

Test Paper 4/2008

Q. No 11(a)

11(a)

The Fundamental duties imposed on the Citizens of India under the Constitution:

The Fundamental Duties under Article 51A are :

- i. To abide by the Constitution and respect its ideals and provisions, the National Flag and the National Anthem.
- ii. To cherish and follow the noble ideals which inspired national struggle.
- iii. To uphold and protect sovereignty, unity and integrity.
- iv. To defend and render national service to country.
- v. To promote harmony and spirit of brotherhood.
- vi. To value and preserve the rich heritage of our culture.
- vii. To protect and improve the natural environment.
- viii. To develop scientific temper, humanism and reform.
- ix. To safeguard public property and abjure violence.
- x. To strive excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

Fundamental Duties, as held by the court, cannot be enforced by writs and legislation are necessary for their implementation.

(6)

Freedom of trade, commerce and intercourse in the constitution.

Article 19(1)(g) provides that all citizens shall have the right to practise any profession, or to carry on any occupation, trade or business.

However these freedoms are subject to reasonable restrictions as provided in Article 19(6).

Further, Article 21 confers on every person the fundamental right to life and personal liberty, except according to procedure established by law.

The term 'liberty' + 'personal liberty' includes liberty concerning the body of an individual. Ref: A.K. Gopalan Vs State. Also, right to life includes a person's extension of his personality which is established by his wishes and desires. Hence, Freedom of Intercourse is a fundamental right under Article 19, provided it is not opposed to public policy.

Powers of Governor to issue Ordinances:

(1)

Article 213 empowers the Governor to make ordinances only when the State Legislature or either of the two Houses is not in session, only when it is necessary to take immediate action, with the aid and advice of the Council of Ministers.

However, the Governor cannot promulgate any Ordinance without the President's instructions, in certain circumstances.

The Ordinance must be, however, laid before the State legislature, as and when it assembles and shall automatically cease to have effect at the end of six weeks from the date of the re-assembly disapproved earlier.

1 (d)

"Detention of a person without trial is draconian in nature" - law against Preventive Detention.

Preventive Detention is to prevent a person from doing an act against law and prohibited by law for reasons of defence, security of India.

It is draconian in nature and opposed to the protection against arrest and detention ensured by Article 21 and Article 19(1)(d).

However, any person preventively detained shall have to be communicated the grounds of detention and must be allowed opportunity to make representation against such order.

12 Also, a person cannot be detained beyond 90 days unless prescribed by any law or detained by order of an advisory body for having sufficient reasons for any longer detention.

Answer to Question No. 2.

2(a)

Every confession is an admission but every admission is not a confession.

An admission is a statement made which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under circumstances specified under section 18 to 20 of the Evidence Act.

A confession is an admission made by an accused only against its makers and other person who is being jointly tried with the accused making such admission for an offence.

An admission can be made both in civil or criminal proceedings, where as a confession can only be made in criminal proceedings. So, admission is an wider term and confession is a species of admission.

Thus, confessions are a special form of admissions but every admission may not amount to a confession.

IN PAKALA NARAYANASWAMI Vs EMPEROR
(1929, PC 47)

the Privy Council observed that

No statement that contains self-explanatory matter can amount to confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be a confession.

Hence, all confessions are admissions but all admissions are not confessions ~~and~~

Answers to Question No. 2 (b) :

2 (b)

The doctrine of "Sufficient Cause" for the condonation of delay under the Limitation Act, 1963.

Section 5 of the Limitation Act, 1963 allows extension of the prescribed time to file a suit, appeal or application beyond the stipulated period to enforce an existing right, in sufficient certain cases on 'sufficient cause' being shown for the delay.

It is the Court's discretion to extend or not the period of limitation, exercised judiciously. Judicial observations lay down a few causes accepted to be sufficient for condonation of delay:

- I Court's wrong practice misleading the appellant.
- II Mistake on behalf of Counsel, bonafide.
- III Appellant misled by Counsel or Advocate.
- IV Mistake of law in exercising the right.
- V Imprisonment or serious illness of the party.
- VI Time needed to obtain certified copy of documents needed to accompany the application.

~~XX~~ However, quasi-judicial authorities have no power to extend the limitation period. Such cause for delay must be one which is beyond the control of the party.

Ref. Ram Lal
Vs

Rewa Coal Fields Ltd

(AIR 1962 SC 361)

In the above referred citation, the Supreme Court held that once the period of limitation expires then the appellant has to explain the delay even for a single day, it would be deemed that the party didnot have sufficient cause for delay.

3

Answer to Question No. 3~~iii~~

3 (iii)

Quo-warranto:

The writ of Quo-warranto enables enquiry into the legality of the claim which a person asserts, to an office or franchise and to cast him from such position if he is an usurper. The holder of the office has to show to the court under what authority he holds the office.

It is issued when -

- a. the office is of public and of a substantive nature.
- b. created by statute or by the constitution itself and
- c. the respondent has asserted his claim to the office. It can be issued even though he has not assumed the charge of the office.

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.

3 (iv)

Domain Name:

Domain names are identities that enables a company to conduct online transactions and be easily traceable by customers, suppliers and interested people over the internet. A domain name is an address of a company

in the cyber space

This may be linked to a company having its Registered Office to which all communications are usually directed. This explains the utility of registration under a particular Domain Name and Website. All these have become possible with the emergence of the domain name system (DNS) and more chances of deception under Passing off.

Res Gestae:

36(ii)

Res Gestae means Facts relevant to a case and admissible in evidence according to the Indian Evidence Act, 1872.

Section 6 of the Act embodies the rule of admission of evidence 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.

As defined, Res Gestae or facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction.

Illustration of Res Gestae :

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.

3(i) Right to Information :

The guiding principle of the Right to Information Act, 2000 is to "help citizen secure access to information under the control of public authorities".

The conception of the role of Info. Commissioners is rather eclectic. They are expected to play as arbitrators, enforcers, educators and also remedy providers. They have to be the roving ambulators to see for themselves the manner in which the provisions of the Act are implemented.

Answer to Question No. 4

4(b)
(ii)

Simple mortgage and English mortgage:

In a simple mortgage, the mortgagor binds himself personally to pay debt agrees to give away by ~~deed~~ decree for sale, in the event of failure to pay. If the mortgaged property does not suffice to pay off the debt, the mortgagee can bring a personal action and obtain decree against other properties of the mortgagor.

In an English mortgage the ownership is absolutely transferred to the mortgagee, which may be reconveyed on repayment of the loan on the fixed date undertaken by the mortgagor to pay back the debt.

1(b)
1

Hacking and Passing Off:

Hacking according to section 66 of the IT Act, 2008 is an act whereby one, with the intent to cause or knowingly causes wrongful loss or damage to the public or any person, destroys or deletes or alters any information or diminishes its value in a computer resource or affects it injuriously.

'Passing off' is the actual or probable deception to a person who is the holder of a particular domain name by another person.

u(a)

Duties of a Public Information Officer:

- ~~As~~ Public Information Officer ~~shall~~ deal with requests from persons seeking info. and where ~~the~~ not in writing, shall render reasonable assistance
- expeditiously within 30 days either provide info or payment of fees as prescribed or reject the request
- Where request is rejected he shall communicate the reasons, ~~the~~ and the particulars of the Appellate authority
- He must give written notice to the 3rd party by 5 days from the receipt of the request and take its representation

into consideration.

- He must give the third party a chance to make a representation before the P/D within 10 days from the date of receipt of such notice.

②

Before residence at Delhi, contracts with Valued in Mumbai for supply of goods at Kolkata but contract to file suit in Bangalore Court only.

The cause of action arose in Kolkata, neither of the parties resides in Bangalore.

Section 15 to 20 of CPC, 1908 requires suits to be moved at the option of the plaintiff. However, according to Section 20, illustrations state if the non resident defendant objects, the suit cannot proceed without the leave of the court.

Here neither the cause of action arose, nor any of the parties live in Bangalore. Hence, the agreement stands void in respect of that particular clause where 'only Bangalore' is stated. The plea of the Valued is not maintainable.

Ref ABC Kamnast Pvt Ltd & Anr
Vs
AP Agencies, Salem. (1989, SC)

A dancer agrees not to perform in any other theatre for a period other than that for the theatre of the owner.

In Lumley Vs Wagner
the same facts of case emerged.

The court held in Deen Dayal vs. Baig that no order to compel the singer to sing can be made, however, it granted the theatre owner an injunction on the singer to sing for any other theatre for the period of time specified in the contract (one month in the present problem)

This is a case of negative and indirect specific performance

5(c). A writ petition is brought in by a foreign nation for enforcing the right to Freedom of trade.

In the present problem, the foreign national would not succeed for being a foreign national.

The 6 freedoms in Article 19(1) are conferred on the citizens of India only and not to foreign nationals.

Hence he ~~can~~ cannot enforce the fundamental right guaranteed by the Constitution of India to pursue any trade in India.

Answer to Question No. 5:

5(d) A being on trial for murder of C and evidences showing A & B murdered C, B makes an admission
Confession: 'A & I murdered C' -

This is an admission made by an co-accused under the Evidence Act and hence it is a 'confession' which can be used against B & A - being B's co-accused and B himself.

However, there are some qualifications whether the statement made by B can be accepted as a confession as laid down under section 24 to section 30 of the Act. For example if the confession is made to a police officer or made in custody except in presence of a Magistrate or it is made under any ~~fraud~~ threat, inducement or promise - would not hold good as an

10. ~~admit~~ a confession.

Here under section 24 if A is alone tried by court then B's evidence is not admissible. If they are jointly tried, however, under section 30 of the Evidence Act, the evidence is admissible as confession of a co-accused.

Answer to Question No. 6:6(a)

Suresh, a book keeping clerk makes defalcations in the books of account and being threatened by Rakesh, an auditor in service of the ^{same} company admitted having defalcated the accounts.

In the trial ~~for~~ against Suresh the receipt signed by him admitting the crime shall not be admissible as evidence against him ~~for~~ in accordance with the Evidence Act.

According to sections 24 to 30 of the Act, a confession shall not be relevant if it is made in consequence of some inducement, threat or promise in reference to the charge, to the charge against him.

Here Rakesh was a person in authority to induce Suresh to make such a confession, hence, it will not be admissible in evidence in the trial court against Suresh.

6(b)

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 heavy traffic jams. The State Government imposed

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a ban on demonstrations and marches on busy roads on working days. The Organization alleged that the ban was an infringement of the fundamental right of freedom as guaranteed under the Constitution of India.

The Constitution of India confers on its citizen the fundamental freedoms under Chapter III of the Constitution. The rights ~~to~~ under Article 19(1) confer on all citizen the freedom of to assemble peaceably, and move freely, through out India.

Marches and demonstrations are also an extension of these rights - ~~However~~, and imposing a ban on them are ~~an~~ infringement.

However, if such exercise of right causes infringement of the right to life and personal liberty under Article 21 of all the residents of India, these right must be put to 'reasonable restrictions' specified in Article 19 again.

Hence, the decision as should be upheld that a demonstration that does not hamper the life and livelihood of all other citizens and does not cause traffic jams and road blocks can be allowed to that extent with a caution not to cause any harm to the life and property of ~~others~~ else one.

6(b)-

Bye takes permission of the house parent-paying away for the entire property. In the present case

Chaudhri is also a Benalite Buyer.

However, Courts tend to provide equitable remedies in order to avoid the substantial injury resultant in absence of adequate remedies.

In Dies vs British International Mining Corp

It was held that part payment is refundable if not agreed to forfeit. In this case no such agreement was to forfeit the amount. If substantial commitment to fulfill the terms of contract be proved, then Bijoy can claim part performance.

6(d) Arshay is penalized with pecuniary penalty accordingly. However, if he feels aggrieved, he may proceed to the Cyber Appellate Tribunal and further if aggrieved then to the High Court within 10