

EXECUTIVE PROGRAMME EXAMINATION

DECEMBER 2008

GENERAL AND COMMERCIAL LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer SIX questions including Question No. 1 which is **COMPULSORY**.

Question 1

- (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)
- (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.
 - (ii) Alam owes Balu Rs. 1,000. Alam sells a property to Balu, the consideration being Rs.500 and the release of the previous debt of Rs.1,000. Stamp duty would be payable on Rs. _____.
 - (iii) Attestation is valid and complete when _____ witnesses sign the instrument.
 - (iv) No sentence of imprisonment for a term exceeding _____ 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 _____.
 - (vi) A person who refuses to receive a registered letter is deemed to have _____ 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 _____.
 - (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 each)

Answer 1(i)

Article 14 of the Constitution says that "the State 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 within the territory of India. 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 SC 538, 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 of 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 also by a law of procedure.
- (vii) There is always a presumption in 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.

A remarkable example of the application of the principle of equality under the Constitution is the decision of the Supreme Court in *R.K. Garg v. Union of India*, AIR 1981 SC 2138. It should be mentioned that Article 14 invalidates discrimination not only in substantive law but also in procedure. Further, it applies to executive acts also.

In the recent past, Article 14 has acquired new dimensions. The Supreme Court has held that Article 14 strikes at arbitrariness in State action and ensures a fairness and equality of treatment. The principle of reasonableness, which logically as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence (See *Maneka Gandhi v. Union of India*, AIR 1978 SC 597; *Ramana Dayaram Shetty v. International Airport Authority*, AIR 1979 SC 1628; *Kasturi Lal v. State of J&K*, AIR 1980 SC 1992) . In *Ajay Hasia v. Khalid Mujib*, AIR 1981SC 487, the Supreme Court held “ what Article 14 strikes at is arbitrariness because an action that is arbitrary must necessarily involve negation of equality.....

In *Secy., State of Karnataka v. Umadevi*, (2006) 4 SCC 1, the Supreme Court has held that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding the violation of Article 14.

Answer 1(ii)

The writ of *Habeas corpus*

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”. *Habeas corpus* may be defined as a judicial order issued by the Supreme Court or a High Court by which a person who is confined by any public or private agency, may secure his release. The writ is in the form of an order calls upon the person in whose confinement the person is to let the court know the legal justification for the detention, and in the absence of such justification to release the person from his confinement. The great value of this writ is that it enables an immediate determination of a persons’ right to freedom.

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 legal justification. Likewise the High Court under Article 226 of the Constitution can issue writ of *habeas corpus* in similar circumstances provided that the person or authority against whom the writ is sought is within the territorial jurisdiction of that High Court on the date of filing the writ petition.

Writ of *habeas corpus* can be filed by any person on behalf of the detained or by the detained person himself. However, every petition must be supported by an affidavit stating the facts and circumstances of detention and, where relevant, the reasons as to why the prisoner is unable to make application

Answer 1(c)

- (i) 3 Months
- (ii) Rs. 1500/-
- (iii) 2 witnesses
- (iv) 3 months
- (v) Redundant
- (vi) Constrictive

(vii) *Res-judicata*

(viii) *Quo-warranto*

Question 2

Attempt any four of the following :

- (i) *State the conditions to recover the possession of dispossessed immovable property based merely on possession.*
- (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 ?*
- (v) *Describe the offence of 'hacking' with computer system as provided under the Information Technology Act, 2000.* (4 marks each)

Answer 2(i)

Sections 5 and 6 of the Specific Relief Act, 1963 provide for the remedy for recovering possession of property i.e. immovable property. Section 5 dealing with recovery on the strength of title lays down that a 'person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure 1908. It means a suit for ejectment on the basis of title could be brought.

Section 6 of the specific Relief Act, 1963 deals with the recovery of immovable property on the *strength of possession*. Section 6(1) deals with situations where a person has been dispossessed from immovable property without his consent and due course of law and provides that in case any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may by suit recover possession thereof notwithstanding any title that may be set-up in such suit.

Sub-section (2) further provides that, no suit shall be brought:

- (a) after the expiry of six months from the date of dispossession;
- (b) against the Government;
- (c) no appeal shall lie from any orders or decree passed in any suit instituted under this Section.

Therefore, to attract Section 6, following conditions must exist;

- (a) Plaintiff has been dispossessed.
- (b) Plaintiff has been dispossessed without his consent and without due process of law.
- (c) Plaintiff has been dispossessed during last six months from the date of institution of suit.

If the above conditions are fulfilled then no question of title of the plaintiff or of the defendant can be raised or gone into. Plaintiff's previous possession is sufficient to give relief under this Section. The Plaintiff must be in legal possession of the property under some right. In *M/s Chandra & Co. v. State of Rajasthan* (AIR 1976 SC 1628) the Apex Court held that State Government cannot forcibly evict a person who was in peaceful

possession and the High Court upon a petition under Article 226 may provide appropriate relief to the aggrieved.

Answer 2(ii)

As per Section 16 of the Specific Relief Act, 1963 specific performance of a contract cannot be enforced in favour of a person—

- (a) who would not be entitled to recover compensation for its breach; or
- (b) who (i) has become incapable of performing, or (ii) violates any essential term of, the contract that on his part remains to be performed, or (iii) acts in fraud of the contract, or (iv) wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or
- (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

The Explanation appended to the Section provides that where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court; further, the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

Answer 2(iii)

Award means the decision of the arbitrator to whom the dispute is referred. The definition of arbitral award under Section 2(1)(c) of the Arbitration and Conciliation Act, 1996 does not give much details of an arbitral award. It says “arbitral award” includes an interim award.

In fact, an award is a document incorporating the adjudication or determination of a matter in dispute by the person competent to adjudicate and determine the dispute. An arbitral award is such adjudication by the arbitral Tribunal to whom dispute is referred.

Essential Ingredients : As per Section 31 of the Arbitration and Conciliation Act, 1996 an arbitral award shall be made in writing and shall be signed by the members of the arbitral Tribunal. If the arbitral Tribunal consists of more than one arbitrator, it will be sufficient if the majority of the members of the Tribunal sign it provided reasons are given for the omitted signatures.

An arbitral Tribunal must state reasons for its award except when the parties have agreed that no reasons be given, or when the award is on agreed terms under Section 30.

The arbitral award shall state its date and the place of arbitration determined according to Section 20.

After the award is made, a signed copy shall be given to each party.

The arbitral Tribunal may grant interest if the arbitral award is for the payment of money for the period between the date on which the cause of action arose and the date

on which the award is made. This is subject to the agreement of the parties to the contrary. The Tribunal may grant interest at such rate as it deems reasonable, on the whole or part of the money found due, for the whole or any part of the period.

Award may include directions of the arbitral Tribunal regarding costs of the arbitration.

Answer 2(iv)

The general rule of estoppel is when one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing (Section 115). However, there is no estoppel against the Statute. Where the Statute prescribes a particular way of doing something, it has to be done in that manner only.

Estoppel is based on the maxim '*allegans contraria non est audiendus*' i.e. a person alleging contrary facts should not be heard. The principles of estoppel covers one kind of facts. It says that man cannot approbate and reprobate, or that a man cannot blow hot and cold, or that a man shall not say one thing at one time and later on say a different thing.

The doctrine of estoppel is based on the principle that it would be most inequitable and unjust that if one person, by a representation made, or by conduct amounting to a representation, has induced another to act as he would not otherwise have done, the person who made the representation should not be allowed to deny or repudiate the effect of his former statement to the loss and injury of the person who acted on it (*Sorat Chunder v. Gopal Chunder*).

Estoppel is a rule of evidence and does not give rise to a cause of action. There are different kinds of estoppel by conduct or estoppel *in pais*. They are: (a) estoppel by attestation (b) estoppel by contract (c) constructive estoppel (d) estoppel by election (e) equitable estoppel (f) estoppel by negligence, and (g) estoppel by silence.

Answer 2(v)

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 extend 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.

Question 3

Explain any four of the following :

- (i) *Mischief rule.*
- (ii) *Doctrine of part-performance.*
- (iii) *Doctrine of election.*
- (iv) *Domain name and passing-off.*
- (v) *Digital signature.*

(4 marks each)

Answer 3(i)**Mischief rule**

The mischief rule of interpretation originated in *Heydon's case*, 76 ER 637 in 1584. In this case, the Barons of the Exchequer resolved that for the sure and true interpretation of all statutes in general, (be they penal or beneficial, restrictive or enlarging of the Common Law) four things are to be discerned and considered:

- (1) What was the Common Law before the making of the Act;
- (2) What was the mischief and defect for which the Common Law did not provide;
- (3) What remedy the Parliament had resolved and appointed to cure the disease of the Commonwealth; and
- (4) The true reason of the remedy.

When the material words are capable of bearing two or more constructions, the most firmly established rule for construction of such words is the rule laid down in *Heydon's case* which has "now attained the status of a classic". The rule directs that the Courts must adopt that construction which "shall suppress the mischief and advance the remedy". But this does not mean that a construction should be adopted which ignores the plain natural meaning of the words or disregard the context and the collection in which they occur. (See *Umed Singh v. Raj Singh*, AIR. 1975 SC 43) The Supreme Court has applied this rule in many of its decisions.

Answer 3(ii)**Doctrine of part-performance**

The doctrine of part-performance operates as an exception to the principal that equity will only enforce specific performance of a contract that is valid at law and provable in courts of law. The doctrine has been statutorily recognized under Section 53A of the Transfer of Property Act; Specific Relief Act (Section 27A) and Indian Registration Act (Section 49).

Followings are the essential conditions for the operation of the doctrine of part-performance according to Section 53A.

- 1. There must be a contract to transfer immoveable property.
- 2. It must be for consideration.

3. The contract should be in writing and signed by the transferor himself or on his behalf.
4. The terms necessary to constitute the transfer must be ascertainable with reasonable certainty from the contract itself.
5. The transferee should have taken the possession of the property in part performance of the contract. In case he is already in possession, he must have continued in possession in part performance of the contract and must have done something in furtherance of the contract.
6. The transferee must have fulfilled or ready to fulfill his part of the obligation under the contract.

If all the abovementioned conditions are satisfied, then, the transferor and the persons claiming under him are debarred from exercising any right in relation to the property other than the rights expressly provided by the terms of the contract notwithstanding the fact that the instrument of transfer has not been registered or complete in the manner prescribed therefor by the law for time being in force. It should be noted that Section 53A does not confer any positive right on the transferee. It only prohibits exercise of the right of ownership in relation to the property in order to evict the transferee from the property because legal requirements have not been satisfied.

Answer 3(iii)

Doctrine of Election

Section 35 of the Transfer of Property Act deals with what is called doctrine of election. Suppose, a property is given to you and in the same deed of gift you are asked to transfer something belonging to you to another person. If you want to take the property you should transfer your property to someone else, otherwise you cannot take the property which is transferred to you by some one. Election may be defined as “the choosing between two rights where there is a clear intention that both were not intended to be enjoyed”.

The foundation of doctrine of election is that a person taking the benefit of an instrument must also bear the burden, and he must not take under and against the same instrument. It is, therefore, a branch of a general rule that no one may approbate and reprobate [*Copper v. Copper* (1874) H.L. 53].

Answer 3(iv)

Domain Name and Passing-off

It is vital, that prior to entering into any type of business activity, a company must be traceable relatively easily, on the Internet, i.e. it must have an address in 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. This has been made possible with the emergence of the Domain Name System (“DNS”). Such registration would enable the company to conduct on-line transactions, as well as make it easily traceable by customers, suppliers, etc.

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".

Answer 3(v)

Digital Signature

"Digital Signature" under Section 2(p) of the Information Technology Act, 2000 means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of Section 3.

Section 3 deals with authentication of electronic records. This section provides the conditions subject to which an electronic record may be authenticated by means of affixing digital signature. The digital signature is treated in two distinct steps. First the electronic record is converted into a message digest by using a mathematical function known as "hash function" which digitally freezes the electronic record thus ensuring the integrity of the content of the intended communication contained in the electronic record. Any tampering with the contents of the electronic record will immediately invalidate the digital signature. Secondly, the identity of the person affixing the digital signature is authenticated through the use of private key which is attached to the message digest and which can be verified by any person who has the public key corresponding to such private key. This will enable any person to verify whether the electronic record is retained intact or has been tampered with. It will also enable a person who has a public key to identify the originator of the electronic message.

Question 4

*Distinguish between **any four** of the following :*

- (i) 'Judgment', 'decree' and 'order'.
 - (ii) 'Set-off, 'counter-claim' and 'equitable set-off'.
 - (iii) 'Appeal', 'revision' and 'review'.
 - (iv) 'Cognizable offence' and 'non-cognizable offence'.
 - (v) 'Inquiry', 'investigation' and 'trial'.
 - (vi) 'Mortgage' and 'charge'.
- (4 marks each)

Answer 4(i)

Judgement, Decree and Order

"Judgement" as defined in Section 2(9) of the Civil Procedure Code means the statement given by the Judge on the grounds of a decree or order. Thus, a judgement must set out the grounds and reasons for the Judge to have arrived at the decision.

“*Decree*” is defined in Section 2(2) of the Code as (i) the formal expression of an adjudication which, so far as regards the Court expressing it; (ii) conclusively; (iii) determines the rights of the parties; (iv) with regard to all or any of the matters in controversy; (v) in the suit and may be either preliminary (i.e. when further proceedings have to be taken before disposal of the suit) or final.

“*Order*” as set out in Section 2(14) of the Code means the formal expression of any decision of a Civil Court which is not a decree.

Answer 4(ii)

Set-off Counter-claim and Equitable set-off

Set-off : Order 8, Rule 6 deals with set-off which is a reciprocal acquittal of debts between the plaintiff and defendant. It has the effect of extinguishing the plaintiff’s claim to the extent of the amount claimed by the defendant as a counter claim.

Counter-claim : A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of claim for damages or not. Such counter-claim must be within the pecuniary jurisdiction of the Court. (Order 8, Rule 6A)

Equitable set-off : Sometimes, the defendant is permitted to claim set-off in respect of an unascertained sum of money where the claim arises out of the same transaction, or transactions which can be considered as one transaction, or where there is knowledge on both sides of an existing debt due to one party and a credit by the other party found on and trusting to such debt as a means of discharging it.

Answer 4(iii)

Appeal, Revision and Review

Right of appeal is not a natural or inherent right attached to litigation. Such a right is given by the statute or by rules having the force of statute (*Rangoon Botatoung Company v. The Collector, Rangoon*, 39 I.A. 197).

There are four kinds of appeals provided under the Civil Procedure Code:

- (i) Appeals from original Decrees (Sections 96-99-Order 41)
- (ii) Second Appeals (Sections 100-103-Order 42)
- (iii) Appeals from Orders (Sections 104-106, O.43 r. 1-2)
- (iv) Appeals to the Supreme Court (Sections 109 and 112, Order 45)

Revision : Section 115 deals with revision. 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—

- (i) to have exercised a jurisdiction not vested in it by law, or
- (ii) to have failed to exercise a jurisdiction so vested, or

(iii) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order as it thinks fit.

Review : The right of review has been conferred by Section 114 and Order 47 Rule 1 of the Code. It provides that any person considering himself aggrieved by a decree or order may apply for a review of judgement to the court which passed the decree or made the order on any of the grounds as mentioned in Order 47 Rule 1, namely—

- (i) discovery by the applicant of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or
- (ii) on account of some mistake or error apparent on the face of the record, or
- (iii) for any other sufficient reason,

and the Court may make such order thereon as it thinks fit.

Answer 4(iv)

Cognizable Offence and Non-cognizable Offence

“Cognizable offence” means an offence for which, and *“cognizable case”* means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

“Non-cognizable offence” means an offence for which, and *“non-cognizable”* case means a case in which, a police officer has no authority to arrest without warrant.

A non-cognizable offence needs special authority to arrest by the police officer. While in a *“cognizable offence”*, no authority is needed to arrest the accused.

Answer 4(v)

Inquiry, Investigation and Trial

Inquiry : It means every inquiry other than a trial, conducted under this Code by a Magistrate or Court. [Section 2(g)]

- the inquiry is different from a trial in criminal matters;
- inquiry is wider than trial;
- it stops when trial begins.

Investigation : It includes 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 authorised by a Magistrate in this behalf. [Section 2(h)]

Trial : Trial starts when formal charge has been framed against the accused and proceedings ended with either conviction or acquittal by a competent Court.

Answer 4(vi)

Mortgage and Charge

According to Section 58 of the Transfer of Property Act, a *“mortgage”* is the transfer of an interest in specific immoveable property for the purpose of securing the payment

of money advanced or to be advanced by way of loan, an existing or future debt or the performance of an engagement which may give rise to pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee. The principal money and interest the payment of which is secured for the time being are called the mortgage money and the instrument by which the transfer is effected is called a mortgage deed.

“Charge” has been defined under Section 100 as follows: “Where immoveable property of one person is by the 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”.

As is evident from the above definition, a charge comes into existence either by the act of parties or by operation of law.

Question 5

(a) Attempt **any three** of the following :

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

(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 _____.
- (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 _____.
- (iii) Attack on the reputation of a person is called _____.
- (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 each)

Answer 5(a)(i)

The following statements become relevant on account of their having been made under special circumstances:

- (i) Entries made in books of account, *including those maintained in an electronic form* regularly kept in the course of business. Such entries, though relevant, cannot, alone, be sufficient to charge a person with liability; (Section 34)
- (ii) Entries made in public or official records or *an electronic record* made by a public servant in the discharge of his official duties, or by any other person in performance of a duty specially enjoined by the law; (Section 35)

- (iii) Statements made in published maps or charts generally offered for the public sale, or in maps or plans made under the authority of the Central Government or any State government; (Section 36)
- (iv) Statement as to fact of public nature contained in certain Acts or notification; (Section 37)
- (v) Statement as to any foreign law contained in books purporting to be printed or published by the Government of the foreign country, or in reports of decisions of that country. (Section 38)

When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or *is contained in part of electronic record* or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, *electronic record*, book or of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made. (Section 39)

Answer 5(a)(ii)

The Right to Information (RTI) Act, 2005 under Sections 6 & 7 specifies the manner in which requests may be made by a citizen to the authority for obtaining the information. It also provides for transferring the request to the other concerned public authority who may hold the information.

- Application is to be submitted in writing or electronically, with prescribed fee, to Public Information Officer (PIO).
- Information to be provided within 30 days.
- 48 hours where life or liberty is involved.
- 35 days where request is given to Asst. PIO.
- Time taken for calculation and intimation of fees excluded from the time frame.
- No action on application for 30 days is a deemed refusal.
- If the interests of a third party are involved then time limit will be 40 days (*maximum period + time given to the party to make representation*).
- No fee for delayed response.

Answer 5(a)(iii)

Valid Acknowledgement

As per Section 18 of the Act, following requirements should be present for a valid acknowledgement:

1. There must be an admission or acknowledgement;
2. Such acknowledgement must be in respect of any property or right;
3. It must be made before the expiry of period of limitation; and

4. It must be in writing and signed by the party against whom such property or right is claimed.

If all the above requirements are satisfied, a fresh period of limitation shall be computed from the time when the acknowledgement was signed.

Answer 5(a)(iv)

Injuria sine damnum

It means injury without damage, i.e., where there is no damage resulted yet it is an injury or wrong in tort, i.e. where there is infringement of a legal right not resulting in harm plaintiff can still sue in tort.

Some rights or interests are so important that their violation is an actionable tort without proof of damage. Thus when there is an invasion of an “absolute” private right of an individual, there is an *injuria* and the plaintiff’s action will succeed even if there is no *damnum* or damages. An absolute right is one, the violation of which is actionable *per se*, i.e., without the proof of any damage. *Injuria sine damno* covers such cases and action lies when the right is violated even though no damage has occurred. Thus, the act of trespassing upon another’s land is actionable even though it has not caused the plaintiff even the slightest harm.

Answer 5(b)

- (i) *Mamdamus*
- (ii) Harmonious construction
- (iii) Defamation
- (iv) Vicarious liability

Question 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.*

- (ii) *The nature of remedy under the law of torts is —*

- (a) *Criminal*
- (b) *Civil*
- (c) *Quasi-criminal*
- (d) *Quasi-civil.*

- (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).*
- (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.*
- (v) *“I do acknowledge myself to be indebted to Bhupesh in Rs. 1,000 to be paid on demand for value received”, is a —*
- (a) *Bond*
 - (b) *Security*
 - (c) *Promissory note*
 - (d) *Agreement.*
- (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.*
- (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.*
- (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 Rs. 10,000 or of both*
 - (b) *imprisonment for a term not exceeding 5 years or of fine upto Rs. 20,000 or of both*
 - (c) *imprisonment for a term not exceeding 7 years or of fine upto Rs. 15,000 or of both*
 - (d) *imprisonment for a term not exceeding 3 years or of fine upto Rs. 5,000 or of both.*
- (1 mark each)

(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.*
- (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.*
- (iii) *The right to collect rents of immovable property has been recognised as immovable property.*
- (iv) *A declaratory decree is a decree passed to prevent the violation of a negative act.* (2 marks each)

Answer 6(a)

- (i) (d) Have no religion of its own
- (ii) (b) Civil
- (iii) (a) Documentary
- (iv) (c) Both (a) and (b)
- (v) (c) Promissory Note
- (vi) (d) Any one of the above
- (vii) (b) 10 days
- (viii) (d) Imprisonment for a term not exceed 3 years or of fine upto Rs.5,000 or of both.

Answer 6(b)

- (i) **Incorrect :** The time limit for making an application for setting aside an arbitral award is three months from the date of receipt of award.
- (ii) **Incorrect :** Confession made before the magistrate by a co-accused against another co-accused, who is not jointly tried with him for an offence, is inadmissible as evidence.
- (iii) **Correct :** The right to collect rents of immovable property has been recognized as immovable property.
- (iv) **Incorrect :** A declaratory decree is a decree whereby any right as to any property or legal character of a person is judicially ascertained.

Question 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 plaintiffs 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)

(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 Rs. 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 7(a)

This problem is based on *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330 regarding strict or absolute liability in which harm to the plaintiff occurred without intention or negligence on the defendant's part.

In this case it was held 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. If a person brings or accumulates on his land anything which, if it should escape may cause damage to his neighbours, he does so at his own peril...."

In this case mill owner will be liable for the compensation on the basis of strict liability.

Answer 7(b)

Section 10 of Transfer of Property Act says that when property is transferred, the transferee should not be restrained absolutely from alienating the property. One may give property to another subject to a condition, but the condition should not be one which absolutely prevents the transferee from alienating the property.

The given problem is based on *Trichinopoly Varthaga Sangum v. Shunmoga Sunderam* (1939) Madras 954. In this case it was held that the condition absolutely prevented the son from selling the property to any one for good value. In this case, the market value of the property of the son was far greater than Rs.1,000. Hence, the condition was declared invalid.

Answer 7(c)

Section 6 of the Transfer of Property Act lays down certain exceptions to the general rule that property of any kind may be transferred. One of them is "the chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman or any other mere possibility of a like nature cannot be transferred."

Under this clause possibilities referred are bare or naked possibilities and not coupled with an interest such as contingent remainders or future interest-also known as right of *spes successionis* which cannot be the subject to transfer. When a person is the owner of property, the property is in existence and it is in his possession. This he may transfer.

But if property is neither in existence nor is the person owner of the property, then it cannot be transferred.

Similarly, the chance of an heir apparent succeeding to the estate of a deceased person cannot be transferred.

Baljit's suit for possession will not succeed as the reversionary interest is a *spes successionis* and non-transferable. So the transfer is void and Baljit's suit for possession fails.

Question 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 Rs.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)

- (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)

- (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 8(a)

No action will lie. The present case is based on the leading case of *Gloucester Grammar School (1410) Y.B. Hill-11 Hen of 47 pp.21, 36*.

Under the law of torts, it is not every damage that is a damage in the eyes of law. It must be a damage which the law recognizes as such. There are two maxims namely- *Damnum sine injuria* and *injuria sine damnum* that explain this proposition.

The given problem comes under the purview of maxim *damnum sine injuria*. *Damnum* means harm, loss or damage in respect of money, comfort, health etc. *Injuria* means infringement of a right conferred by law on the plaintiff. The maxim means that in a given case, a man may have suffered damage and yet has no action in tort, because the damage is not to an interest protected by the law of torts. Therefore causing damage however substantial to another person is not actionable in law unless there is also a violation of the legal right of the plaintiff. Common examples are where damages result from an act done in the exercise of legal rights.

In the given case, the suit filed by Atul is not maintainable because Ali is exercising his legal right and the monetary loss suffered by Atul has resulted from an act done in the exercise of Ali's legal right.

Answer 8(b)

“Abhay” will not succeed.

Section 3 of the Indian Stamp Act, 1899 charges instruments with duty specified therein. At the same time, it *inter-alia* provides 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.

Hence, in the present case, sale deed will supposed to be effective and Abhay will not succeed.

Answer 8(c)

The document can be registered. Section 24 of the Registration Act, 1908 says, 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.

In the given case, the document has been presented for re-registration after the expiry of three months only of its execution. Therefore, the said document can be registered.
