

EXECUTIVE PROGRAMME EXAMINATION

JUNE 2009

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) *“A declaration of fundamental rights is meaningless unless there is an effective judicial remedy for their enforcement.” Comment on this statement explaining the judicial remedies which the Constitution of India provides. (8 marks)*
- (b) *When and under what circumstances can the Parliament legislate on matters enumerated in the State List ? Discuss. (6 marks)*
- (c) *Briefly mention internal and external aids to interpretation of statute. (6 marks)*

Answer 1(a)

It is true that a declaration of fundamental rights is meaningless unless there is an effective machinery for the enforcement of rights. It is a well known rule of law that where there is a right there shall be remedy (*ubi jus ibi remedium*) and if rights are given without there being a remedy for their enforcement, they are of no use. While remedies are available in the Constitution and under the ordinary laws, Article 32 makes it a fundamental right that a person whose fundamental right is violated has the right to move the Supreme Court by appropriate proceedings for the enforcement of this fundamental right. Our constitution makers having incorporated a long list of fundamental rights have also provided for an effective remedy for the enforcement of these rights under Article 32 of the Constitution. Article 32 is itself a fundamental right. It is remedial and not substantive in nature. This Article has been called as the heart and soul of the Constitution.

Article 32(1) of the Constitution of India guarantees the right to move the Supreme Court by “appropriate proceedings” for the enforcement of fundamental rights conferred by Part III of the Constitution.

The right conferred under Article 32 being a fundamental right cannot be abrogated, abridged or taken away by the Act of the legislature.

It is really a far reaching provision in the sense that a person need not first exhaust the other remedies and then move the Supreme Court. On the other hand, he can directly raise the matter before highest Court of the land under Article 32(2) which empowers the Supreme Court to issue directions or orders or following writs. :

- (i) Habeas Corpus;
- (ii) Mandamus
- (iii) Quo-Warranto
- (iv) Prohibition and
- (v) Certiorari

whichever may be appropriate for the enforcement of the fundamental right the violation of which is alleged. This power of the Supreme Court to issue directions, etc., may also be assigned to other Courts by Parliament without affecting the powers of the Supreme Court.

The right to move the Supreme Court is itself a guarantee right and the significance of this has been assessed by Gajendragadkar, J. in the following words:

“The fundamental right to move this Court can therefore be appropriately described as the cornerstone of the democratic edifice raised by the Constitution. That is why it is natural that this Court should, in the words of Patanjali Sastri, J., regard itself ‘as the protector and guarantor of fundamental rights’, and should declare that “it cannot, consistently with the responsibility laid upon it, refuse to entertain applications seeking protection against infringements of such rights. In discharging the duties assigned to it, this Court has to play the role of ‘sentinel on the qui vive’ (*State of Madras v. V.G. Row*, AIR 1952 SC 196) and it must always regard it as its solemn duty to protect the said fundamental rights ‘zealously and vigilantly’ (*Daryao v. State of U.P.*, AIR 1961 SC 1457).

The right guaranteed by Article 32 shall not be suspended except as provided in the Constitution. Constitution does not contemplate such suspension except by way of President’s order under Article 359 when a proclamation of Emergency is in force.

Answer 1(b)

Although the State Legislatures have the exclusive powers to make laws with respect to the subjects included in State list and the Parliament has no power to encroach upon them, Our constitution makes a few exceptions to this general rule by authorizing Parliament to make laws even on the subjects enumerated in State list. These exceptions are as follows:

- (i) *In the National Interest (Article 249)* : Parliament can make a law with respect to a matter enumerated in the State list if the Council of the States declares by a resolution supported by 2/3rds of its members present and voting that it is necessary or expedient in the national interest that Parliament should make a law on that matter. By such declaration, the Parliament gets the authority to legislate on that matter for the whole or part of the country so long as the resolution of Council of State remains in force. Such a resolution normally lasts for a year. However it may be renewed as many times as may be necessary but not exceeding one year at a time.
- (ii) *During a proclamation of Emergency (Article 250)* : According to Article 250 while the proclamation of emergency is in operation, the Parliament shall have the power to make laws for the whole or any part of the territory of India with respect to all matters in the State list. Such a law, however, shall cease to have effect on the expiration of six months after the proclamation of emergency ceases to operate.
- (iii) *On the request of two or more States (Article 252)* : According to Article 252, if the legislature of two or more states pass a resolution to the effect that it is desirable to have a law passed by Parliament on any matters in the State List so that there should be a common legislation applicable to all such States, it

shall be lawful for Parliament to make law regulating that matter. Any other state may adopt such a law by passing a resolution to that effect. Such law can be amended or repealed by the Act of Parliament.

- (iv) *For enforcing treaties and international agreements (Article 253)* : Article 253 confers on union Parliament exclusive power to make laws in any list with respect to foreign affairs and entering into treaties and agreements with foreign countries and implementing of the treaties, agreements and conventions with foreign countries. But laws enacted for the enforcement of treaties cannot infringe fundamental rights.
- (v) *Failure of Constitutional Machinery in state [Article 356, 357]* : Whenever Governor of a State reports to the President that there is a breakdown of constitutional machinery in that State and functions cannot be carried out as per constitution in that State, the powers of the State Legislature are to be exercised by Parliament. President can confer on the Parliament the power to make laws for the States. Parliament may also authorize the President to delegate such power to any other authority as may be specified by him [Article 357(1(a))].

Answer 1(c)

For interpreting any provisions of any statute, it is permissible to consider internal and external evidence of such statute. They are stated in brief as follows:

A. Internal Aids : The following may be taken into consideration for interpretation of any statute as internal aids.

- (i) *Title of the Act* : It is a part of the statute and may be helpful to interpret the provisions of such statute. The long title sets out in general terms, the purpose of Act and it precedes the preamble
- (ii) *Preamble*: The preamble of a statute is not part thereof but contains generally the motive or inducement thereof. Preamble is to be considered, for it is the key to open the meaning of the makers of the Act and the mischief it was intended to remedy.
- (iii) *Heading and Title of a Chapter* : In *Frick India Ltd. v. Union of India* (AIR 1990 SC 689), the Supreme Court held that the heading prefixed to Section or entries cannot control the plain words of the provision, they cannot also be referred to for the purpose of construing the provision when words used are clear. Only in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid for construing the provisions but even in such case aid could not be used for cutting down the wide application of clear words used in the provision.
- (iv) *Marginal Notes* : The marginal notes cannot be invoked for interpretation where meaning is clear. But in the case of ambiguity, it is helpful for the interpretation of the provisions.
- (v) *Interpretation Clauses* : It is common to find in statutes “definitions” of certain words and expressions used elsewhere in the body of the statute. The object of such a definition is to avoid the necessity of frequent repetitions in describing all the subject-matter to which the word or expression so defined is intended to apply.

- (vi) *Proviso* : The proper function of proviso is to provide exception of the general rule given in the Section.
- (vii) *Illustrations & Explanations* : Illustrations are part of the statute and useful to indicate the intention of the legislature regarding the Section or provision. An explanation explains the meaning of words contained in the Section.
- (viii) *Schedules* forms part of the statute and must be read together with it for all purposes of construction.

B. External Aids : In the case of ambiguity, for the sake of interpretation of the provisions of the statute, the external aids may be considered like parliamentary history of the statute, reference to report of committee which was constituted to enact the statute, etc. It is well accepted legislative practice to incorporate by reference, if the legislature so chooses, the provisions of some other Acts in so far as they are relevant for the purposes of and in furtherance of the scheme of subjects of the Act. In the case of the ambiguity of the words dictionaries may be useful. Foreign judicial decisions may be useful in peculiar situations.

Question 2

Write short notes on any four of the following :

- (i) *Expert opinion*
- (ii) *Doctrine of feeding the grant by estoppel*
- (iii) *Doctrine of lis pendens*
- (iv) *E-governance*
- (v) *Adjudicating officer.* (4 marks each)

Answer 2(i)

Expert Opinion

According to Section 45 of the Indian Evidence Act, 1872, opinions of the persons who are experts or have special knowledge or skill in any particular field are called expert opinion. Opinions of the experts are admissible when the question in issue is such which can be determined only by special training or experience.

Who is an expert : As per Section 45, a person who is specially skilled is an expert for the purpose of this section. The opinions of experts are relevant upon a point of:

- (i) Foreign law
- (ii) Science
- (iii) Art
- (iv) Identity of handwriting
- (v) Identity of finger impressions.

Answer 2(ii)

Doctrine of feeding the grant by estoppel

This means that if a man who has no title to a property grants it by conveyance

which would carry the legal estate and if he subsequently acquires an interest sufficient to satisfy the grant, the estate instantly passes. An estoppel arises against him by reasons of his conduct and the law obliges him to feed that estoppel by reason of his subsequent acquisition. Section 43 of the Transfer of Property Act, 1882 provides that where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the rights of a transferee in good faith for consideration, without notice of the existence of the said option.

Essentials

- (i) There was a representation, fraudulent or erroneous;
- (ii) It was to the effect that the transferor is entitled to transfer the immovable property;
- (iii) The transferor is found to have subsequently acquired the interest which he professed to transfer;
- (iv) The transfer of property was for consideration;
- (v) The transferee has not rescinded the contract; and
- (vi) The transferee acted in good faith for consideration and without notice of the rights under the prior transfer.

Answer 2(iii)

Doctrine of Lis pendens

Section 52 of the Transfer of Property Act, 1882 embodies the doctrine of *lis pendens*, as expressed in the maxim "*ut lite pendente nihil innovetur*" which means that nothing new should be introduced in a pending litigation. Section 52 states that during the pendency of a suit in a court of law, property which is subject to litigation cannot be transferred. It actually means that the property may be transferred but this transfer is subject to the rights that are created by a Court's decree.

Essentials

- (i) There must be a suit or proceeding in a court of competent jurisdiction;
- (ii) The suit or proceeding must be one in which right to immovable property is directly and specifically in question.
- (iii) The suit or proceeding must not be collusive.
- (iv) There must be transfer of or otherwise dealing with the property in dispute by any party to the litigation.
- (v) Such transfer must affect the rights of the other party that may ultimately accrue under the terms of the decree or order.

A suit in foreign Court cannot operate as *lis pendens*. The doctrine of *lis pendens* does not apply to movables.

Answer 2(iv)**E-governance**

Section 4 of the Information Technology Act, 2000 grants legal recognition to electronic records by laying down that where (by any law) “information” or any other matter is to be in:

- (a) writing or
- (b) typewritten form or
- (c) printed form,

then, such requirement is satisfied, if such information or matter is:

- (i) rendered or made available in an electronic form; and
- (ii) accessible, so as to be usable for a subsequent reference.

Private transactions

Section 4 of the said Act practically equates electronic record with a manual or typed or printed record. Section 5 of the said Act proceeds to achieve the same object in regard to signature by laying down that where any law provides that information or any other matter shall be “signed”, such requirement is satisfied by authentication through digital signature in the prescribed manner.

Public records

Section 6 of the said Act proceeds to bring in the regime of electronic records and digital signature in public records, by making an analogous provision which grants recognition to electronic records and digital signatures, in cases where any law provides for

- (a) the filing of any form, application or any other document with a Governmental office or agency or
- (b) the grant of any licence, permit etc. or
- (c) the receipt or payment of money in a particular manner.

Answer 2(v)**Adjudicating officer**

According to Section 46 of the Information Technology Act, 2000 an adjudication officer is to be appointed by the Central Government for adjudging whether any person has committed a contravention of the Act or of any rule, regulation, direction or order issued under the Act. He may impose penalty or award compensation in accordance with the provisions of the relevant section.

In adjudging the quantum of compensation the following factors are to be taken into account by the adjudication officer:

- (a) the amount of gain or unfair advantage (wherever quantifiable), made as a result of the default;

- (b) the amount of loss caused to any person as a result of the default; and
- (c) the repetitive nature of the default

Question 3

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

- (i) 'Public key' and 'private key'.
- (ii) 'Vested interest' and 'contingent interest'.
- (iii) 'Complaint' and 'FIR'.
- (iv) 'Res judicata' and 'stay of suits'.
- (v) 'Computer' and 'computer network'. (4 marks each)

Answer 3(i)

'Public Key' and 'Private Key'

According to Section 2(1) (zd) of the Information Technology Act, 2000, the term 'public key' means "the key of a key pair, used to verify a digital signature and listed in the Digital Signature Certificate." On the other hand the term 'private key' as defined under Section 2(1) (zc) of the Information Technology Act, 2000, means "the key of a key pair, used to create a digital signature."

Answer 3(ii)

'Vested Interest' and 'Contingent Interest'

1. When an interest is vested the transfer is complete whereas the contingent interest is dependant upon the fulfilment of some conditions which may or may not happen.
2. A vested interest takes effect from the date of transfer. A contingent interest in order to become vested is conditioned by a contingency which may not occur.
3. A vested interest cannot be defeated by the death of the transferee before he obtains possession. A contingent interest may fail in case of the death of transferee before the fulfilment of condition.
4. Since vested interest is not circumscribed by any limitation which derogates from the completeness of the grant, it logically follows that a vested interest is transferable as well as heritable. If, therefore, a transferee of the vested interest dies before actual enjoyment, it will devolve on his legal heirs. A contingent interest, on the other hand, cannot be inherited though it may be transferred coupled with limitation regarding fulfilment of a condition.

Answer 3(iii)

'Complaint' and 'FIR'

- (a) In complaint the allegation is made orally or in writing to a Magistrate, but the report of cognizable offence is given to an officer in charge of a Police Station, which is called FIR.

- (b) A complaint may relate to non-cognizable offence, whereas FIR must relate to a cognizable offence on the face of it.
- (c) A magistrate takes cognizance of an offence on a complaint made to him but he cannot do so on a FIR.
- (d) A complaint does not include the report of the police officer; FIR may be lodged by any body including a police officer with respect to cognizable offence.

Answer 3(iv)**‘Res judicata’ and ‘stay of suits’**

- (i) *res judicata* applies to a matter adjudicated upon (*res judicatum*), but stay of suits applies to a matter pending trial (*sub judice*) and
- (ii) *res judicata* bars the trial of a suit or an issue which has been decided in a former suit, stay of suits bars the trial of a suit which is pending decision in a previously instituted suit.

Answer 3(v)**‘Computer’ and ‘Computer network’**

As per Section 2(1) (i) of the Information Technology Act, 2000 “computer” means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions, by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network

As per Section 2(1) (j) of the said Act, “computer network” means the interconnection of one or more computers through -

- (i) the use of satellite, microwave, terrestrial line or other communication media; and
- (ii) terminals or a complex consisting of two or more interconnected computers, whether or not the interconnection is continuously maintained.

Question 4

Attempt **any four** of the following :

- (i) State the modes of cancellation of adhesive stamps.
- (ii) State the documents of which registration is optional.
- (iii) Specify the categories of information that have been exempted from disclosure under the Right to Information Act, 2005.
- (iv) What are the cyber offences under the Information Technology Act, 2000 ?
- (v) “Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it.” Discuss.
- (vi) Explain the maxim *damnum sine injuria* under the law of torts.

(4 marks each)

Answer 4(i)

Section 12(3) of the Indian Stamp Act, 1899 provides that the cancellation of an adhesive stamp may be done by the person concerned by writing on or 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.

In *Mahadeo Koeri v. Sheoraj Ram Teli* AIR 1919 All 196, it was held that a stamp may be treated as having been effectively cancelled by merely drawing a line across it.

Answer 4(ii)

Section 18 of the Registration Act, 1908 specifies documents, registration of which is optional. It provides that any of the following documents may be registered under this Act, namely:

- (a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, of value less than one hundred rupees, to or in immovable property;
- (b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment; limitation or extinction of any such right, title or interest;
- (c) leases of immovable property for any term not exceeding one year and leases exempted under Section 17;
- (d) instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of a value less than one hundred rupees, to or in immovable property;
- (e) instruments (other than wills) which purport or operate to create declare, assign, limit or extinguish any right, title or interest to or in movable property;
- (f) wills; and
- (g) other documents not required by Section 17 to be registered.

Answer 4(iii)

Following categories of information have been exempted from disclosure under Section 8 of the Right to Information Act, 2005:

- Where disclosure prejudicially affects the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- Information which has been expressly forbidden by any court or tribunal or the disclosure of which may constitute contempt of court;
- Where disclosure would cause a breach of privilege of Parliament or the State Legislature;

- Information including commercial confidence, trade secrets or intellectual property, where disclosure would harm competitive position of a third party, or available to a person in his fiduciary relationship, unless larger public interest so warrants;
- Information received in confidence from a foreign government;
- Information the disclosure of which endangers life or physical safety of any person or identifies confidential source of information or assistance;
- Information that would impede the process of investigation or apprehension or prosecution of offenders;
- Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

Personal information which would cause invasion of the privacy unless larger public interest justifies it.

Answer 4(iv)

According to the Information Technology Act, 2000, cyber offences are classified as follows:

- (i) Tampering with computer source documents (Section 65)
- (ii) Hacking with computer system (Section 66);
- (iii) Publishing of obscene information (Section 67);
- (iv) Failure to comply with controller's Directions (Section 68);
- (v) Failure to decrypt information (Section 69);
- (vi) Breaking into protection system (Section 70);
- (vii) Misrepresentation before Controller or Certifying authority (Section 71);
- (viii) Breach of confidentiality or privacy (Section 72);
- (ix) Publishing erroneous digital signature certificate (Section 73);
- (x) When a person knowingly creates, publishes or otherwise makes available a digital signature certificate for any fraudulent or unlawful purpose (Section 74).

Answer 4(v)

According to Section 9 of the Limitation Act, 1963, where once time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover debt shall be suspended while the administration continues.

The rule of this Section is based on the English dictum. "Time when once it has commenced to run in any case will not cease to be so by reason of any subsequent event". Thus, when any of the statutes of limitation has begun to run, no subsequent disability or inability will stop its running.

The applicability of this Section is limited to suits and applications only and does not apply to appeals unless the case fell within any of the exceptions provided in the Act itself.

For the applicability of Section 9 it is essential that the cause of action or the right to move the application must continue to exist and subsisting on the date on which a particular application is made. If a right itself had been taken away by some subsequent event, no question of bar of limitation will arise as the starting point of limitation for that particular application will be deemed not to have been commenced.

Answer 4(vi)

Damnum sine injuria : The maxim means that in a given case, a man may have suffered damage and yet have 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 legal right of the plaintiff. Common examples are where the damage results from an act done in the exercise of legal rights.

In Gloucester Grammar School Case (1410) Y. B.Hill.11 Hen, 4 of 47, pp. 21, 36, A owned a School and at A's Neighborhood 'B' opened another school in which B reduced the fees of the students. All the students of A's school joined B's school; hence A was in the economic loss. But it was not actionable because there was no violation of legal rights of A.

Question 5

State, with reasons in brief, whether the following statements are correct or incorrect:

- (i) *In computing the period of limitation for an application to set aside an award, the time required for obtaining a copy of the award shall not be excluded.*
- (ii) *A document executed by several persons at different times may be presented for registration and re-registration within six months from the date of each execution.*
- (iii) *Anubhav sells a property to Balwant for Rs.5 lakh which is subject to a mortgage to Charu for Rs. 10 lakh and unpaid interest of Rs.2 lakh. Stamp duty is payable on Rs.17 lakh.*
- (iv) *Suits for compensation for false imprisonment can be filed within two years from the date when the imprisonment ends.*
- (v) *Article 53 of the Constitution of India lays down that the executive powers of the Union shall be vested in the President of India.*
- (vi) *The rule of 'harmonious construction' is the best rule of interpretation of any provision of any statute.*
- (vii) *Under certain circumstances, the court may award damages in addition to specific enforcement of the contract.*

- (viii) *Generally orders passed by the court under the Code of Civil Procedure, 1908 are not appealable but there are certain exceptions to it. (2 marks each)*

Answer 5(i)

Incorrect

Section 12(4) of Limitation Act, 1963 provides that in computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Answer 5(ii)

Incorrect

Section 24 of the Registration Act, 1908, a document executed by several persons at different times may be presented for registration and re-registration within four months from the date of each execution.

Answer 5(iii)

Correct

The explanation appended to Section 24 of the Indian Stamp Act, 1899 inter alia provides that in the case of sale of property subject to mortgage or other encumbrances, any unpaid mortgage money or money charged together with the interest, if any, due on the same shall be deemed to be part of the consideration for the sale.

Answer 5(iv)

Incorrect

Under the Limitation Act, 1963, suits for compensation for false imprisonment can be filed within one year from the date when the imprisonment ends.

Answer 5(v)

Correct

The President of India shall be the head of the 'executive power' of the Union.

Answer 5(vi)

Correct

It provides that 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 consistent enactment of the whole statute.

Answer 5(vii)

Correct

Section 21 of the Specific Relief Act, 1963 provides that in a suit of specific performance of contract, the plaintiff may also claim compensation for its breach either in addition or in substitution of such performance.

Answer 5(viii)**Correct**

The exceptions are provided under Section 104 and Order 43 Rule 1 of the Civil Procedure Code, 1908 specifying the categories of orders which are appealable.

Question 6

- (a) *Choose the most appropriate answer from the given options in respect of the following :*
- (i) *The Constitution of India came into force on —*
 - (a) *26th November, 1949*
 - (b) *15th August, 1947*
 - (c) *26th January, 1947*
 - (d) *26th January, 1950.*
 - (ii) *The right to alienate the mortgaged property without intervention of the court is available to the mortgagee in the case —*
 - (a) *Where the mortgagee is government*
 - (b) *Where there is English mortgage*
 - (c) *Where there is mortgage by conditional sale*
 - (d) *Under both (a) and (b).*
 - (iii) *The relief regarding recovery of possession of immovable property is available under —*
 - (a) *Provisions of the Code of Civil Procedure, 1908*
 - (b) *Provisions of the Specific Relief Act, 1963*
 - (c) *Provisions of the Code of Criminal Procedure, 1973*
 - (d) *Both (a) and (b).*
 - (iv) *In the transfer of property with condition, the condition is void and transfer is valid —*
 - (a) *Where transfer is made with void condition*
 - (b) *Where transfer is made with the condition restraining absolutely future transfer of such property*
 - (c) *Where transfer is made absolutely with the condition restraining enjoyment of such property*
 - (d) *Both (b) and (c).*
 - (v) *Section 20 of the Right to Information Act, 2005 imposes penalty on a public information officer for failing to provide information —*
 - (a) *Rs. 250 per day*
 - (b) *Rs.250 per day to the extent of maximum Rs. 50,000*
 - (c) *Rs.300 per day to the extent of maximum Rs. 25,000*
 - (d) *Rs.250 per day to the extent of maximum Rs. 25,000.*

- (vi) *The Chief Judicial Magistrate is empowered to pass —*
- (a) *Any sentence authorised by law*
 - (b) *Any sentence except a sentence of death*
 - (c) *Any sentence except a sentence of death, life imprisonment or imprisonment for a term exceeding seven years*
 - (d) *Any sentence except a sentence of death and life imprisonment.*
- (vii) *The definition of 'decree' as given under section 2 of the Code of Civil Procedure, 1908 includes —*
- (a) *An 'award' passed by the arbitral tribunal under the Arbitration and Conciliation Act, 1996*
 - (b) *Rejection of plaint under Order 7, Rule 11 of the Code of Civil Procedure, 1908*
 - (c) *Adjudication of any question raised by any party to the decree during execution proceedings under section 47 of the Code of Civil Procedure, 1908*
 - (d) *An order of which appeal lies like an order.*
- (viii) *A magistrate may take cognizance of any offence upon —*
- (a) *His own knowledge*
 - (b) *The information of police officer*
 - (c) *The information of any person other than police officer*
 - (d) *His own knowledge, police report and complaint or information received from any person other than police officer. (1 mark each)*
- (b) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*
- (i) *Temporary injunction is granted under order _____ of the Code of Civil Procedure, 1908.*
 - (ii) *Declaratory decree is granted under _____ of the Specific Relief Act, 1963.*
 - (iii) *A police officer may arrest any person without warrant if he has committed _____ offence.*
 - (iv) *_____ means any person against whom a decree has been passed or an order capable of execution has been made.*
 - (v) *The law of limitation bars the remedy as well as extinguishes the right where _____.*
 - (vi) *A fresh suit is barred for the same cause of action under section(s) _____ of the Code of Civil Procedure, 1908.*
 - (vii) *Application for obtaining information with prescribed fees may be submitted to _____ officer under the provisions of the Right to Information Act, 2005.*
 - (viii) *Central Information Commission is constituted by _____ through a gazette notification. (1 mark each)*

Answer 6(a)(i)

- (d) 26th January, 1950

Answer 6(a)(ii)

- (d) Under both (a) and (b)

Answer 6(a)(iii)

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

Answer 6(a)(iv)

- (d) Both (b) and (c)

Answer 6(a)(v)

- (d) Rs.250 per day to the extent of maximum Rs.25,000.

Answer 6(a)(vi)

- (c) Any sentence except a sentence of death, life imprisonment or imprisonment for a term exceeding seven years.

Answer 6(a)(vii)

- (b) Rejection of plaint under Order 7, Rule 11 of the Code of Civil Procedure, 1908.

Answer 6(a)(viii)

- (d) His own knowledge, police report and complaint or information received from any person other than police officer.

Answer 6(b)

- (i) Temporary injunction is granted under order **XXXIX** of the Code of Civil Procedure, 1908.
- (ii) Declaratory decree is granted under **Section 34** of the Specific Relief Act, 1963.
- (iii) A police officer may arrest any person without warrant if he has committed **Cognizable** offence.
- (iv) **Judgement debtor** means any person against whom a decree has been passed or an order capable of execution has been made.
- (v) The law of limitation bars the remedy as well as extinguishes the right where **the time limit of recovery of possession of immovable property has elapsed**.
- (vi) A fresh suit is barred for the same cause of action under section(s) **10 and 11** of the Code of Civil Procedure, 1908.
- (vii) Application for obtaining information with prescribed fees may be submitted to **Public Information** officer under the provisions of the Right to Information Act, 2005.
- (viii) Central Information Commission is constituted by **Central Government** through a gazette notification.

Question 7

- (a) *Ajit, a Hindu, who has separated from his father Baljit, sells to Charanjit three fields X, Y and Z representing that Ajit is authorised to transfer the same. Of these fields, Field-Z does not belong to Ajit, it having been retained by Baljit on the partition of property. But subsequently on Baljit's death, Ajit, as a heir obtains Field-Z. Decide the validity of the sale of the above said fields in a circumstance where Charanjit does not rescind the contract of sale. (6 marks)*
- (b) *In a case, Hamid was terminated from the police service. Hamid filed a writ petition against termination order on the ground that a reasonable opportunity of being heard was not given to him by the government. The writ petition was dismissed by the court as the government proved that reasonable opportunity of being heard had been given to the petitioner. Afterwards, Hamid filed another writ petition on the ground that as he was appointed by the Director General of Police, termination by the order of Deputy Inspector General of Police was in violation of Article 311(1) of the Constitution of India. Decide the validity of the second writ petition. (5 marks)*
- (c) *Anurag, a child, entered the botanical garden of a municipality and consumed some attractive looking but poisonous berries. As a result of that, he died. The representatives of the child sued the municipality for damages. Will they succeed ? Give reasons. (5 marks)*

Answer 7(a)

Charanjit may require Ajit to deliver field Z to him. The given problem is an illustration appended to Section 43 of the Transfer of Property Act, 1882, envisaging the doctrine of feeding the grant by estoppel. As per this Section where a grantor has purported to grant an interest in land which he did not at that time possess, but subsequently acquires, the benefit of his subsequent acquisition goes automatically to the earlier grantee or as it usually expressed, feeds the estoppel.

Answer 7(b)

The facts of the present problem are similar to the case of *State of U.P. v. Nawab Hussain*, AIR 1977 S.C.1680 pertaining to Section 11 of C.P.C. The Explanation IV to Section 11 of C.P.C. provides that if a plea could have been taken by a party in a proceeding between him and his opponent, he should not be permitted to take that plea against the same party in a subsequent proceeding with reference to the same subject matter.

In the given problem, Hamid should have raised the plea based on violation of Article 311 (1) of the Constitution of India in the first writ petition itself but this was not done. He has raised this issue in the second writ petition which as per Explanation IV, he is not allowed to raise.

Answer 7(c)

This problem pertains to the rule of strict or absolute liability stated in the law of torts. This rule of strict/absolute liability has been laid down in *Ryland v. Fletcher* (1868) L.R.3 H.L.330. As per this rule, if any person uses his land in an unnatural way

then he is liable for the wrong committed to any person if such person enters in the land. In the present problem defendant uses his land in unnatural way i.e. municipal garden, by planting such plants having poisonous berries. The child who is unknown about it enters and ate these berries and died. For that, the defendant is liable to pay compensation to the legal representative of the deceased child.

Question 8

- (a) *On 20th March, Kamal told his wife that he was going to Berhmpore, as Pankaj's wife has written a letter and asked him to come and receive payments due to him. On 21st March, Kamal left his house in time to catch a train for Berhmpore, where Pankaj lived with his wife. On 23rd March, Kamal's dismembered body was found in a box which had been purchased for Pankaj. Decide whether on the trial of Pankaj for the murder of Kamal, the statement made by Kamal to his wife was admissible in evidence. If so, on what grounds ? (6 marks)*
- (b) *Arpit took a debt of Rs.10,000 from Bharat on January, 1998 and promised to pay by 31st December, 2003. He could not pay such debt within the stipulated time. On 1st December, 2006, Arpit paid Rs.500 as interest against such debt to Bharat against receipt. Bharat filed a suit against Arpit to recover such debt on 15th December, 2008. Whether the suit filed by Bharat is within the period of limitation ? Decide with reasons citing relevant provisions of the law. (5 marks)*
- (c) *Arjun transfers his property to Bhanu for life and after Bhanu's death to that of his unborn sons as shall first attain the age of 25 years and if no son of Bhanu shall attain that age, to Chandan who is living at the time of the transfer. Decide the validity of this transfer. (5 marks)*

Answer 8(a)

The facts of the case are similar to that of *Pakala Narayanaswami v. King Emperor*, (1939) LR 66 IA, decided by the Privy Council. In this case the statement was admitted by the Privy Council under Section 32 (1) of the Indian Evidence Act, 1872.

Section 32(1) of the Indian Evidence Act, 1872 dealing with dying declaration states that statements, written or verbal of relevant facts made by a person who is dead are themselves relevant facts in the following case- when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under the expectation of the death and whatever may be the nature of the proceeding in which the cause of his death comes into question.

In the present problem the statement made by the deceased (Kamal) to his wife is clearly a statement as to the circumstances of the transaction which resulted in his death. Thus, it is rightly admissible under Section 32(1) of the Indian Evidence Act, 1872. This is so even when the statement has not been made to an independent person.

Answer 8(b)

The given problem relates to Section 19 of the Limitation Act, 1963. Section 19 provides that where payment on account of a debt or of interest on a legacy is made

before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made.

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgement of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

In the present problem the limitation period for Bharat to file a suit to recover a debt from Arpit expired on 31st December, 2006. But Arpit paid interest amount on 1st December, 2006 i.e. before the expiry of the limitation period. In view of the provisions of Section 19, Bharat is entitled to a fresh period of limitation of three years from the date of payment of interest by Arpit. Therefore, the suit filed by Bharat on 15th December, 2008 is within the period of limitation.

Answer 8(c)

The present problem is based on Section 14 read with Section 15 and 16 of the Transfer of Property Act, 1882.

Section 14 dealing with the rule against perpetuity contains two propositions, i.e.:

- (1) No transfer is valid after the life-time of one or more persons living at the date of such transfer. Transfer can remain in effect only during the life time of an existing person.
- (2) Transfer can be extended to a person who is not in existence but if he is in existence at the time of termination of the period of last transfer. The moment the person is born he shall have contingent interest and after minority i.e. after the age of 18 years, he shall have vested interest. Barring these two conditions, a restriction on alienation of a property is void.

Section 15 contemplates a situation when a property is transferred and interest is created in favour of a class of persons (and not one individual) some of whom may be or may not be in existence.

In the given case, property is transferred to Bhanu for life and after her death to her unborn sons who shall first attain 25 years of age. Such persons should attain 25 years of age within 18 years of death of Bhanu as under Section 14 vesting cannot be postponed beyond that period.

Therefore, the validity of the transfer can be summarised as follows :

- (1) If Bhanu has any sons, and they will attain the age of 25 years within 18 years of her death, the property will vest with them.
 - (2) If the above condition does not arise, transfer to Chandan is not valid as Section 14 and 15 are violated and as per Section 16, any further transfer is also not valid.
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COMPANY ACCOUNTS COST AND MANAGEMENT ACCOUNTING

Time allowed : 3 hours

Maximum marks : 100

NOTE : All working notes should be shown distinctly.

PART A

(Answer Question No. 1 which is compulsory
and any two of the rest from this part)

Question 1

- (a) State, with reasons in brief, whether the following statements are correct or incorrect :
- (i) Accounting Standards (AS) are formulated by International Accounting Standard Board.
 - (ii) A joint stock company cannot purchase its own shares.
 - (iii) If the rate of dividend declared by a company is 22%, then under the Companies (Transfer of Profits to Reserves) Rules, 1975 the percentage of profits to be transferred to reserves should be 10%.
 - (iv) The law limits the commission in case of issue of shares to 10% of the issue price of shares and in case of debentures to 5% or such lower rate as is provided in the articles of association.
 - (v) Contingent liabilities relating to outsiders must be shown on the liability side of the consolidated balance sheet. (2 marks each)
- (b) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :
- (i) According to the provisions of section 198 of the Companies Act, 1956, maximum limit on the total managerial remuneration payable by public company is _____ of net profits.
 - (ii) A company must pay the dividends within _____ days of its declaration.
 - (iii) Preliminary expense is a _____ asset.
 - (iv) Discount on the issue of debenture is a _____ loss.
 - (v) If the purchase price of the debenture includes the interest for the expired period, it is known as _____. (1 mark each)
- (c) Gaurav Ltd. had issued 12%, Rs. 10,00,000 debentures @ Rs. 100 each in the past. For the purpose of redemption, it maintains a debenture redemption fund with an annual contribution of Rs. 90,000. On 1st April, 2008, the fund stood at Rs. 4,50,000 represented by 6%, Rs. 5,00,000 government loan.
- On 31st March, 2009, Rs. 2,00,000 government loan was sold @ Rs. 93.50 and the proceeds were utilised to purchase debentures for cancellation @ Rs. 85 each. Assume that Rs. 20,000 debentures have been redeemed out of capital and the balance with face value of Rs. 1,80,000 has been redeemed out of debenture redemption fund account.