

Qn. 1. (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)

Ans. 1 (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 assembly 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.

Qn. 1. (b) What do you mean by double jeopardy ? (4 marks)

Ans. 1 (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.

Qn. 1 (c) What do you mean by doctrine of waiver of rights under the Constitution of India ? (4 marks)

Ans. 1 (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.

Qn. 1 (d) Discuss in brief the rule of colourable legislation.

(4 marks)

Ans. 1 (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 a bit of the power or the motives behind exercise of the power, but only the manner of its exercise.

Qn. 2. Explain any four of the following :

- (i) Rule of *harmonious construction*
- (ii) Proviso
- (iii) Rectification of an instrument
- (iv) International commercial arbitration
- (v) Valid acknowledgement and its effect on period of limitation.

(4 marks each)

Ans. 2 (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 propriety 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.

Ans. 2 (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.

Ans. 2(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.

Ans. 2 (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.

Ans. 2 (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 acknowledgment 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 acknowledgment 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.

Qn. 3. Distinguish between any four of the following :

- (i) 'Admission' and 'confession'.
- (ii) 'Vested interest' and 'contingent interest'.
- (iii) 'Mortgage' and 'charge'.
- (iv) 'Review' and 'revision' in civil law.
- (v) 'Lease' and 'licence'.

(4 marks each)

Ans. 3 (i)

Basis	Admission	Confession
Nature	Admission is a statement, oral or documentary or contained in electronic form, which suggest 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.O.
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.
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Ans. 3 (ii) Distinction between vested and contingent interest

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 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.

Ans. 3 (iii) Simple mortgage.— Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to sale the mortgaged property. The proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money. Such transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Charge –

- As per **section 100** of the Transfer of Property Act, 1882, where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property.
- These do not apply to the charge of a trustee on the trust property for expenses property incurred in the execution of his trust.
- No charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.

Ans. 3 (iv) 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.

Ans. 3 (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.

Qn. 4. (a) Discuss briefly the doctrine of part-performance embodied in section 53A of the Transfer of Property Act, 1882. (6 marks)

(b) Discuss the doctrine of *res judicata* under section 11 of the Code of Civil Procedure, 1908. (5 marks)

(c) Discuss the powers of various courts under the Code of Criminal Procedure, 1973. (5 marks)

Ans. 4 (a) 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.

Ans. 4 (b) 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.

Ans. 4 (c) 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 Rs.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 Rs. 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**.

Qn. 5 (a) Re-write the following sentence's 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.
- (ii) The period of limitation for instituting a summary suit is _____ from the date on which the debt becomes due.
- (iii) Limitation of taking cognizance is _____, if the offence is punishable with fine only.
- (iv) Adjudicating Authority under section 43 of the Information Technology Act, 2000 can impose damages by way of compensation an amount not exceeding Rs. _____.
- (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 Rs. _____.
- (vi) If there is any appearance of inconsistency between the Schodulq urul u specific; provision in an enactment, the _____ shall prevail: (1 mark each)

Ans. 5 (a) (i) 45

- (ii) 3 years
- (iii) 6 months
- (iv) 1 Crore
- (v) one
- (vi) provision

Qn 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.
- (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.
- (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.
- (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.
- (v) Public Information Officer for failing to provide information will be liable for fine of Rfi.250 per day upto a maximum of —
 - (a) Rs.25,000
 - (b) Rs.50,000
 - (c) Rs.75,000
 - (d) Rs.1,00,000.
- (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 each)

Ans. 5 (b) (i) (b)

- (ii) (b)
- (iii) (c)
- (iv) (b)
- (v) (a)
- (vi) (d)

Qn. 5 (c) Explain **either** of the following :

- (i) Doctrine of marshalling
- (ii) Circumstantial evidence.

(4 marks)

Ans. 5 (c) (i) 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.

Ans. 5 (c) (ii) 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 evidences. 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.

Qn. 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)

Ans. 6 (a) 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 circumstances 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 Lakshmi's theatre for a certain period and not to sing anywhere 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 Murali succeed ?

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

Qn. 6 (b) Government of Madhya Pradesh passed a law prohibiting the manufacture of J 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)

Ans. 6 (b)

Qn. 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)

Ans. 6 (c) 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.

Qn. 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)

Ans. 7 (a) 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.

Qn. 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)

Ans. 7 (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.

Qn. 7 (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)

Ans. 7 (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 immoveable property and professes to transfer such property for consideration such transfer shall at the option of the transferee, operate on any interest which the transferor 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 ?

Decision : B, not having rescinded the contract of sale, may require A to deliver B and C to him. Therefore B after the death of A's father can compel A to transfer to him fields B and C.

Qn. 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)

Ans. 8 (a) 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.

Qn. 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)

Ans. 8 (b) 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 vest 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 .

Qn 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)

Ans. 8 (c) 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 registered first it will get the first priority.