an offence for which no bail is available. It is an offence for which anyone can be arrested without a warrant. This is as per the Section 2 of the Code of Criminal Procedure, 1973. These are outlined in the First Schedule to the Code. An example of a cognizable offence would be murder. These are generally non-bailable offences.

In such cases, the police officer in whose jurisdiction such offences happen, or who receives information that people are planning the commitment of such offences, has the power to arrest or cause the arrest of such persons without a warrant. Such an action would count as a preventive action under Section 149 of the Code. Hence, Sumesh's action of arrest would be valid if he had intimated his superior or the person whose duty it was to take cognizance of such offences. The person authorized to do so could then have ordered the arrest.

2006 - Dec [6] (a) A magistrate of the first class passes a sentence of imprisonment for a term of three years with a fine of ₹ 5,000 and in lieu of non-payment thereof, an additional imprisonment for another one year. The convict feels aggrieved by the sentence.

- (i) Has the convict any right to appeal against this sentence ?
- (ii) Will the situation change, if the sentence is passed by the court of a chief judicial magistrate ?

Give reasons in support of your answer. (5 marks)

Answer :

Under Section 29 of the Code of Criminal Procedure, 1973, a Magistrate of first class has the right to pass a sentence of imprisonment not exceeding a period of three years. Hence, in the first case, the convict has a right to appeal against the sentence, as the term of the sentence crosses this limit in its entirety.

However, had the sentence been passed by a Chief Judicial Magistrate (CJM), it would have been valid and the convict would have had no right to appeal against it, as the CJM has the right to pass a sentence of imprisonment not exceeding a period of seven years.

2007 - Dec [8] (b) The Sub Divisional Magistrate at the instance of officer in-charge of police station passed an order under section 144 of the Code of Criminal Procedure, 1973 by which petitioner's Puja Committee and others were prohibited from taking out immersion procession of statue of Goddess Durga and passing in front of two mosques in the village concerned playing music on Vijaydashmi day. Members of Hindu community agitate the order as such order amounts to interference in their legal exercise of customary and religious right. Whether the order passed by the Sub Divisional Magistrate is valid ? Give reasons in support of your answer. (5 marks)

Answer :

Under Section 144 of the Code of Criminal Procedure, 1973, where the Executive, District or the Sub-Divisional Magistrate is of the view that immediate prevention or speedy remedy is necessary to prevent, obstruction, annoyance or injury to any person, or where there appears to be a danger to human life, health or safety, or a possibility of public tranquility being disturbed, or a riot, or a scuffle breaking out, he may pass an urgent order. This order can either stop any person from doing something that is disallowed under this act, or cause any foreseeable harm to be avoided.

In this case, the Sub-Divisional Magistrate issues an order by which the Puja Committee people were prohibited from taking the immersion procession and passing in front of two mosques in the village. This order would be valid if an imminent danger to the peace and tranquility is foreseen. Moreover, taking out the procession itself should not be barred; it should be ordered that the procession should not cause any harm or disturbance to the public, especially public coming to the mosques. In this case the order would be valid.

2008 - June [6] (b) Attempt the following :

- (iv) Arun is charged of murder of Varun. The charge sheet is filed in the court of Chief Judicial Magistrate, who passed an order of sentence of imprisonment for life. Arun engages you as a lawyer to advise him. Advise him giving reasons.

(4 marks)

Answer :

Under Section 29 of the Code of Criminal Procedure, 1973, Chief Judicial Magistrate (CJM), has the right to pass a sentence of imprisonment not exceeding a period of seven years, not for life imprisonment. Hence, Arun can appeal against the order of the CJM.

Repeatedly Asked Questions		
No.	Question	Frequency
1	Distinguish between Cognizable offence and non-cognizable offence. 07 - June [3] (iii), 08 - Dec [4] (iv), 11 - June [4] (b) (i)	3 Times
2	Practical Questions of 05 - Dec [7] (a) and 06 - June [7] (b)	2 Times
3	Distinguish between 'Sumons cases and warrant cases'. 06 - Dec [2] (c) (i), 10 - June [3] (i), 13 - June [3] (v)	3 Times
4	'Inquiry', 'investigation' and 'trial'. 07 - Dec [3] (v), 08 - Dec [4] (v)	2 Times
5	When can the magistrate take cognizance of an offence ? 07 - June (5) (c), 12 - Dec [4] (v)	2 Times
6	Distinguish between the 'Complaint' and 'FIR'. 09 - June [3] (iii), 13 - Dec [3] (ii)	2 Times

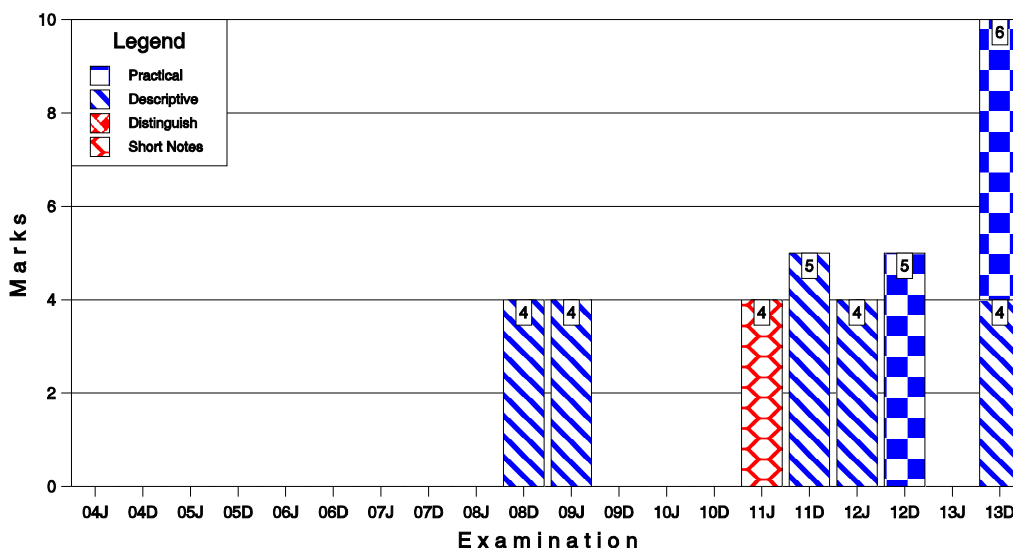
Star Rating

On the basis of Maximum marks from a chapter	Nil
On the basis of Questions included every year from a chapter	Nil
On the basis of Compulsory questions from a chapter	Nil

10 Law Relating to Right to Information

This Chapter Includes : Public Authorities & their obligation. Public Information Officees (PIO)', Duties of PIO', Constitution of Information Commission & its powers, Appellate Authorities, Penalties Jurisdiction of Courts.

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



CS Executive Programme (Module I)

OBJECTIVE QUESTIONS

2009 - June [6] (a) Choose the most appropriate answer from the given options in respect of the following :

- (v) Section 20 of the Right to Information Act, 2005 imposes penalty on a public information officer for failing to provide information –

- (a) ₹ 250 per day
- (b) ₹ 250 per day to the extent of maximum ₹ 50,000
- (c) ₹ 300 per day to the extent of maximum ₹ 25,000
- (d) ₹ 250 per day to the extent of maximum ₹ 25,000. (1 mark)

Answer :

- (v) (d) ₹ 250 per day to the extent of maximum ₹ 25,000.

2009 - June [6] (b) Re-write the following sentences after filling-in the blank spaces with appropriate word (s)/figure (s) :

- (vii) Application for obtaining information with prescribed fees may be submitted to _____ officer under the provisions of the Right to Information Act, 2005. (1 mark)
- (viii) Central Information Commission is constituted by _____ through a gazette notification. (1 mark)

Answer :

- (vii) Application for obtaining information with prescribed fees may be submitted to **Public Information** officer under the provisions of the Right to Information Act, 2005.
- (viii) Central Information Commission is constituted **by the Central Government** through a gazette notification.

2009 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (i) Any person aggrieved by an order of Controller of Certifying Authorities or of the Adjudicator can appeal to the Cyber Regulations Appellate Tribunal within _____ days. (1 mark)

Answer :

- (i) 45

2009 - Dec [5] (b) Choose the most appropriate answer from the given options in respect of the following :

- (iii) Right to information is derived from the constitutional right, i.e.,—
 - (a) Right of freedom of speech and expression
 - (b) Right to liberty
 - (c) Right of trade and commerce
 - (d) Right to equality. (1 mark)
- (v) Public Information Officer for failing to provide information will be liable for fine of ₹ 250 per day upto a maximum of —
 - (a) ₹ 25,000
 - (b) ₹ 50,000

- (c) ₹ 75,000
- (d) ₹ 1,00,000.

(1 mark)

Answer :

- (iii) (a)
- (v) (a)

2010 - June [6] State, with reasons in brief, whether the following statements are correct or incorrect :

- (iii) The Right to Information Act, 2005 confers on all citizens of India a right to information.
- (iv) Certain categories of information have been exempted from disclosure under the Right to Information Act, 2005. (2 marks each)

Answer :

- (iii) Correct. As per the RTI Act, subject to certain provisions.
- (iv) Correct. According to Section 8 of the RTI Act.

2010 - Dec [6] State, with reasons in brief, whether the following statements are true or false :

- (i) Certain categories of information have been exempted from disclosure under the Right to Information Act, 2005. (2 marks)

Answer :

- (i) **Correct** : Under Section 8 of the Right to Information Act, 2005 certain categories of information have been exempted from disclosure.

2011 - June [5] (b) Write the most appropriate answer from the given options in respect of the following :

- (v) Second appeal to the Central Information Commission or the State Information Commission, as the case be, may be filed within -
 - (a) 30 days
 - (b) 60 days
 - (c) 90 days
 - (d) 120 days. (1 mark)

of the date on which the decision was given by the First Appellate Authority.

Answer :

- (v) (c) 90 days

2011 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (iii) An application for obtaining information under the Right to Information Act, 2005 is to be submitted to _____ . (1 mark)

Answer :

- (iii) An application for obtaining information under the Right to Information Act, 2005 is to be submitted to the Public Information Officer/Assistant Public Information Officer.

2011 - Dec [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (iii) The Right to Information Act, 2005 confers on all citizens a right to receive information. This is now a —
- (a) Legal right
 - (b) Constitutional right
 - (c) Fundamental right
 - (d) Human right. (1 mark)
- (vii) Certain categories of information have been exempted from disclosure under the Right to Information Act, 2005 —
- (a) Where the disclosure prejudicially affects the sovereignty and integrity of India
 - (b) Where disclosure would cause a breach of privilege of the Parliament or the State Legislature
 - (c) Information received in confidence from foreign government
 - (d) All the above. (1 mark)

Answer :

- (iii) (a) Legal Right
(vii) (d) All the above

2011 - Dec [7] State, with reasons in brief, whether the following statements are true or false:

- (vii) Any person who is aggrieved by a decision of the Public Information Officer (PIO) may file an appeal under the Right to Information Act, 2005. (2 marks)

Answer :

- (vii) **True:** Section 19 of the Act provides for appeal provisions wherein in case the public authorities are not doing their work properly or not providing the information, an appeal may be preferred. Sec 19 of the Act provides two tier system of appeals- first appeal and second appeal. One may file a complaint with SIC/CIC against Public Authority, Public Information Officer [PIO] and First Appellate Authority [FAA] for enquiring and taking corrective steps in respect of majority of problems that the applicant may face in getting information to which he is entitled to under this act.

2012 - June [6] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (iv) A Public Information Officer has to render information within _____ days under the Right to Information Act, 2005. (1 mark)

Answer:

- (iv) Thirty.

2012 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (viii) Every Public Information Officer in case of not performing his duties will be liable for a fine of ₹ 250 per day upto a maximum of ₹ _____. (1 mark)

Answer:

- (viii) Every Public Information Officer in case of not performing his duties will be liable for a fine of ₹ 250 per day upto a maximum of ₹ 25,000/-

2012 - Dec [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (iv) Who among the following acts as Chairman of the committee for appointment of the Central Information Commissioners—
(a) President of India
(b) Prime Minister of India
(c) The leader of opposition in Lok Sabha
(d) None of the above. (1 mark)

Answer:

- (b) Prime Minister of India

2012 - Dec [6] State, with reasons in brief, whether the statement is true or false:

- (iv) Where the information requested for concerns the life or liberty of a person, the same should be provided within 48 hours of the receipt of such request under the provisions of the Right to Information Act, 2005. (2 marks)

Answer:

True: As per Section 28 of the Right to Information Act, 2005 - In normal course, information to an applicant shall be supplied within 30 days from the receipt of application by the public authority. If information sought concerns the life or liberty of a person, it shall be supplied within 48 hours by the PIO.

2013 - June [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (v) All _____ shall have the right to seek information subject to the provisions of the Right to Information Act, 2005. (1 mark)

Answer:

citizen

2013 - June [6] State, with reasons in brief, whether the following statements are true or false:

- (iv) The Right to Information Act, 2005 imposes stringent penalty on a public information officer (PIO) for failing to provide information and the penalty is ₹ 150 per day upto a maximum of ₹ 15,000. (2 marks)

Answer:

False: This is covered under Section 20 of the RTI Act, 2005, which provides for a penalty of ₹ 250 per day increasing upto ₹ 25,000.

SHORT NOTES

2011 - June [2] Write notes on the following :

- (i) Penalties which can be imposed on public information officer under section 20 of the Right to Information Act, 2005 (4 marks)

Answer :

Penalties which can be imposed on public information officer under section 20 of the Right to Information Act, 2005

Section 20 (1) of the RTI Act states, "Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty five thousand rupees. However, the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him.

Section 20 reveals that there are three circumstances where the Commission must impose penalty:

1. Refusal to receive an application for information.
2. Not furnishing information within the time specified under sub-section (1) of section 7 – 30 days.

3. Malafidely denying the request for information or knowingly giving incorrect, incomplete or misleading information or destroying information which was the subject of the request

4. Obstructing in any manner in furnishing the information.

All the above are prefaced by the condition, ' without reasonable cause' (as per Decision No. CIC/SG/A/2011/000217/11995Penalty Appeal No. CIC/SG/A/2011/000217 of the CENTRAL INFORMATION COMMISSION)

DESCRIPTIVE QUESTIONS

2008 - Dec [5] (a) Attempt the following :

- (ii) Specify the manner in which requests may be made by a citizen to the authority for obtaining information under the Right to Information Act, 2005. (4 marks)

Answer :

The applicant has to apply either in writing or by using electronic means. The application has to be given to the PIO of the public authority, and has to detail the requirements of the applicant. However, he is not required to give the reasons for requiring the information. Along with the application, he has to submit the requisite fee. The PIO has to give the information within thirty days from the date of the application. If the matter relates to the life or freedom of a person, the time limit is reduced to forty-eight hours. In case the PIO needs the approval of a third party to disclose the information, the time limit becomes forty days. Refusal to give information is not allowed, except for the reasons provided in Section 8 of the Act. If the PIO does not inform as to the reason for refusal, or fails to intimate anything during the prescribed time, it is deemed to be a refusal by that authority.

2009 - June [4] Attempt the following :

- (iii) Specify the categories of information that have been exempted from disclosure under the Right to Information Act, 2005. (4 marks)

Answer :

- (iii) According to Section 8 of the Right to Information Act, 2005, information not available for disclosure is information-
- That has the capacity to have a negative effect on the integrity and independence of the country.
 - Which if disclosed, is likely to cause a breach of the restrictions put on its disclosure by a court.
 - The disclosure of which results in leaking out of information that the Parliament or a State Legislature does not want to render public.

- Has the nature of a trade secret or IPR, which if disclosed, can cause financial losses to the party that controls it.
- Is better not disclosed in the larger interests of the public.
- Is entrusted by the government of a foreign country.
- Is related to the identity of an informant, which if disclosed would endanger the life or property of that person.
- Obstructs any judicial proceedings against an individual or a wrongdoer.
- Counts as the inner workings of the Cabinet or Council of Ministers.
- Is of a personal nature.

If, however, the giving of the information has more benefits for the public than losses for the party who controls the information, the PIO will allow the disclosure of the information.

2011 - Dec [6] (b) What do you understand by 'Public Information Officer' (PIO) under the Right to Information Act, 2005? What are the duties of PIO under the said Act?

(5 marks)

Answer :

All public authorities are required under the Right to Information Act, 2005 to designate a Public Information Officer (PIO). It will be his duty to provide information to the citizens requesting for information under the Act. If, for providing information, the PIO requires the aid of any other officer, such other officer will also be termed as a PIO. 'Public authority' means any authority or body created by the Constitution, or by any Parliamentary or state law, or by a notification passed by the Central or State government.

The work of the PIO is to deal with all the applications for information being received by their office. Moreover, his work is to assist the applicant to formulate an application in case of need. Once the application has been accepted, the duty of the PIO is to see to its timely redressal within thirty days. If he cannot make available the required or desired information, he has to provide reasons for the rejection in writing.

In case the information sought pertains to the life or liberty of an individual, it has to be given within a period of forty-eight hours from the application being received. Not providing the information within the prescribed time will be construed as a refusal.

In case of confidential or third party information, the PIO has to inform the applicant of the fact within five days of the receipt of the application. The applicant will then be given a period of ten days to present his position before the PIO.

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2012 - June [4] Explain the following:

(iii) Salient features of the Right to Information Act, 2005

(4 marks)

Answer :**Salient features of India's Right to Information Act, 2005**

1. The RTI Act, 2005 empowers every citizen to:
 - To ask for clarifications from any government department
 - Inspect any government documents.
 - Take copies of any government documents
 - Take samples of materials of any Government work, subject to certain facts remaining outside the scope of public purview.
2. Information can be sought from any department of the central or state government, from panchayati raj institutions, and from any other organization or institution (including NGOs) that is established, constituted, owned, controlled or substantially financed, directly or indirectly, by the state or central government (section 2(a) & (h)).
3. In each department, at least one officer has been designated as a public information officer (PIOs). The work of this officer would be to provide the information sought by the applicant (section 5(1)).
4. Each sub-district/divisional level there are to be assistant public information officers (APIOs) who receive requests for information and appeals against decisions of the public information officers, and then send them to the appropriate authorities (section 5(2)).
5. Any person seeking information should file an application in writing or through electronic means in English or Hindi (or in the official language of the area) along with the application fees with the PIO/APIO (section 6(1)).
6. Where a request cannot be made in writing, the PIO is supposed to render all reasonable assistance to the person making the request orally to reduce the same in writing (section 6(1)).
7. The applicant need not give any reasons for requesting the information or any other personal details (section 6(2)).
8. A fee will be charged for obtaining a copy of the documents. (The Central Government has prescribed fees of Rs.2/- for each page created and copied. In some states the charges may vary. Please see the fee rules chart). If the Information is not provided in the stipulated time limit then the information will be provided for free. (u/s 7(6)).
9. If the PIO feels that the sought information does not pertain to his department then it shall be his responsibility to forward the application to the related/relevant department within 5 days and also inform the applicant about the same. In such instance, the stipulated time limit for provision of information would be 35 days (u/s 6(3)).

10. In case PIO does not furnish information within the prescribed period or unreasonably troubles the applicant, then the applicant can file a complaint against him with the information commission. In case a PIO without any reasonable cause fails to receive an application for information, malafidely denies a request for information, or knowingly gives incorrect, incomplete or misleading information, or asks for high fees for furnishing the information the applicant can file a direct complaint to the Central or the State Information Commission.
11. The PIO can deny information in some cases/matters. The various exemptions from disclosure of information are listed in Section 8 of the RTI Act, 2005. If the sought information is in public interest then the exemptions enumerated in Section 8 of the RTI Act, 2005 can also be disclosed.
12. Any information that cannot be denied to parliament or legislative assembly cannot be denied to a common citizen.
13. In case a person fails to get a response from the PIO within the prescribed period or is aggrieved by the response received, or misuses Section 8 of the Act, then he/she can file an appeal within 30 days with an officer superior in rank to the PIO (first appellate authority) (section 19(1)).
14. If the appellant is not happy with the 1st appeal then he/she can file a 2nd appeal with the State Information Commission or the Central Information Commission within 90 days (u/s 19(3)).
15. In case a PIO fails to furnish the information asked for under the Act or fails to communicate the rejection order, within the time specified, he will be liable to pay a penalty of Rs 250 per day for each day of delay, subject to a maximum of Rs 25,000 (section 20(1)). The information commission can also recommend disciplinary action against the concerned PIO (section 20(2)).

2013 - Dec [4] Attempt the following:

- (ii) When is the Central Information Commission/State Information Commission duty bound to receive complaints from any person ? (4 marks)

PRACTICAL QUESTIONS

2012 - Dec [7] (c) Bimal made an application in writing with prescribed fee to the Public Information Officer (PIO) for obtaining the information which is permissible under the relevant statute. The PIO neither provided the required information nor rejected the application of Bimal for providing the required information although a period of 45 days elapsed from the date of submitting the aforesaid application to the PIO. Bimal wants to file a suit in the civil court for not providing the required information to him. Advise Bimal. (5 marks)

Answer:

According to the Right to Information Act, 2005, no lower court is allowed to hear petition regarding suits or applications against any orders made under this Act (Section 23).

Under this Act, the Public Information Officer (PIO) has to provide the information within thirty days (Forty eight hours if the matter pertains to the life or liberty of another). If he takes no action, it is presumed to be deemed refusal (Section 7).

Bimal would be recommended not to file any suit in the civil court for not providing the required information to him. He may, however, approach the next higher authority in the public authority or organization within thirty days of deemed refusal or from expiry of the time required for making the decision or giving the information (Section 19). He may also approach the State Information Commission, which may decide to impose penalty on the PIO (Section 20).

2013 - Dec [7] (a) Amar is a citizen of India and lives in Delhi with his family. He makes an application to the Public Information Officer (PIO) under the Right to Information Act, 2005 and completes all the formalities. The information sought relates to Cabinet papers including records of deliberations of the Council of Ministers. The PIO rejects the application. Has Amar any right to go to the court or to the Central Information Commission against the decision of the PIO ? Give your answer quoting the relevant provisions of law. (6 marks)

Star Rating

On the basis of Maximum marks from a chapter Nil

On the basis of Questions included every year from a chapter Nil

On the basis of Compulsory questions from a chapter Nil

11

Objective Questions

CS Executive Programme (Module I)

2008 - Dec [1] {C} (c) Re-write the following sentences after filling-up the blank spaces with appropriate word(s)/figure(s) :

- (i) An instrument chargeable with duty executed out of India may be stamped within _____ month(s) after it has been first received in India. (5)
 - (ii) Alam owes Balu ₹ 1,000. Alam sells a property to Balu, the consideration being ₹ 500 and the release of the previous debt of ₹ 1,000. Stamp duty would be payable on ₹ _____. (5)
 - (iii) Attestation is valid and complete when _____ witnesses sign the instrument. (4)
 - (iv) No sentence of imprisonment for a term exceeding _____ shall be passed in any case or instance in a summary trial. (9)
 - (v) Interpretation of a statute should not be given a meaning which would make other provisions _____. (2)
 - (vi) A person who refuses to receive a registered letter is deemed to have _____ notice of its contents. (9)
 - (vii) Doctrine which underlines the general principle that no one shall be vexed twice for the same cause in civil cases is called _____. (9)
 - (viii) High Court issued an order to the holder of office to show to the court under what authority he holds the office. This writ is called _____. (1)
- (1 mark each)

Answer :

- (i) An instrument chargeable with duty executed out of India may be stamped within **three** month(s) after it has been first received in India.
- (ii) Alam owes Balu ₹ 1,000. Alam sells a property to Balu, the consideration being ₹ 500 and the release of the previous debt of ₹ 1,000. Stamp duty would be payable on ₹ **1,500**.
- (iii) Attestation is valid and complete when **two** witnesses sign the instrument.
- (iv) No sentence of imprisonment for a term exceeding **three** months shall be passed in any case or instance in a summary trial.

- (v) Interpretation of a statute should not be given a meaning which would make other provisions **redundant**.
- (vi) A person who refuses to receive a registered letter is deemed to have **constructive** notice of its contents.
- (vii) Doctrine which underlines the general principle that no one shall be vexed twice for the same cause in civil cases is called **Constructive Res Judicata**.
- (viii) High Court issued an order to the holder of office to show to the court under what authority he holds the office. This writ is called **Quo Warranto**.

2008 - Dec [5] (b) Fill in the blank spaces with the appropriate nomenclature or terminology in the following :

- (i) A writ issued by the court to some person or body to compel it to perform a public duty is called _____ . (1)
 - (ii) Where in an enactment, there are two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect may be given to both. This rule of interpretation is called _____ . (2)
 - (iii) Attack on the reputation of a person is called _____ . (3)
 - (iv) Normally the tort-feasor is liable for his tort, but in some cases a person may be held liable for the tort committed by another. This is known as _____ . (3)
- (1 mark each)

Answer :

- (i) A writ issued by the court to some person or body to compel it to perform a public duty is called **mandamus**.
- (ii) Where in an enactment, there are two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect may be given to both. This rule of interpretation is called Harmonious **Construction**.
- (iii) Attack on the reputation of a person is called **defamation**.
- (iv) Normally the tort-feasor is liable for his tort, but in some cases a person may be held liable for the tort committed by another. This is known as vicarious **liability**.

2008 - Dec [6] (a) Choose the most appropriate answer from the given options in respect of the following :

- (i) Secularism means that the State should -
 - (a) Have its own religion
 - (b) Ignore all religions
 - (c) Have all religions of its own
 - (d) Have no religion of its own. (1)
- (ii) The nature of remedy under the law of torts is -
 - (a) Criminal
 - (b) Civil

- (c) Quasi-criminal
(d) Quasi-civil. (3)
- (iii) When there are two types of evidence, one oral and another documentary, which type of evidence shall prevail -
(a) Documentary
(b) Oral
(c) None
(d) Both (a) and (b). (3)
- (iv) The Transfer of Property Act, 1882 applies to -
(a) Movable property
(b) Immovable property
(c) Both (a) and (b).
(d) Only to testamentary dealings. (4)
- (v) "I do acknowledge myself to be indebted to Bhupesh in ₹ 1,000 to be paid on demand for value received", is a -
(a) Bond
(b) Security
(c) Promissory note
(d) Agreement. (4)
- (vi) Every breach of contract gives rise to a cause of action and a suit may be instituted to secure proper relief at the place -
(a) Where the contract was made
(b) Where the breach has occurred
(c) Where money is payable
(d) Any one of the above. (3)
- (vii) The defendant is entitled to 'leave to defend' in a summary suit if he enters an appearance after service of summons within -
(a) 30 days
(b) 10 days
(c) 60 days
(d) 15 days. (8)
- (viii) A Magistrate of the first class may pass a sentence of -
(a) imprisonment for a term not exceeding 10 years or of fine upto ₹ 10,000 or of both
(b) imprisonment for a term not exceeding 5 years or of fine upto ₹ 20,000 or of both

- (c) imprisonment for a term not exceeding 7 years or of fine upto ₹ 15,000 or of both
- (d) imprisonment for a term not exceeding 3 years or of fine upto ₹ 5,000 or of both. (9) (1 mark each)

Answer :

- (a) (i) (d);
(ii) (d);
(iii) (a);
(iv) (c);
(v) (c);
(vi) (b);
(vii) (b);
(viii) (d).

2008 - Dec [6] (b) State, with reasons in brief, whether the following statements are correct or incorrect :

- (i) The time limit for making an application for setting aside an arbitral award is 2 months from the date of receipt of award. (3)
- (ii) Confession made before the magistrate by a co-accused against another co-accused, who is not jointly tried with him for an offence, is admissible as evidence. (3)
- (iii) The right to collect rents of immovable property has been recognised as immovable property. (4)
- (iv) A declaratory decree is a decree passed to prevent the violation of a negative act. (8) (2 marks each)

Answer :

- (i) **Incorrect** : The time limit for applying for setting aside an award is three months from the date of receipt of order. It can be further extended by a period of thirty days.
- (ii) **Incorrect** : A statement made before a magistrate by a co-accused against another co-accused, who is jointly tried with him for an offence is admissible as evidence, as per Section 30 of the Indian Evidence Act, 1872.
- (iii) **Correct** : As per the definitions given in the Transfer of Property Act, 1882, the General Clauses Act, and The Registration Act, 1908.
- (iv) **Incorrect** : It is a decree passed to declare the rights of the legal owner or title bearer to a property.

2009 - June [5] State, with reasons in brief, whether the following statements are correct or incorrect :

- (i) In computing the period of limitation for an application to set aside an award, the time required for obtaining a copy of the award shall not be excluded. (3)
- (ii) A document executed by several persons at different times may be presented for registration and re-registration within six months from the date of each execution. (6)
- (iii) Anubhav sells a property to Balwant for ₹ 5 lakh which is subject to a mortgage to Charu for ₹ 10 lakh and unpaid interest of ₹ 2 lakh. Stamp duty is payable on ₹ 17 lakh. (6)
- (iv) Suits for compensation for false imprisonment can be filed within two years from the date when the imprisonment ends. (3)
- (v) Article 53 of the Constitution of India lays down that the executive powers of the Union shall be vested in the President of India. (1)
- (vi) The rule of 'harmonious construction' is the best rule of interpretation of any provision of any statute. (2)
- (vii) Under certain circumstances, the court may award damages in addition to specific enforcement of the contract. (3)
- (viii) Generally orders passed by the court under the Code of Civil Procedure, 1908 are not appealable but there are certain exceptions to it. (8)

(2 marks each)

Answer :

- (i) **Incorrect** : As per Section 12 of the Limitation Act, in computing the period of limitation for an application to set aside an award, the time required for obtaining a copy of the award shall be excluded.
- (ii) **Incorrect** : As per Section 24 of The Registration Act, 1908, in case there are several executants, operating at various times to execute a document, the document can be presented for registration and re-registration within four months from the date of each execution.
- (iii) **Correct** : As per Section 24 of The Registration Act, 1908.
- (iv) **Incorrect** : The period prescribed as per Part VII of the Schedule to the Limitation Act, 1963 is of one year, which is to be computed from the date when the imprisonment ends.
- (v) **Correct** : These powers are vested in the President of India as per the Constitution of India, subject to the limitations prescribed therein.
- (vi) **Correct** : This rule of interpretation allows the scope for applying all the provisions of a statute.

- (vii) **Correct** : The court might award damages in addition to specific enforcement of the contract, when some damages have already been incurred and need to be compensated.
- (viii) **Correct** : There are four types of appeals provided under the Code of Civil Procedure, 1908.

2009 - June [6] (a) Choose the most appropriate answer from the given options in respect of the following :

- (i) The Constitution of India came into force on –
(a) 26th November, 1949
(b) 15th August, 1947
(c) 26th January, 1947
(d) 26th January, 1950. (1)
- (ii) The right to alienate the mortgaged property without intervention of the court is available to the mortgagee in the case –
(a) Where the mortgagee is government
(b) Where there is English mortgage
(c) Where there is mortgage by conditional sale
(d) Under both (a) and (b). (4)
- (iii) The relief regarding recovery of possession of immovable property is available under –
(a) Provisions of the Code of Civil Procedure, 1908
(b) Provisions of the Specific Relief Act, 1963
(c) Provisions of the Code of Criminal Procedure, 1973
(d) Both (a) and (b). (3)
- (iv) In the transfer of property with condition, the condition is void and transfer is valid –
(a) Where transfer is made with void condition
(b) Where transfer is made with the condition restraining absolutely future transfer of such property
(c) Where transfer is made absolutely with the condition restraining enjoyment of such property
(d) Both (b) and (c). (4)
- (v) Section 20 of the Right to Information Act, 2005 imposes penalty on a public information officer for failing to provide information –
(a) ₹ 250 per day
(b) ₹ 250 per day to the extent of maximum ₹ 50,000
(c) ₹ 300 per day to the extent of maximum ₹ 25,000
(d) ₹ 250 per day to the extent of maximum ₹ 25,000. (10)

- (vi) The Chief Judicial Magistrate is empowered to pass –
- Any sentence authorised by law
 - Any sentence except a sentence of death
 - Any sentence except a sentence of death, life imprisonment or imprisonment for a term exceeding seven years
 - Any sentence except a sentence of death and life imprisonment. (9)
- (vii) The definition of 'decree' as given under section 2 of the Code of Civil Procedure, 1908 includes –
- An 'award' passed by the arbitral tribunal under the Arbitration and Conciliation Act, 1996
 - Rejection of plaint under Order 7, Rule 11 of the Code of Civil Procedure, 1908
 - Adjudication of any question raised by any party to the decree during execution proceedings under section 47 of the Code of Civil Procedure, 1908
 - An order of which appeal lies like an order. (8)
- (viii) A magistrate may take cognizance of any offence upon –
- His own knowledge
 - The information of police officer
 - The information of any person other than police officer
 - His own knowledge, police report and complaint or information received from any person other than police officer. (9)
- (1 mark each)

Answer :

- (d) 26th January 1950
- (d) under both (a) and (b)
- (d) Both (a) and (b)
- (d) Both (b) and (c)
- (d) ₹ 250 per day to the extent of maximum ₹ 25,000
- (c) Any sentence except a sentence of death life imprisonment or imprisonment for a term exceeding seven year.
- (b) Rejection of plaint under order 7 Rule 11 of the code of civil procedure 1908.
- (d) His own knowledge police report and complaint or information received from only person other than police officer.

2009 - June [6] (b) Re-write the following sentences after filling-in the blank spaces with appropriate word (s)/figure (s) :

- Temporary injunction is granted under _____ of the Code of Civil Procedure, 1908. (8)
- Declaratory decree is granted under _____ of the Specific Relief Act, 1963. (3)

- (iii) A police officer may arrest any person without warrant if he has committed _____ offence. (9)
- (iv) _____ means any person against whom a decree has been passed or an order capable of execution has been made. (8)
- (v) The law of limitation bars the remedy as well as extinguishes the right where _____ . (3)
- (vi) A fresh suit is barred for the same cause of action under section (s) _____ of the Code of Civil Procedure, 1908. (8)
- (vii) Application for obtaining information with prescribed fees may be submitted to _____ officer under the provisions of the Right to Information Act, 2005. (10)
- (viii) Central Information Commission is constituted by _____ through a gazette notification. (10)
- (1 mark each)

Answer :

- (i) Temporary injunction is granted under order **XXXIX** of the Code of Civil Procedure, 1908.
- (ii) Declaratory decree is granted under **Section 34** of the Specific Relief Act, 1963.
- (iii) A police officer may arrest any person without warrant if he has committed **cognizable** offence.
- (iv) **Judgement debtor** means any person against whom a decree has been passed or an order capable of execution has been made.
- (v) The law of limitation bars the remedy as well as extinguishes the right **where the remedy is extinguished by limitation.**
- (vi) A fresh suit is barred for the same cause of action under section (s) **11** of the Code of Civil Procedure, 1908.
- (vii) Application for obtaining information with prescribed fees may be submitted to **Public Information** officer under the provisions of the Right to Information Act, 2005.
- (viii) Central Information Commission is constituted **by the Central Government** through a gazette notification.

2009 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (i) Any person aggrieved by an order of Controller of Certifying Authorities or of the Adjudicator can appeal to the Cyber Regulations Appellate Tribunal within _____ days. (10)

- (ii) The period of limitation for instituting a summary suit is _____ from the date on which the debt becomes due. (3)
- (iii) Limitation of taking cognizance is _____, if the offence is punishable with fine only. (3)
- (iv) Adjudicating Authority under section 43 of the Information Technology Act, 2000 can impose damages by way of compensation an amount not exceeding ₹ _____. (7)
- (v) Only the principal instrument shall be chargeable under section 4 of the Indian Stamp Act, 1899 with the duty prescribed for the conveyance, mortgage or settlement and each of other instruments shall be chargeable with the duty of ₹ _____. (5)
- (vi) If there is any appearance of inconsistency between the Schedule and a specific provision in an enactment the _____ shall prevail. (2)
- (1 mark each)
- (b)** Choose the most appropriate answer from the given options in respect of the following :
- (i) In which of the following case, the Supreme Court made it clear that Parliament cannot alter the basic structure of the Constitution of India—
 (a) I.C. Golak Nath vs. State of Punjab
 (b) Kesavananda Bharati vs. State of Kerala
 (c) Shankari Prasad vs. Union of India.
 (d) Indira Gandhi vs. Raj Narain. (1)
- (ii) Doctrine of sufficient cause under section 5 of the Limitation Act, 1963 will apply on—
 (a) Suits
 (b) Appeals and applications
 (c) Both (a) and (b)
 (d) None of the above. (3)
- (iii) Right to information is derived from the constitutional right, i.e.,—
 (a) Right of freedom of speech and expression
 (b) Right to liberty
 (c) Right of trade and commerce
 (d) Right to equality. (10)
- (iv) Who may pass any sentence authorised by law —
 (a) District Magistrate
 (b) Chief Judicial Magistrate
 (c) Sessions Judge
 (d) Magistrate of the First Class. (9)

- (v) Public Information Officer for failing to provide information will be liable for fine of ₹ 250 per day upto a maximum of –
(a) ₹ 25,000
(b) ₹ 50,000
(c) ₹ 75,000
(d) ₹ 1,00,000. (10)
- (vi) Any person aggrieved by any decision or order of the Cyber Regulations Appellate Tribunal may appeal to the –
(a) Civil Judge
(b) District Judge
(c) District Magistrate
(d) High Court. (7) (1 mark each)

Answer :

- (a) (i) 45
(ii) 3 years
(iii) 6 months
(iv) 1 Crore
(v) one
(vi) provision
- (b) (i) (b)
(ii) (b)
(iii) (c)
(iv) (b)
(v) (a)
(vi) (d)

2010 - June [5] (b) Choose the most appropriate answer from the given options in respect of the following :

- (i) Under the Transfer of Property Act, 1882, the transfer of property may be made—
(a) Orally
(b) By written document
(c) By written document with its registration
(d) By delivery of property except where transfer is required to be in writing under the law. (4)
- (ii) The right to foreclosure is available to the mortgagee when it is—
(a) English mortgage
(b) Simple mortgage
(c) Mortgage by conditional sale
(d) Usufructuary mortgage. (4)

- (iii) The income of transferred property may be accumulated for an unlimited time where the property is transferred with condition—
 (a) For the payment of debts taken by the transferor
 (b) For the maintenance of the property itself
 (c) For the maintenance of the descendants of the transferor generation after generation
 (d) All of the above. (4)
- (iv) Under the Specific Relief Act, 1963, the relief of cancellation of a written instrument is available—
 (a) When an instrument is void or voidable at the option of the plaintiff
 (b) Where the plaintiff may apprehend serious injury if the instrument is left outstanding
 (c) Where the instrument requires registration but is not registered
 (d) Where conditions mentioned (a) and (b) above are fulfilled. (3)
- (v) The definition of the 'State' as given under Article 12 of the Constitution of India includes—
 (a) The Central Government and Parliament of India
 (b) The Government and the Legislature of each State
 (c) All local or other authorities within India and under the control of the Government of India
 (d) All of the above. (1)
- (1 mark each)

Answer :

- (i) (d)
 (ii) (c)
 (iii) (d)
 (iv) (d)
 (v) (d)

2010 - June [5] (c) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (i) Perpetual injunction is granted under section _____ of the Specific Relief Act, 1963. (3)
- (ii) A police officer may arrest an accused without warrant in case of _____. (9)
- (iii) The Court of a Judicial Magistrate of the First Class is authorised to pass a sentence of _____. (9)
- (iv) The right to maintenance under section 125 of the Code of Criminal Procedure, 1973 is available to _____. (9)
- (v) The application of revision under the provisions of the Code of Civil Procedure, 1908 is made to _____. (8)

(1 mark each)

Answer :

- (i) Section 38
- (ii) cognizable offences.
- (iii) imprisonment upto three years or with fine or with both.
- (iv) dependants unable to maintain themselves (spouse, children both legitimate and illegitimate and parents).
- (v) the High Court.

2010 - June [6] State, with reasons in brief, whether the following statements are correct or incorrect :

- (i) The Constitution of India makes a few exceptions in which the Parliament is authorised to make the laws even on the subjects included in the State List. (1)
 - (ii) Article 174 of the Constitution of India empowers the Governor of the State to dissolve the State Legislature. (1)
 - (iii) The Right to Information Act, 2005 confers on all citizens of India a right to information. (10)
 - (iv) Certain categories of information have been exempted from disclosure under the Right to Information Act, 2005. (10)
 - (v) Under certain circumstances, a person is liable for the torts committed by another. (8)
 - (vi) On the same cause of action, a fresh suit is barred by law. (8)
 - (vii) Decree is a formal expression of an adjudication, whereas an order is the decision of the court. (8)
 - (viii) The procedure provided under any special or local law is not affected by the procedure given under the Code of Civil Procedure, 1908. (8)
- (2 marks each)

Answer :

- (i) **Correct.** When the states refer the matter to the Union or when in a state of emergency.
- (ii) **Correct.** This happens when the state Assembly is unable to function properly.
- (iii) **Correct.** As per the RTI Act, subject to certain provisions.
- (iv) **Correct.** According to Section 8 of the RTI Act.
- (v) **Correct.** In the cases of vicarious liability.
- (vi) **Correct.** As per Sections 10, 11, 12 of the Code of Civil Procedure.
- (vii) **Correct.** As per the definitions given in Sections 2(2) and 2(14) of the Code of Civil Procedure.
- (viii) **Correct.** As per Section 4 of the Code of Civil Procedure.

2010 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (i) A writ of _____ is issued to an inferior court preventing the latter from usurping jurisdiction which is not legally vested in it. (1)
 - (ii) A decree through which the right as to any property or the legal character of a person is judicially ascertained is known as _____. (8)
 - (iii) The word 'tort' is a French equivalent of English word _____. (3)
 - (iv) All documents produced for inspection of the court are called _____. (3)
 - (v) The provisions regarding use of adhesive stamps are given under section _____ of the Indian Stamp Act, 1899. (4)
 - (vi) The statement given by the court on the grounds of a decree or order as defined in section 2(9) of the Code of Civil Procedure, 1908 is known as _____. (8)
- (1 mark each)

Answer :

- (a) (i) A writ of prohibition is issued to an inferior court preventing the latter from usurping jurisdiction which is not legally vested in it.
- (ii) A decree through which the right as to any property or the legal character of a person is judicially ascertained is known as declaratory decree.
- (iii) The word 'tort' is a French equivalent of English word wrong .
- (iv) All documents produced for inspection of the court are called documentary evidence.
- (v) The provisions regarding use of adhesive stamps are given under Section 11 of the Indian Stamp Act, 1899.
- (vi) The statement given by the court on the grounds of a decree or order as defined in Sec. 2(9) of the Code of Civil Procedure, 1908 is known as judgement.

2010 - Dec [5] (b) Choose the most appropriate answer from the given options in respect of the following :

- (i) The relief of cancellation of a written instrument is available under the Specific Relief Act, 1963 —
 - (a) When an instrument is void or voidable at the option of plaintiff
 - (b) When the plaintiff may apprehend serious injury if the instrument is left outstanding
 - (c) Where the instrument requires registration but is not registered
 - (d) Where the conditions (a) and (b) mentioned above are fulfilled. (3)
- (ii) An award may be challenged on the ground of —
 - (a) Incapacity of a party
 - (b) Invalidity of an arbitration agreement
 - (c) Both (a) and (b)

- (d) None of the above. (3)
- (iii) The Parliament is empowered to make laws on the subjects enumerated in —
(a) List-I
(b) List-II
(c) Both List-I and List-II
(d) None of the above. (1)
- (iv) As per the Registration Act, 1908 a testator may deposit with any Registrar his will in a sealed cover with the name of the testator —
(a) Personally
(b) Through an agent
(c) Through any person
(d) Either (a) or (b). (6)
- (v) Where possession of the property is to be given to the mortgagee, the mortgage is called —
(a) Usufructuary mortgage
(b) Simple mortgage
(c) Anomalous mortgage
(d) None of the above. (4)
- (vi) Summary trials will apply to those offences which are not punishable with imprisonment for a term exceeding —
(a) Two years
(b) One year
(c) 60 Days
(d) 90 Days. (8)

(1 mark each)

Answer :

- (b) (i) (d) Where the conditions (a) and (b) mentioned above are fulfilled.
(ii) (c) Both (a) and (b)
(iii) (c) Both List-I and List-II
(iv) (d) either (a) or (b)
(v) (a) Usufructuary mortgage
(vi) (a) Two years.

2010 - Dec [6] State, with reasons in brief, whether the following statements are true or false :

- (i) Certain categories of information have been exempted from disclosure under the Right to Information Act, 2005. (10)
- (ii) Article 174 of the Constitution of India empowers the Governor of a State to dissolve the State Legislature. (1)
- (iii) Arbitration is the means by which the parties to a dispute get it settled through

- the intervention of a third person. (3)
- (iv) The limitation for taking cognizance of certain offences has been prescribed by the Code of Criminal Procedure, 1973. (9)
- (v) If the parties to arbitration fail to determine the number of arbitrators, the arbitral tribunal shall consist of three arbitrators. (3)
- (vi) An easement can be transferred apart from dominant heritage. (3)
- (vii) The doctrine of part-performance is applicable only where the transferee has taken possession of the immovable property. (4)
- (viii) A judicial proceeding under the Code of Criminal Procedure, 1973 includes inquiry, trial and investigation. (9)
- (2 marks each)

Answer :

State, with reasons in brief, whether the following statements are true or false:

- (i) **Correct** : Under Section 8 of the Right to Information Act, 2005 certain categories of information have been exempted from disclosure.
- (ii) **Correct** : Article 174(2) of the Constitution expressly vests in the Governor the power of dissolving State Legislature.
- (iii) **Correct** : Arbitration is the means by which parties to a dispute get the same settled through the intervention of a third person (or more persons) but without recourse to a court of law.
- (iv) **Correct** : Chapter XXXVI of the CR.P.C prescribes limitation period for taking cognizance of certain offences.
- (v) **Incorrect** : As per Section 10 of the Arbitration and Conciliation Act, 1996 if the parties failed to determine the number of arbitrators, the arbitral tribunal shall consist of a sole arbitrator.
- (vi) **Incorrect** : An easement cannot be transferred as apart from the dominant heritage. It is a right ancillary to the enjoyment of the land and cannot be separated from it.
- (vii) **Incorrect** : All the ingredients of Section 53A of the Transfer of Property Act, 1882 should be present.
- (viii) **Incorrect** : The term judicial proceeding includes inquiry and trial but does not include investigation. [Section 2(i)] of the Cr.P.C]

2011 - June [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (i) The publication of defamatory statement through written words is known as _____. (3)
- (ii) A pending suit, action, petition or the like is known as _____. (8)
- (iii) The doctrine which underlines the general principle that no one shall be vexed

- twice for the same cause is known as _____ . (8)
- (iv) A statement given by a judge on the grounds of decree or order is known as _____. (8)
- (v) Actionable claims are claims to _____ debts. (4)
- (1 mark each)
- (b)** Write the most appropriate answer from the given options in respect of the following :
- (i) The Constitution of India was enacted on -
(a) 26th November, 1949
(b) 26th January, 1950
(c) 28th January, 1950
(d) None of the above. (1)
- (ii) The Preamble of the Constitution -
(a) Is a part of the Constitution
(b) Can be used for interpreting the Constitution
(c) Both (a) and (b)
(d) None of the above. (1)
- (iii) The relief of cancellation of instrument is founded upon the principle of -
(a) Preventive justice
(b) Protective justice
(c) Proper justice
(d) None of the above. (3)
- (iv) As per the Transfer of Property Act, 1882, a person is an ostensible owner of an immovable property where he becomes interested therein by -
(a) Express consent
(b) Implied consent
(c) Either (a) or (b)
(d) Both (a) and (b). (4)
- (v) Second appeal to the Central Information Commission or the State Information Commission, as the case be, may be filed within -
(a) 30 days
(b) 60 days
(c) 90 days
(d) 120 days. (10)
- of the date on which the decision was given by the First Appellate Authority.
- (vi) The right of review has been conferred by the Code of Civil Procedure, 1908. It provides that any person considering himself aggrieved by a decree or order may apply for a review of the judgement to the -

- (a) Appellate Court
 - (b) High Court
 - (c) District Court
 - (d) Court which passed the decree or order. (8)
- (1 mark each)

Answer :

- (a) (i) The publication of defamatory statement through written words is known as libel.
- (ii) A pending suit, action, petition or the like is known as *lis pendens*.
- (iii) The doctrine which underlines the general principle that no one shall be vexed twice for the same cause is known as *res judicata*.
- (iv) A statement given by a judge on the grounds of decree or order is known as judgement.
- (v) Actionable claims are claims to unsecured debts.
- (b) (i) (b) 26th January, 1950
- (ii) (c) Both (a) and (b)
- (iii) (b) Protective justice
- (iv) (c) Either (a) or (b)
- (v) (c) 90 days
- (vi) (d) Court which passed the decree or order.

2011 - June [6] State, with reasons in brief, whether the following statements are true or false :

- (i) A contract which is dependent upon the personal qualifications can be specifically enforced. (3)
 - (ii) 'Arbitral tribunal' means a sole arbitrator or a panel of arbitrators. (3)
 - (iii) A mere right to sue can be transferred. (4)
 - (iv) A complaint in a criminal case is what a plaint is in a civil case. (9)
 - (v) In a declaratory decree, the right of any person to any property or his legal character is ascertained. (8)
 - (vi) A writ of *certiorari* is issued to prevent a lower court from usurping jurisdiction which is not legally vested in it. (1)
 - (vii) All documents produced for the inspection of the court are known as documentary evidence. (4)
 - (viii) An instrument not 'duly stamped' can be accepted in evidence by an arbitral tribunal. (5)
- (2 marks each)

Answer :

- (i) **False.** As per Section 14 of the Specific Relief Act, contracts of personal volition or qualification cannot be specifically enforced, as the quality of work performance cannot be ensured, nor can the continuity be ensured.

- (ii) **True.** As per Section 2 (1) (d) and Section 10 of the Arbitration and Conciliation Act, 1996
- (iii) **False.** As per Section 6 (e) of the Transfer of Property Act.
- (iv) **True.** A complaint in CrPC means a complaint made to a magistrate. It is defined in Section 2(d) of CrPC. As per the section it means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.
- (v) **True.** A declaratory judgment is a judgment of a court which determines the rights of parties without ordering anything be done or awarding damages.
- (vi) **False.** A writ of certiorari is issued to question what right the person acquiring any powers have to acquire them. Where they exceed their legal authority, they can be questioned using this writ.
- (vii) **True.** As per Section 3 of the Indian Evidence Act.
- (viii) **True.** An instrument not 'duly stamped' can be accepted in evidence by an arbitral tribunal, but only after having paid the requisite penalty.

2011 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (i) A 'reference' may be made by the subordinate court to _____ under the provisions of the Code of Civil Procedure, 1908. (8)
 - (ii) Cyber Appellate Tribunal is to be presided over by a person who is or has been qualified to be a _____. (7)
 - (iii) An application for obtaining information under the Right to Information Act, 2005 is to be submitted to _____. (10)
 - (iv) In the interpretation of statutes, where the rule applies that the general words following the particular or specific words, such rule is called _____. (2)
 - (v) A person liable for the torts committed by other person is called _____ under the law of torts. (3)
 - (vi) A document executed outside India is not valid unless it is _____. (6)
 - (vii) Whoever commits 'hacking' shall be punished with _____. (7)
 - (viii) Digital signature is recognised as a valid method of _____. (7)
- (1 mark each)

(b) Write the most appropriate answer from the given options in respect of the following:

- (i) The definition of 'legal representative' under the Code of Civil Procedure, 1908 means —
 - (a) A person who represents the deceased
 - (b) A person who represents in law the estate of the deceased
 - (c) A person who intermeddles with the estate of the deceased
 - (d) Both (b) and (c) above. (8)

- (ii) The mortgagee has the right to sell out the mortgaged property without intervention of the court in the —
(a) English mortgage
(b) Usufructuary mortgage
(c) Mortgage by conditional sale
(d) Simple mortgage. (4)
- (iii) The Right to Information Act, 2005 confers on all citizens a right to receive information. This is now a —
(a) Legal right
(b) Constitutional right
(c) Fundamental right
(d) Human right. (10)
- (iv) The conciliation proceedings shall be terminated —
(a) By signing of the settlement agreement by the parties
(b) By a written declaration of the conciliator
(c) By a written declaration of the parties for termination
(d) All the above. (3)
- (v) Where warrant remains unexecuted, the Code of Criminal Procedure, 1973 provides the remedy(ies) of —
(a) Issuing a proclamation
(b) Attachment and sale of property
(c) Sale of the property
(d) Both (a) and (b) above. (9)
- (vi) Any magistrate of the first class and of the second class is specially empowered to take cognizance of an offence upon —
(a) His own knowledge that such offence has been committed
(b) Receiving a complaint of facts constituting such offence
(c) Information received from a police officer
(d) Both (a) and (b) above. (9)
- (vii) Certain categories of information have been exempted from disclosure under the Right to Information Act, 2005 —
(a) Where the disclosure prejudicially affects the sovereignty and integrity of India
(b) Where disclosure would cause a breach of privilege of the Parliament or the State Legislature
(c) Information received in confidence from foreign government
(d) All the above. (10)

- (viii) Appointment of an arbitral tribunal under section 11 of the Arbitration and Conciliation Act, 1996 has to be made by an agreement between the parties within —
- (a) 30 Days
 - (b) 45 Days
 - (c) 60 Days
 - (d) None of the above.

(3)

(1 mark each)

Answer :

- (a) (i) A 'reference' may be made by the subordinate court to **the High Court** under the provisions of the Code of Civil Procedure, 1908.
- (ii) Cyber Appellate Tribunal is to be presided over by a person who is or has been qualified to be a Judge of a **High Court**.
- (iii) An application for obtaining information under the Right to Information Act, 2005 is to be submitted to **the Public Information Officer/Assistant Public Information Officer**.
- (iv) In the interpretation of statutes, where the rule applies that the general words following the particular or specific words, such rule is called **Rule of ejusdem generis**.
- (v) A person liable for the torts committed by other person is called **vicarious liability** under the law of torts.
- (vi) A document executed outside India is not valid unless it is **Registered in India**.
- (vii) Whoever commits 'hacking' shall be punished with **Imprisonment upto three years or fine which may extend to Rs. 2 lakh or with both**.
- (viii) Digital signature is recognised as a valid method of **Authentication of an instrument**.
- (b) (i) Both (b) and (c) above
- (ii) (a) English Mortgage
- (iii) (a) Legal Right
- (iv) (d) All the above
- (v) (d) Both (a) and (b) above.
- (vi) (d) Both (a) and (b) above A
- (vii) (d) All the above
- (viii) (a) 30 days.

2011 - Dec [7] State, with reasons in brief, whether the following statements are true or false:

- (i) 'Actionable claim' as defined in the Transfer of Property Act, 1882 is a property and transferable. (4)

- (ii) The provisions relating to 'fundamental rights' given in the Constitution of India are subject to amendment. (1)
 - (iii) Arbitration is the means by which the parties to a dispute get the same settled through the intervention of a third person. (3)
 - (iv) The limitation for taking cognizance of certain offences has been prescribed by the Code of Criminal Procedure, 1973. (9)
 - (v) Where a suit is pending in the jurisdictional civil court, a fresh suit cannot be proceeded with on the same cause of action between the same parties in another court in India. (8)
 - (vi) Questions arising between the parties and the representatives relating to execution, satisfaction and discharge of the decree will be decided by the executing court. (8)
 - (vii) Any person who is aggrieved by a decision of the Public Information Officer (PIO) may file an appeal under the Right to Information Act, 2005. (10)
 - (viii) Under the provisions of the Code of Criminal Procedure, 1973, the magistrate is empowered to issue search warrant for searching a document, parcel or other things in the custody of the postal or telegraph authority. (9)
- (2 marks each)

Answer :

- (i) **True:** As per the definition of Section 3 of the Transfer of Property Act, 1882, actionable claim includes all kinds of unsecured debts and beneficial interest in movable property which is not in the possession of claimant. Actionable claim can be transferred by execution of an instrument in writing signed by the transferor or his duly authorized agent.
- (ii) **True:** As per the case of *Kesavananda Bharti v. State of Kerala (AIR 1973 SCC 225)*. It was decided that the 24th Constitutional Amendment is entirely valid and that the Parliament can amend any part of the Constitution including Fundamental Rights. However, the basic structure or framework of the Constitution cannot be changed.
- (iii) **True:** Under the Arbitration And Conciliation Act, 1996 parties to a dispute can by agreement appoint the Arbitrator who settles their dispute outside the court. The parties rely on the judgement of Arbitrator and show their willingness to accept the decision.
- (iv) **True:** Section 468 in The Code of Criminal Procedure, 1973 as quoted, says that – there is a bar to taking cognizance after lapse of the period of limitation.
 1. Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

2. The period of limitation shall be-
- (a) six months, if the offence is punishable with fine only
 - (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
 - (c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.
- (v) **True:** This is as per Section 10 of the Code of Civil Procedure, 1908 which deals with the doctrine of res sub judice. This doctrine helps in avoiding duplicity of cases, and prevents opposing judgements being reached in same matters (Section 10 of the Code of Civil Procedure, 1908). When such a case arises, generally a stay operates on the second or following suit.
- (vi) **True:** Section 47 Sub-section (1) - Questions to be determined by the Court executing decree -
All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.
- (vii) **True:** Section 19 of the Act provides for appeal provisions wherein in case the public authorities are not doing their work properly or not providing the information, an appeal may be preferred. Sec 19 of the Act provides two tier system of appeals- first appeal and second appeal. One may file a complaint with SIC/CIC against Public Authority, Public Information Officer [PIO] and First Appellate Authority [FAA] for enquiring and taking corrective steps in respect of majority of problems that the applicant may face in getting information to which he is entitled to under this act.
- (viii) **False:** As per Section 93 Sub-Section (3), nothing contained in this section shall authorize any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority. It might however, be issued by a magistrate other than a District Magistrate or Chief Judicial Magistrate.

2012 - June [6] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (i) Any person in whose favour a decree has been passed is known as _____ (8)
- (ii) A private person may arrest or cause to be arrested any person who is a _____ (9)
- (iii) A police officer may conduct investigation without a Magistrate's order in _____ (9)

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- (iv) A Public Information Officer has to render information within _____ days under the Right to Information Act, 2005. (10)
- (v) A document executed by several persons at different times may be presented for registration and re-registration within _____ months from the date of each execution. (6)
- (vi) Verification of the electronic record is done by the use of a _____ of the subscriber under section 3(3) of the Information Technology Act, 2000. (7)
(1 mark each)

Answer :

- (i) decree holder
- (ii) proclaimed offender
- (iii) cognizable offence
- (iv) thirty
- (v) four
- (vi) public key

2012 - June [6] (b) Write the most appropriate answer from the given options in respect of the following:

- (i) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be —
 - (a) Voidable
 - (b) Not voidable
 - (c) Void
 - (d) Illegal. (4)
- (ii) The limitation period for money lent under an agreement that it shall be payable on demand is —
 - (a) 3 years
 - (b) 5 years
 - (c) 15 years
 - (d) 12 years. (3)
- (iii) Third party appeal against Public Information Officer's decision under the Right to Information Act, 2005 must be filed before first appellate authority within —
 - (a) 30 days
 - (b) 90 days
 - (c) 105 days
 - (d) None of the above. (11)
- (iv) Immovable property under the law relating to transfer of property includes —
 - (a) Growing trees
 - (b) Growing crops
 - (c) Both (a) and (b)
 - (d) None of the above. (4)

- (v) The duty of the Collector under section 31 of the Indian Stamp Act, 1899 is only to determine the stamp duty payable upon the instrument where he concludes that the instrument is not sufficiently stamped. He is not authorised to —
- (a) Impound the instrument
 - (b) Impose any penalty
 - (c) Both (a) and (b)
 - (d) Either (a) or (b). (5)
- (vi) Internal aids in interpretation of statutes include —
- (a) Title
 - (b) Preamble
 - (c) Marginal notes
 - (d) All the above. (2)

(1 mark each)

Answer :

- (i) (a) voidable
- (ii) (a) 3 years
- (iii) (a) 30 days
- (iv) (a) growing trees
- (v) (c) both a and b
- (vi) (d) all the above

2012 - June [7] State, with reasons in brief, whether the following statements are true or false :

- (i) The law of limitation is not unconstitutional. (3)
- (ii) "Traffic" in human beings means to deal in men and women like goods, such as to sell or let out or otherwise dispose them off. (1)
- (iii) The laws passed by Parliament in the national interest cease to have effect automatically after nine months. (1)
- (iv) A trustee may sue for possession of specific movable property of which he is a trustee. (3)
- (v) Where there is infringement of a legal right not resulting in harm, but plaintiff can still sue under the law relating to torts. (3)
- (vi) The maximum period of limitation prescribed under the Limitation Act, 1963 is 30 years. (3)
- (vii) Anil is tried for the murder of Sunil. The fact that before the death of Sunil, Anil procured poison similar to that which was administered to Sunil is not relevant. (9)
- (viii) A search warrant can be issued in cases where the court has reason to believe that a person summoned to produce any document or other thing will not produce it. (9)

(2 marks each)

Answer :

- (i) True. The law of limitation exists as a protection for the plaintiff, hence it is entirely constitutional.
- (ii) True. This is as per Article 23 of the Constitution of India.
- (iii) False. The laws passed by the Parliament have a maximum validity of six months, as per the Constitution of India.
- (iv) True. Section 7 of the Specific Relief Act allows for this.
- (v) True. As per the law of torts, which allow for injuria sine damnum, i.e. legal infringement without actual damage can be sued against.
- (vi) True. The maximum period allowable under the Limitation Act is thirty years for three kinds of suits.
- (vii) False. The fact is relevant as per Section 8 of the Indian Evidence Act.
- (viii) True. The court may issue such a warrant to recover/ inspect the object/ document required, which the person might not produce willingly.

2012 - Dec [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (i) The Constitution of India is a comprehensive document containing 395 Articles and _____ Schedules. (1)
 - (ii) One of the fundamental duties given in Article 51A of the Constitution of India is to uphold and protect the sovereignty, unity and _____ of India. (1)
 - (iii) The right to receive future rents and profits of land is _____ property. (4)
 - (iv) In lease, the transfer of immovable property is for a certain period or _____. (4)
 - (v) In every criminal offence, _____ is an essential ingredient. (9)
 - (vi) A complaint in criminal case must be made to _____. (9)
 - (vii) A private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence or who is a _____. (9)
 - (viii) Every Public Information Officer in case of not performing his duties will be liable for a fine of ₹ 250 per day upto a maximum of ₹ _____. (10)
- (1 mark each)

(b) Write the most appropriate answer from the given options in respect of the following:

- (i) Which of the following contracts are not specifically enforced as per the Specific Relief Act, 1963—
 - (a) Contracts for sale of patent right
 - (b) Contracts for copyright
 - (c) Contracts for rent laws
 - (d) Contracts for future property. (3)

- (ii) An instrument in writing containing an unconditional order signed by the maker is called—
(a) Cheque
(b) Bill of exchange
(c) I.O.U.
(d) Promissory note. (5)
- (iii) Section 46 of the Information Technology Act, 2000 deals with—
(a) Hacking
(b) Tampering
(c) Contravention of a rule
(d) The appointment of adjudicating officer. (7)
- (iv) Who among the following acts as Chairman of the committee for appointment of the Central Information Commissioners—
(a) President of India
(b) Prime Minister of India
(c) The leader of opposition in Lok Sabha
(d) None of the above. (10)
- (v) Which of the following authority under section 5 of the Limitation Act, 1963 is empowered to extend the period of limitation—
(a) Labour Court
(b) District Court
(c) High Court
(d) Arbitrator. (3)
- (vi) Under the provisions of the Code of Civil Procedure, 1908, from the date of the decree or order, an appeal can be made in the High Court within—
(a) 60 Days
(b) 30 Days
(c) 90 Days
(d) 120 Days. (8)
- (vii) Under the provisions of the Code of Civil Procedure, 1908, the defendant has to file the written statement of his defence from the date of the service of summons within a period of—
(a) 40 Days
(b) 30 Days
(c) 45 Days
(d) 60 Days. (8)
- (viii) Under the Code of Criminal Procedure, 1973, a search warrant can be issued under—
(a) Section 91

- (b) Section 92
 (c) Section 92(2) (9)
 (d) Section 93. (1 mark each)

Answer:

- (a) (i) 395 articles and 12 schedules
 (ii) integrity
 (iii) immovable
 (iv) perpetuity
 (v) *mens rea*
 (vi) magistrate
 (vii) proclaimed offender
 (viii) ₹ 25,000/-
- (b) (i) (c) Contract for rent laws
 (ii) (b) Bill of exchange
 (iii) (d) The appointment of adjudicating officer.
 (iv) (b) Prime Minister of India
 (v) (b) District Court
 (vi) (c) 90 days
 (vii) (b) 30 days
 (viii) (d) Section 93.

2012 - Dec [6] State, with reasons in brief, whether the following statements are true or false:

- (i) Ram sells a property to Shyam for ₹ 10,00,000 which is subject to mortgage to Mohan for ₹ 20,00,000 and unpaid interest of ₹ 4,00,000. Stamp duty is payable on ₹ 34,00,000. (5)
- (ii) Every copy of the summons issued must be signed by the Judge or an authorised officer of the court. (9)
- (iii) Under the Code of Criminal Procedure, 1973, summary trial is conducted in those offences which are not punishable with imprisonment for a term exceeding two years. (9)
- (iv) Where the information requested for concerns the life or liberty of a person, the same should be provided within 48 hours of the receipt of such request under the provisions of the Right to Information Act, 2005. (10)
- (v) As per the provisions of the Arbitration and Conciliation Act, 1996 conciliator is bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. (8)
- (vi) Under the Information Technology Act, 2000, 'addressee' is a person who is supposed to receive information sent by the originator of the message through an intermediary. (7)

- (vii) A document executed by several persons at different times may be presented for registration and re-registration within six months from the date of each execution. (6)
- (viii) A collector is not authorised to impound the instrument or to impose any penalty if he comes to the conclusion that the instrument is not sufficiently stamped.(5)
(2 marks each)

Answer:

- (i) **True.** This is as per Section 24 of the Indian Stamp Act, 1899, which provides that in case of property subject to mortgage or any other encumbrances, the assessee is to treat as part of consideration any unpaid amount due on the mortgage and is to pay stamp duty on the total amount.
- (ii) **True.** As per Order 5 of The Civil Procedure Code, 1908, summons need to be signed by the judge from whose court it is issued, and sealed with the seal of the Court in order to be valid.
- (iii) **True.** Section 260 Clause 2 of the Code lists certain offences which may be summarily tried by any Chief Judicial Magistrate, any Metropolitan Magistrate or any Judicial Magistrate First Class. The offences that may be tried summarily under this Section are: offences not punishable with death, life imprisonment, or imprisonment for a term exceeding two years.
- (iv) **True.** As per Section 28 of the Right to Information Act, 2005 - In normal course, information to an applicant shall be supplied within 30 days from the receipt of application by the public authority. If information sought concerns the life or liberty of a person, it shall be supplied within 48 hours by the PIO.
- (v) **False.** The Conciliator under the provisions of the Arbitration and Conciliation Act, 1996 shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.
- (vi) **False.** Under Section 2 (1) (b) of the Information Technology Act, 2000, "addressee" means a person who is intended by the originator to receive the electronic record but does not include any intermediary.
- (vii) **False.** A document executed by several persons at different times may be presented for registration and re-registration within four months from the date of each execution.(Section 24, Indian Registration Act, 1908).
- (viii) **True.** As per Section 31 of the Indian Stamp Act, 1899, the Collector is to determine the stamp duty payable upon the instrument, but he cannot impound the instrument or impose any penalty.

2013 - June [5] (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (i) 'Lease' means a lease of _____ property.

- (ii) There are two types of stamping namely, adhesive stamping and _____ stamping.
- (iii) 'Private key' means the key of a key pair used to create a _____ as given under section 2 (1)(zc) of the Information Technology Act, 2000.
- (iv) No court shall take cognizance of an offence after six months, if it is punishable with _____ only.
- (v) All _____ shall have the right to seek information subject to the provisions of the Right to Information Act, 2005.
- (vi) Attack on the reputation of a person is called _____.
- (vii) _____ is at times appended to a section to explain the meaning of words contained in the section.
- (viii) A licence does not transfer any _____ in the property and the licensee has no right to possession. (1 mark each)

(b) Write the most appropriate answer from the given options in respect of the following:

- (i) Which of the following conditions are necessary for the application of section 41 of the Transfer of Property Act, 1882—
 - (a) The transferor is the ostensible owner
 - (b) The transferor has given his consent
 - (c) The transfer is not for consideration
 - (d) Both (a) and (b) above.
- (ii) Which of the following conditions are required for the principle of *res judicata* to suits as applied by courts *vide* section 11 of the Code of Civil Procedure, 1908—
 - (a) The matter directly and substantially arise in former and later suits
 - (b) The former suit has not been decided
 - (c) The said suit has not been heard and decided
 - (d) All the above are required for the application of *res judicata*.
- (iii) Which of the following are the different classes of criminal courts —
 - (a) High Courts
 - (b) Sessions Courts
 - (c) Judicial Magistrates
 - (d) All of the above.
- (iv) Which of the following judicial authorities shall not conduct a summary trial —
 - (a) Any Judge of a High Court
 - (b) Any Chief Judicial Magistrate
 - (c) Any Metropolitan Magistrate
 - (d) Any first class Magistrate specifically empowered by a High Court.

- (v) To avoid any inconsistency or repugnancy either in a section or between sections and other parts of the statutes, the rule applied is that of—
(a) Harmonious construction
(b) Literal construction
(c) Reasonable construction
(d) None of the above.
- (vi) Any person aggrieved by an order of the Controller of Certifying Authorities or of the Adjudicating Officer can appeal to the Cyber Appellate Tribunal within—
(a) 30 days
(b) 45 days
(c) 60 days
(d) 90 days.
- (vii) Under law of torts, exception to the strict liability is —
(a) Inevitable accident
(b) Inevitable mistake
(c) Consent of the plaintiff
(d) All of the above.
- (viii) 'Computer network' means the interconnection of one or more computers through the use of —
(a) Satellite
(b) Microwave
(c) Terminals
(d) All of the above.

(1 mark each)

Answer:

- (a) (i) immovable
(ii) impressed
(iii) digital signature
(iv) fine
(v) citizens
(vi) defamation
(vii) An explanation
(viii) interest in the property
- (b) (i) (d) both a and b above
(ii) (a) The matter directly and substantially arise in former and later suits
(iii) (d) All of the above.
(iv) (a) Any Judge of a High Court
(v) (a) None of the above.
(vi) (b) Inevitable mistake
(vii) (c) Consent of the plaintiff
(viii) (d) All of the above.

2013 - June [6] State, with reasons in brief, whether the following statements are true or false:

- (i) The right to know, receive and impart information has been recognised within the right to freedom of speech and expression.
- (ii) The rules of evidence are the same in civil and criminal proceedings and there is no strong and marked difference as to the effect of evidence in civil and criminal proceedings.
- (iii) The courts of India are not bound by the specific provisions of the Limitation Act, 1963.
- (iv) The Right to Information Act, 2005 imposes stringent penalty on a public information officer (PIO) for failing to provide information and the penalty is ₹ 150 per day upto a maximum of ₹ 15,000.
- (v) Under section 24 of the Registration Act, 1908 a document executed by several persons at different times may be presented for registration and re-registration within six months from the date of each execution.
- (vi) The mere existence of arbitration clause in agreement bars the jurisdiction of civil courts automatically.
- (vii) The chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of kinsman or any other mere possibility of a like nature cannot be transferred.
- (viii) Delay in registration of a deed of gift under the Transfer of Property Act, 1882 postpones its operation. (2 marks each)

Answer:

- (i) **True:** Based on Article 21 of the Constitution of India, the Supreme Court decided in the case of S.P. Gupta v. Union of India that the right to information is within the constitutional right to know. Also, as per Article 19 (1) (a), Right to freedom of speech and expression necessarily includes the right to be informed.
- (ii) **False:** The most marked difference is the incidence of probability. It is enough in civil cases to decide on the basis of probability, whereas in criminal matters, no decision is taken without being certain of the facts to a large extent.
- (iii) **False:** The courts in India are bound by the Limitation Act, 1963, as they are bound to accept cases only if filed within a particular time frame. The only exception is when the courts condone the delay for sufficient cause, which is also allowed within set time frames.
- (iv) **False:** This is covered under Section 20 of the RTI Act, 2005, which provides for a penalty of ₹ 250 per day increasing upto ₹ 25,000.
- (v) **False:** The time prescribed for this purpose within the Registration Act, 1908 is four months counting from the date of each execution.

- (vi) **False:** The existence of arbitration clause in an agreement does not bar the jurisdiction of the Civil Court automatically. If a party wants to go to court, he/she has to raise objection not later than the first submission of the statement of defence on the matter. [Mahesh Kumar v. Rajasthan State Road Corporation].
- (vii) **True:** This is included within the cases provided in Section 6 of the Transfer of Property Act, which provides a list of properties that cannot be transferred.
- (viii) **False:** In the case of Kalyan Sundaram v. Kumarappa, it was decided that a gift is entirely valid as from the date of acceptance, regardless of its registration taking place at a later date. Although in case of immovable properties, registration of gift becomes mandatory, but still a later registration will not postpone its operation.

2013 - Dec [5] (a) Re- write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):

- (i) Article 21 of the Constitution of India confers on every person the fundamental right to life and _____ .
- (ii) Ejusdem generis, literally means 'of the same _____' .
- (iii) A declaratory decree is a decree whereby any right as to any property or the _____ of a person is judicially ascertained.
- (iv) According to the maxim _____ where there is infringement of a legal right not resulting in harm, the plaintiff can still sue in tort.
- (v) In lease, there is a transfer of the right to _____ immovable property.
- (vi) _____ as set out in section 2(14) of the Code of Civil Procedure, 1908 is the formal expression of any decision of a Civil Court which is not a decree.
- (vii) In case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, only the _____ instrument shall be chargeable with the prescribed duty as per section 4 of the Indian Stamp Act, 1899.
- (viii) The test of 'sufficient cause' is purely an individualistic test. It is not an _____ test. (1 mark each)

2013 - Dec [5] (b) Write the most appropriate answer from the given options in respect of the following:

- (i) When the President of India makes a reference to the court on questions of fact and law, the advice is given by the -
- (a) Civil Court
(b) Criminal Court
(c) High Court
(d) Supreme Court.
- (ii) Where a contract comprises an affirmative as well as negative agreement, the court can grant an injunction to perform -
- (a) Affirmative agreement

- (b) Negative agreement
 - (c) Both of the above
 - (d) None of the above.
- (iii) Where meaning of a word is known from its accompanying or associating words, the construction is known as -
- (a) Noscitur a sociis
 - (b) Liberal construction
 - (c) Harmonious construction
 - (d) Eiusdem generis.
- (iv) The mandate of an arbitrator gets terminated when -
- (a) He becomes unable to perform his functions
 - (b) He remains in his office to perform his functions
 - (c) The parties agree to retain him in the office
 - (d) None of the above.
- (v) A party may refuse to produce the document for inspection —
- (a) When it discloses party's evidence
 - (b) When it enjoys a legal professional privilege
 - (c) When it is injurious to public interest
 - (d) All of the above.
- (vi) Death sentence can be passed by the court of a —
- (a) Chief Judicial Magistrate
 - (b) Metropolitan Magistrate
 - (c) Magistrate of the First Class
 - (d) None of the above.
- (vii) 'Computer network' means the interconnection of one or more computers through the use of —
- (a) Satellite
 - (b) Microwave
 - (c) Terrestrial line
 - (d) All of the above.
- (viii) As per section 18 of the Indian Stamp Act, 1899, an instrument not duly stamped can be properly stamped within a period of —
- (a) One month
 - (b) Three months
 - (c) Four months
 - (d) Six months.

(1 mark each)

2013 - Dec [6] State, with reasons in brief, whether the following statements are true or false:

- (i) An instrument not properly stamped is not accepted as evidence in the court of law.

- (ii) The court can suo moto take note of question of limitation.
- (iii) The writ of habeas corpus is an effective bulwark of personal liberty.
- (iv) A person suing for rescission of a contract can also sue for specific performance of a contract.
- (v) Any fact is relevant even when it does not show or constitute a motive or preparation for any fact in issue.
- (vi) Bills of exchange and promissory notes drawn or made out of India may be stamped with adhesive stamp.
- (vii) A testator has to deposit with any Registrar his 'will' in person.
- (viii) Certain wrongful acts concerning computers, etc., are adjudicated not before courts but before Adjudication Officer. (2 marks each)

June - 2012
General and Commercial Laws
Paper 1

NOTE: Answer SIX questions including Question No. 1 which is compulsory.

1. (a) What is the scope of Article 14 of the Constitution of India? To what extent is it correct to say that Article 14 forbids class legislation, but does not forbid classification? (8 marks)
- (b) Discuss the fundamental duties imposed on citizens of India. (6 marks)
- (c) What are the presumptions in the interpretation of statutes when the intention of the legislature is not clear? (6 marks)
2. (a) Mention the persons against whom specific performance of contract can not be enforced. (6 marks)
- (b) State the places where documents relating to immovable property may be presented for registration under the Registration Act, 1908. (5 marks)
- (c) What are the modes of cancellation of adhesive stamps? (5 marks)
3. (a) What are the grounds on which an arbitral award may be challenged before the court? (6 marks)
- (b) Describe the exceptions to the rule of strict liability. (5 marks)
- (c) Explain the 'doctrine of sufficient cause' for condonation of delay as provided in section 5 of the Limitation Act, 1963. (5 marks)
4. Explain in brief **any four** of the following:
 - (i) 'Cause of action' under the Code of Civil Procedure, 1908
 - (ii) 'Cyber Regulations Appellate Tribunal' under the Information Technology Act, 2000
 - (iii) Salient features of the Right to Information Act, 2005
 - (iv) 'Expert opinion' under the Indian Evidence Act, 1872
 - (v) 'Digital signature' under the Information Technology Act, 2000. (4 marks each)
5. Distinguish between **any four** of the following:
 - (i) 'Vested interest' and 'contingent interest'
 - (ii) 'English mortgage' and 'mortgage by conditional sale'
 - (iii) 'Actionable claim' and 'mere right to sue'
 - (iv) 'Legal set-off' and 'equitable set-off'
 - (v) 'Public key' and 'private key' (4 marks each)
6. (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):
 - (i) Any person in whose favour a decree has been passed is known as _____.

- (ii) A private person may arrest or cause to be arrested any person who is a _____.
 - (iii) A police officer may conduct investigation without a Magistrate's order in _____.
 - (iv) A Public Information Officer has to render information within _____ days under the Right to Information Act, 2005.
 - (v) A document executed by several persons at different times may be presented for registration and re-registration within _____ months from the date of each execution.
 - (vi) Verification of the electronic record is done by the use of a _____ of the subscriber under section 3 (3) of the Information Technology Act, 2000. (1 mark each)
- (b) Write the most appropriate answer from the given options in respect of the following:
- (i) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be —
 - (a) Voidable
 - (b) Not voidable
 - (c) Void
 - (d) Illegal.
 - (ii) The limitation period for money lent under an agreement that it shall be payable on demand is —
 - (a) 3 years
 - (b) 5 years
 - (c) 15 years
 - (d) 12 years.
 - (iii) Third party appeal against Public Information Officer's decision under the Right to Information Act, 2005 must be filed before first appellate authority within —
 - (a) 30 days
 - (b) 90 days
 - (c) 105 days
 - (d) None of the above.
 - (iv) Immovable property under the law relating to transfer of property includes—
 - (a) Growing trees
 - (b) Growing crops
 - (c) Both (a) and (b)
 - (d) None of the above.

- (v) The duty of the Collector under section 31 of the Indian Stamp Act, 1899 is only to determine the stamp duty payable upon the instrument where he concludes that the instrument is not sufficiently stamped. He is not authorised to —
- (a) Impound the instrument
 - (b) Impose any penalty
 - (c) Both (a) and (b)
 - (d) Either (a) or (b).
- (vi) Internal aids in interpretation of statutes include —
- (a) Title
 - (b) Preamble
 - (c) Marginal notes
 - (d) All the above. (1 mark each)
- (c) Amit mortgages a house of the value of ₹ 25,000 to Bimal for ₹ 10,000. Bimal afterwards buys the house from Amit. Whether the stamp duty already paid is deductible from the stamp duty payable on ₹ 25,000 ? (4 marks)
7. State, with reasons in brief, whether the following statements are true or false :
- (i) The law of limitation is not unconstitutional.
 - (ii) "Traffic" in human beings means to deal in men and women like goods, such as to sell or let out or otherwise dispose them off.
 - (iii) The laws passed by Parliament in the national interest cease to have effect automatically after nine months.
 - (iv) A trustee may sue for possession of specific movable property of which he is a trustee.
 - (v) Where there is infringement of a legal right not resulting in harm, but plaintiff can still sue under the law relating to torts.
 - (vi) The maximum period of limitation prescribed under the Limitation Act, 1963 is 30 years.
 - (vii) Anil is tried for the murder of Sunil. The fact that before the death of Sunil, Anil procured poison similar to that which was administered to Sunil is not relevant.
 - (viii) A search warrant can be issued in cases where the court has reason to believe that a person summoned to produce any document or other thing will not produce it. (2 marks each)
8. (a) A transport company has its head office at Kolkata and branch offices at Allahabad, Lucknow and Puri. A dispute cropped up between Hassan and the transport company in respect of a transaction through Allahabad office. Hassan files a suit in respect of this dispute against the company in a court at Puri. Is the court at Puri competent to decide this case? Give reasons. (5 marks)

- (b) Sohan is tried summarily by the Metropolitan Magistrate on the charge of committing theft and is sentenced to undergo imprisonment for a period of six months. Can Sohan challenge this decision ? If so, on what grounds ?
(5 marks)
- (c) Shyam executes a sale deed of a house in favour of Krishna. The house is situated in Faridabad, but the transferor and the transferee want the sale deed to be registered at Gurgaon, which has also a District Court of Haryana State. Can they do so ? Given reasons.
(6 marks)

December - 2012
General and Commercial Laws
Paper 1

Answer SIX questions including Question No. 1 which is compulsory.

1. (a) Creation of monopoly rights in favour of a person or body of persons to carry on any business *prima facie* affects the freedom of trade. Can the State create a monopoly in favour of itself? Answer citing case law, if any. (8 marks)
- (b) Describe in brief the powers of Parliament to make laws on the subjects enumerated in the State List. (6 marks)
- (c) The true place of a preamble in a statute was at one time the subject of conflicting decisions. Is such an opinion still prevailing? Discuss, citing case law. (6 marks)
2. Comment on **any four** of the following:
- (i) Parliamentary history as an external aid in the interpretation of statutes.
 - (ii) Persons against whom specific performance of contract is available.
 - (iii) Making of additional award by arbitral tribunal.
 - (iv) Exceptions to the rule that absolute restraint on transfer of property is void.
 - (v) Computation of period of limitation for an appeal or an application for leave to appeal. (4 marks each)
3. Distinguish between **any four** of the following:
- (i) 'Writ of prohibition' and 'writ of mandamus.'
 - (ii) 'Remedies of specific performance' and 'remedies of injunction'.
 - (iii) 'Arbitration' and 'conciliation'.
 - (iv) 'Libel' and 'slander'.
 - (v) 'Mortgage' and 'charge'. (4 marks each)
4. Attempt **any four** of the following:
- (i) The law looks into the substance and effect (or intended effect) of the text of the instrument and not the physical medium through which it is recorded. Comment.

- (ii) The majority of legal problems in the information technology relate to the machine, the medium and the message. Discuss.
 - (iii) Explain the rules relating to delivery of summons by court under the Code of Civil Procedure (Amendment) Act, 2002.
 - (iv) The principle of *estoppel* says that a man shall not say one thing at one time and later on say a different thing. Comment.
 - (v) When can the Magistrate take cognizance of an offence? (4 marks each)
5. (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):
- (i) The Constitution of India is a comprehensive document containing 395 Articles and _____ Schedules.
 - (ii) One of the fundamental duties given in Article 51A of the Constitution of India is to uphold and protect the sovereignty, unity and _____ of India.
 - (iii) The right to receive future rents and profits of land is _____ property.
 - (iv) In lease, the transfer of immovable property is for a certain period or _____.
 - (v) In every criminal offence, _____ is an essential ingredient.
 - (vi) A complaint in criminal case must be made to _____.
 - (vii) A private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence or who is a _____.
 - (viii) Every Public Information Officer in case of not performing his duties will be liable for a fine of ₹ 250 per day upto a maximum of ₹ _____.
- (1 mark each)
- (b) Write the most appropriate answer from the given options in respect of the following:
- (i) Which of the following contracts are not specifically enforced as per the Specific Relief Act, 1963—
 - (a) Contracts for sale of patent right
 - (b) Contracts for copyright
 - (c) Contracts for rent laws
 - (d) Contracts for future property.
 - (ii) An instrument in writing containing an unconditional order signed by the maker is called—
 - (a) Cheque
 - (b) Bill of exchange
 - (c) I.O.U.
 - (d) Promissory note.

- (iii) Section 46 of the Information Technology Act, 2000 deals with—
(a) Hacking
(b) Tampering
(c) Contravention of a rule
(d) The appointment of adjudicating officer.
- (iv) Who among the following acts as Chairman of the committee for appointment of the Central Information Commissioners—
(a) President of India
(b) Prime Minister of India
(c) The leader of opposition in Lok Sabha
(d) None of the above.
- (v) Which of the following authority under section 5 of the Limitation Act, 1963 is empowered to extend the period of limitation—
(a) Labour Court
(b) District Court
(c) High Court
(d) Arbitrator.
- (vi) Under the provisions of the Code of Civil Procedure, 1908, from the date of the decree or order, an appeal can be made in the High Court within—
(a) 60 Days
(b) 30 Days
(c) 90 Days
(d) 120 Days.
- (vii) Under the provisions of the Code of Civil Procedure, 1908, the defendant has to file the written statement of his defence from the date of the service of summons within a period of—
(a) 40 Days
(b) 30 Days
(c) 45 Days
(d) 60 Days.
- (viii) Under the Code of Criminal Procedure, 1973, a search warrant can be issued under—
(a) Section 91
(b) Section 92
(c) Section 92(2)
(d) Section 93. (1 mark each)
6. State, with reasons in brief, whether the following statements are true or false:
(i) Ram sells a property to Shyam for ₹ 10,00,000 which is subject to mortgage to Mohan for ₹ 20,00,000 and unpaid interest of ₹ 4,00,000. Stamp duty is payable on ₹ 34,00,000.

- (ii) Every copy of the summons issued must be signed by the Judge or an authorised officer of the court.
 - (iii) Under the Code of Criminal Procedure, 1973, summary trial is conducted in those offences which are not punishable with imprisonment for a term exceeding two years.
 - (iv) Where the information requested for concerns the life or liberty of a person, the same should be provided within 48 hours of the receipt of such request under the provisions of the Right to Information Act, 2005.
 - (v) As per the provisions of the Arbitration and Conciliation Act, 1996 conciliator is bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.
 - (vi) Under the Information Technology Act, 2000, 'addressee' is a person who is supposed to receive information sent by the originator of the message through an intermediary.
 - (vii) A document executed by several persons at different times may be presented for registration and re-registration within six months from the date of each execution.
 - (viii) A collector is not authorised to impound the instrument or to impose any penalty if he comes to the conclusion that the instrument is not sufficiently stamped. (2 marks each)
7. (a) Amrit (*lessor*) grants his immovable property (premises) on lease for 4 years to Sukant (*lessee*) commencing from 1st June, 2001. The lessor gives a notice to the lessee on 1st February, 2008 for vacating the premises on 1st March, 2008:
- (i) Is this notice a valid notice?
 - (ii) If the lease is continued after 4 years, will the tenancy be on monthly basis or yearly basis? Decide. (6 marks)
- (b) The managing clerk of a firm of solicitors, while acting in the ordinary course of business committed fraud against a lady client by fraudulently inducing her to sign documents transferring her property to him. The clerk did so without the knowledge of his principal. Who is liable to the lady in this case? Support your answer with reasons, citing case law, if any. (5 marks)
- (c) Bimal made an application in writing with prescribed fee to the Public Information Officer (PIO) for obtaining the information which is permissible under the relevant statute. The PIO neither provided the required information nor rejected the application of Bimal for providing the required information although a period of 45 days elapsed from the date of submitting the aforesaid application to the PIO. Bimal wants to file a suit in the civil court for not providing the required information to him. Advise Bimal. (5 marks)

8. (a) One morning, scientists at an atomic research centre found a rude-nuclear message splashed across their computer screens. Someone had breached the atomic research centre's advanced security system and sensitive e-mail. What offence has been committed in the atomic research centre? Decide with reference to the provisions of the relevant statute. (6 marks)
- (b) Rohit executes a sale deed of a house in favour of Prem. The house is situated at NOIDA (Uttar Pradesh), but the transferor (Rohit) and transferee (Prem) want the sale deed to be registered at Lucknow, which is capital of the State. Can they do so? Discuss. (5 marks)
- (c) A suit was instituted by the plaintiff company alleging infringement by the defendant company by using trade name of medicine and selling the same colour combination, etc., as that of plaintiff company. A subsequent suit was instituted in a different court by the defendant company containing the same allegations. Advise the plaintiff company about the steps to be taken by it giving reference to relevant legal provisions and case law. (5 marks)

June - 2013
General and Commercial Laws
Paper 1

Note: Answer **SIX** questions including Question No. 1 which is compulsory.

1. (a) Discuss in brief the doctrine of severability. (8 marks)
- (b) Describe the right of minorities to establish and administer educational institutions as enshrined in the Constitution of India. (6 marks)
- (c) Explain the rule of *ejusdem generis* with the help of any case decided by the Supreme Court of India. (6 marks)
2. (a) What do you mean by 'promissory note'? State the requisites of a promissory note with the help of some illustrations. (5 marks)
- (b) Discuss in brief the main remedies available to a person against whom *ex parte* decree is passed. (5 marks)
- (c) What is meant by 'preventive detention'? What are the safeguards available against preventive detention? (6 marks)
3. Distinguish between the following. Attempt **any four**:
- (i) 'Specific performance' and 'injunction'.
(ii) 'Battery' and 'assault'.
(iii) 'Set-off' and 'counter claim'.
(iv) 'Review' and 'revision'.
(v) 'Summons' and 'warrant of arrest'. (4 marks each)

4. (a) Discuss the evidentiary value of an instrument not duly stamped under the Indian Stamp Act, 1899. (4 marks)
- (b) Describe the offence of 'hacking' the computer system as provided under the provisions of the Information Technology Act, 2000. (4 marks)
- (c) State the meaning and characteristics of immovable property as per the Transfer of Property Act, 1882. (4 marks)
- (d) What do you mean by the rule of *lis pendens*? Write down the essentials of rule of *lis pendens* as provided in the Transfer of Property Act, 1882. (4 marks)
5. (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):
- (i) 'Lease' means a lease of _____ property.
 - (ii) There are two types of stamping namely, adhesive stamping and _____ stamping.
 - (iii) 'Private key' means the key of a key pair used to create a _____ as given under section 2 (1)(zc) of the Information Technology Act, 2000.
 - (iv) No court shall take cognizance of an offence after six months, if it is punishable with _____ only.
 - (v) All _____ shall have the right to seek information subject to the provisions of the Right to Information Act, 2005.
 - (vi) Attack on the reputation of a person is called _____.
 - (vii) _____ is at times appended to a section to explain the meaning of words contained in the section.
 - (viii) A licence does not transfer any _____ in the property and the licensee has no right to possession. (1 mark each)
- (b) Write the most appropriate answer from the given options in respect of the following:
- (i) Which of the following conditions are necessary for the application of section 41 of the Transfer of Property Act, 1882—
 - (a) The transferor is the ostensible owner
 - (b) The transferor has given his consent
 - (c) The transfer is not for consideration
 - (d) Both (a) and (b) above.
 - (ii) Which of the following conditions are required for the principle of *res judicata* to suits as applied by courts *vide* section 11 of the Code of Civil Procedure, 1908—
 - (a) The matter directly and substantially arise in former and later suits
 - (b) The former suit has not been decided
 - (c) The said suit has not been heard and decided
 - (d) All the above are required for the application of *res judicata*.

- (iii) Which of the following are the different classes of criminal courts —
 - (a) High Courts
 - (b) Sessions Courts
 - (c) Judicial Magistrates
 - (d) All of the above.
 - (iv) Which of the following judicial authorities shall not conduct a summary trial —
 - (a) Any Judge of a High Court
 - (b) Any Chief Judicial Magistrate
 - (c) Any Metropolitan Magistrate
 - (d) Any first class Magistrate specifically empowered by a High Court.
 - (v) To avoid any inconsistency or repugnancy either in a section or between sections and other parts of the statutes, the rule applied is that of—
 - (a) Harmonious construction
 - (b) Literal construction
 - (c) Reasonable construction
 - (d) None of the above.
 - (vi) Any person aggrieved by an order of the Controller of Certifying Authorities or of the Adjudicating Officer can appeal to the Cyber Appellate Tribunal within—
 - (a) 30 days
 - (b) 45 days
 - (c) 60 days
 - (d) 90 days.
 - (vii) Under law of torts, exception to the strict liability is —
 - (a) Inevitable accident
 - (b) Inevitable mistake
 - (c) Consent of the plaintiff
 - (d) All of the above.
 - (viii) 'Computer network' means the interconnection of one or more computers through the use of —
 - (a) Satellite
 - (b) Microwave
 - (c) Terminals
 - (d) All of the above. (1 mark each)
6. State, with reasons in brief, whether the following statements are true or false:
- (i) The right to know, receive and impart information has been recognised within the right to freedom of speech and expression.

- (ii) The rules of evidence are the same in civil and criminal proceedings and there is no strong and marked difference as to the effect of evidence in civil and criminal proceedings.
 - (iii) The courts of India are not bound by the specific provisions of the Limitation Act, 1963.
 - (iv) The Right to Information Act, 2005 imposes stringent penalty on a public information officer (PIO) for failing to provide information and the penalty is ₹ 150 per day upto a maximum of ₹ 15,000.
 - (v) Under section 24 of the Registration Act, 1908 a document executed by several persons at different times may be presented for registration and re-registration within six months from the date of each execution.
 - (vi) The mere existence of arbitration clause in agreement bars the jurisdiction of civil courts automatically.
 - (vii) The chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of kinsman or any other mere possibility of a like nature cannot be transferred.
 - (viii) Delay in registration of a deed of gift under the Transfer of Property Act, 1882 postpones its operation. (2 marks each)
7. (a) An instrument bears a stamp of sufficient amount, but of improper description. Can it be certified as duly stamped? How the instrument can be rectified and what would be the date of its execution? (6 marks)
- (b) Achal gives an instrument to Basu which is unstamped. This instrument is also not registered –
- (i) Will the instrument be admitted in evidence?
 - (ii) Will the situation change if the instrument is stamped but not registered before passing to Basu and Basu gets it registered subsequently? (5 marks)
- (c) Ragini told Rajendra in the year 2007 that she had committed theft of the jewellery of her neighbour Asha. Thereafter, Ragini and Rajendra were married in the year 2008. In the year 2009, criminal proceedings were instituted against Ragini in respect of the theft of the said jewellery. Rajendra is summoned to give evidence in the said criminal proceedings. Decide whether Rajendra can disclose the communication made to him by Ragini in the year 2007, in the criminal proceedings in respect of the theft of the jewellery. (5 marks)
8. (a) Mohan and Sohan are jointly tried for the murder of Rohan. It is proved that Mohan said, "Sohan and I murdered Rohan." Can the court consider the effect of this confession as against Sohan? Give reasons. (5 marks)

- (b) The driver of a petrol lorry, while transferring petrol from the lorry to an underground tank at a garage, struck a matchstick in order to light a cigarette and then threw it, still alight on the floor. An explosion and a fire ensued. Who is liable for the damage so caused? Decide giving case law on this point. (5 marks)
- (c) Shyam, a police officer comes to know from reliable sources that four persons are staying in a house and planning to kidnap and murder Rajan. They are equipped with automatic weapons. The police officer apprehends that they will commit the crime at any moment. He directly goes to that house and, without any warrant or order from the Metropolitan Magistrate, arrests all the four persons along with weapons in their possession. Is the arrest of all the four persons valid? Decide with reasons. (6 marks)

December - 2013
General and Commercial Laws
Paper 1

Note: Answer **SIX** questions including Question No. 1 which is compulsory.

1. (a) "Article 14 of the Constitution of India does not rule out classification for purposes of legislation; what it requires is a valid classification for the same." Explain. (8 marks)
- (b) Describe the power of the President of India to promulgate ordinances. (6 marks)
- (c) Discuss in brief the primary rule of literal construction in the interpretation of a statute. (6 marks)
2. Discuss the following. Attempt **any four**:
- (i) Vicarious liability of the State.
 - (ii) A person taking the benefit of an instrument must also bear the burden of the instrument.
 - (iii) Fraudulent transfer is voidable as per the Transfer of Property Act, 1882.
 - (iv) Summary suit applies to a suit to prevent unreasonable obstruction by a defendant.
 - (v) Liability of network service provider under section 79 of the Information Technology Act, 2000. (4 marks each)
3. Distinguish between the following. Attempt any four:
- (i) 'Judicial remedies' and 'extra-judicial remedies'.
 - (ii) 'Complaint' and 'FIR'.
 - (iii) 'Doctrine of *res sub judice*' and 'doctrine of *res judicata*'.
 - (iv) 'Admissions' and 'confessions' under the Indian Evidence Act, 1872.
 - (v) 'Condition precedent' and 'condition subsequent.' (4 marks each)

4. Attempt any **four** of the following:
- (i) State any four categories of cases in which a police officer may arrest a person without an order from a Magistrate and without a warrant.
 - (ii) When is the Central Information Commission/State Information Commission duty bound to receive complaints from any person ?
 - (iii) What is the effect of non-registration of documents required to be registered?
 - (iv) What is the remedy available to a person, if the document presented by him for registration is refused to be registered by the Registrar ?
 - (v) Explain form and contents of an arbitral award. (4 marks each)
5. (a) Re- write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):
- (i) Article 21 of the Constitution of India confers on every person the fundamental right to life and _____ .
 - (ii) Eiusdem generis, literally means 'of the same _____' .
 - (iii) A declaratory decree is a decree whereby any right as to any property or the _____ of a person is judicially ascertained.
 - (iv) According to the maxim _____ where there is infringement of a legal right not resulting in harm, the plaintiff can still sue in tort.
 - (v) In lease, there is a transfer of the right to _____ immovable property.
 - (vi) _____ as set out in section 2(14) of the Code of Civil Procedure, 1908 is the formal expression of any decision of a Civil Court which is not a decree.
 - (vii) In case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, only the _____ instrument shall be chargeable with the prescribed duty as per section 4 of the Indian Stamp Act, 1899.
 - (viii) The test of 'sufficient cause' is purely an individualistic test. It is not an _____ test. (1 mark each)
- (b) Write the most appropriate answer from the given options in respect of the following:
- (i) When the President of India makes a reference to the court on questions of fact and law, the advice is given by the -
 - (a) Civil Court
 - (b) Criminal Court
 - (c) High Court
 - (d) Supreme Court.
 - (ii) Where a contract comprises an affirmative as well as negative agreement, the court can grant an injunction to perform -
 - (a) Affirmative agreement

- (b) Negative agreement
 - (c) Both of the above
 - (d) None of the above.
- (iii) Where meaning of a word is known from its accompanying or associating words, the construction is known as -
- (a) Noscitur a sociis
 - (b) Liberal construction
 - (c) Harmonious construction
 - (d) Eiusdem generis.
- (iv) The mandate of an arbitrator gets terminated when -
- (a) He becomes unable to perform his functions
 - (b) He remains in his office to perform his functions
 - (c) The parties agree to retain him in the office
 - (d) None of the above.
- (v) A party may refuse to produce the document for inspection —
- (a) When it discloses party's evidence
 - (b) When it enjoys a legal professional privilege
 - (c) When it is injurious to public interest
 - (d) All of the above.
- (vi) Death sentence can be passed by the court of a —
- (a) Chief Judicial Magistrate
 - (b) Metropolitan Magistrate
 - (c) Magistrate of the First Class
 - (d) None of the above.
- (vii) 'Computer network' means the interconnection of one or more computers through the use of —
- (a) Satellite
 - (b) Microwave
 - (c) Terrestrial line
 - (d) All of the above.
- (viii) As per section 18 of the Indian Stamp Act, 1899, an instrument not duly stamped can be properly stamped within a period of —
- (a) One month
 - (b) Three months
 - (c) Four months
 - (d) Six months.
- (1 mark each)
6. State, with reasons in brief, whether the following statements are true or false:
- (i) An instrument not properly stamped is not accepted as evidence in the court of law.
 - (ii) The court can suo moto take note of question of limitation.

- (iii) The writ of habeas corpus is an effective bulwark of personal liberty.
 - (iv) A person suing for rescission of a contract can also sue for specific performance of a contract.
 - (v) Any fact is relevant even when it does not show or constitute a motive or preparation for any fact in issue.
 - (vi) Bills of exchange and promissory notes drawn or made out of India may be stamped with adhesive stamp.
 - (vii) A testator has to deposit with any Registrar his 'will' in person.
 - (viii) Certain wrongful acts concerning computers, etc., are adjudicated not before courts but before Adjudication Officer. (2 marks each)
7. (a) Amar is a citizen of India and lives in Delhi with his family. He makes an application to the Public Information Officer (PIO) under the Right to Information Act, 2005 and completes all the formalities. The information sought relates to Cabinet papers including records of deliberations of the Council of Ministers. The PIO rejects the application. Has Amar any right to go to the court or to the Central Information Commission against the decision of the PIO ? Give your answer quoting the relevant provisions of law.(6 marks)
- (b) Anuj orally grants the rights to catch and carry away fish from his lake to Barun for ₹ 700. Is the grant valid? Give your answer under the relevant provisions of the Transfer of Property Act, 1882. Also cite an appropriate case law. (5 marks)
- (c) 'X' is charged for murder of 'Y'. The chargesheet is filed in the court of Chief Judicial Magistrate, who passed the order of sentence of life imprisonment. 'X' engages you as an Advocate. What shall be your advice in the matter ? (5 marks)
8. (a) A document, which is apparently an agreement granting a franchise, is produced in the court, but is not stamped. Examine, citing the relevant provisions of the Indian Stamp Act, 1899, whether —
- (i) the document is void;
 - (ii) the document can be admitted on payment of penalty; and
 - (iii) the parties are liable to be prosecuted. (6 marks)
- (b) Arun prefers an appeal for setting aside the arbitral award on the ground that he was not given a proper notice of arbitral proceedings and thereby not being able to present his case. He also furnishes sufficient proof and pleads before the court that he received the arbitral award just 15 days back. Decide with reasons—
- (i) Whether Arun will succeed in his prayer; and
 - (ii) Whether the law of limitation will not be a bar ? (5 marks)

- (c) Atul, executed in favour of his brother, Bimal, a gift of all his property. By another deed, Bimal made provision for the living expenses of his brother Atul and hypothecated in favour of Atul, a part of the property included in the above mentioned gift deed in order to secure the payment of the living expenses. Decide, whether the gift made by Atul and making a hypothecation in his favour by Bimal are one and the same transaction or more than one transaction. Further, is it a case of 'settlement' under the Indian Stamp Act, 1899 ? (5 marks)



FOR NOTES

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