

EXECUTIVE PROGRAMME

JUNE 2010

GENERAL AND COMMERCIAL LAWS

Time allowed: 3 hours

Max. Marks: 100

PART A

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

Question 1

- (a) *"Constitution of India is basically federal with strong unitary features." Discuss. (8 marks)*
- (b) *Explain the writ jurisdictions of the Supreme Court and High Courts as provided in the Constitution of India. (6 marks)*
- (c) *Explain the mischief rule in the interpretation of statutes. (6 marks)*

Answer 1(a)

The Constitution of India is basically federal in character with many striking unitary features. The Constitution of India possesses all the essential features of a federal system. A federal system has the following essential features:

- (i) Dual Government
- (ii) Distribution of powers between the Union Government and the State Governments.
- (iii) Supremacy of the Constitution.
- (iv) A written and rigid Constitution.
- (v) Authority of the Courts.

The Constitution of India possesses all the above-mentioned features of a federal Government. At the same time, the following features of the Constitution are indicative of its unitary character:

- (i) President of India is the Constitutional Head of the executive of the Union and the appointment of Governors is made by him. They are answerable to the President and hold office till they enjoy pleasure of the President;
- (ii) Appointment and transfers of the Chief Justice and the Judges of the High Court by the President;
- (iii) Parliament's powers to form States and alteration of boundaries etc. of the existing states;
- (iv) Supremacy of Parliament in legislative matters;
- (v) Parliament's powers to legislate on subjects of State list under special circumstances;
- (vi) Control of Centre over State legislatures;

- (vii) Power of Centre to give directions to the States.
- (viii) All key administrative positions in the states are filled by officers of All India Services of the Union e.g. IAS, IPS.
- (ix) Dependence of States upon the Centre for grants-in-aid since their financial resources are inadequate.
- (x) Suspension of federal structure during the emergency period as declared under the Constitution.

All the facts as stated above, support the contention as correctly observed by Sir Ivor Jennings that Indian Constitution establishes a federation, which possesses strong centralizing tendency.

Answer 1(b)

The Supreme Court and the High Courts are empowered to exercise writ jurisdiction under Articles 32 and 226 of the Constitution respectively. For enforcement of Fundamental Rights as conferred on the citizens of India and others under the Constitution of India. Article 32 of the Constitution confers on the Supreme Court of India power to issue directions or orders or writs including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the said rights.

The Constitution also confers power on the High Courts to issue certain writs. Article 226 of the Constitution lays down: "Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III (Fundamental Rights) and for any other purpose.

The difference between writ jurisdictions of both the Courts may be summarized as follows:

- (1) The Supreme Court can exercise writ jurisdiction under Article 32 only for the enforcement of fundamental rights; whereas the High Court exercises this jurisdiction under Article 226 for the enforcement of fundamental rights and for other purposes also. This power is exercisable by each High Court throughout the territory in relation to which it exercises jurisdiction.
- (2) Article 32 itself being a fundamental right, the Constitutional remedy of writ is available to anyone whose fundamental rights are infringed by the State action.
- (3) While the Supreme Court can issue a writ against any person or Government within the territory of India, a High Court can, under Article 226, issue a writ against any person, Government or other authority only if such person or authority is physically resident or located within the territorial jurisdiction of that particular High Court or if the cause of action arises within such jurisdiction.

- (4) The jurisdiction of the High Court also extends to the enforcement of rights other than fundamental rights provided there is a public duty. The Supreme Courts jurisdiction to issue writs extends to all fundamental rights (Common Cause v Union of India, A.I.R. 1999 SC 2979).

Answer 1(c)

The Mischief Rule

In 1584, in Heydon's Case, it was resolved by the Barons of the Exchequer "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.

The rule laid down in Heydon's case which has "now attained the status of a classic provides 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. (*Umed Singh v. Raj Singh*, AIR 1975 SC 43)

In *Sodra Devi's Case* (AIR 1957 SC 832), the Supreme Court observed that the rule in Heydon's case is applicable only when the words in question are ambiguous and are reasonably capable of more than one meaning.

Question 2

Attempt **any four** of the following:

- (i) State the circumstances in which a property may be transferred in favour of an unborn person.
- (ii) Explain the rule of *lis pendens* as provided in the Transfer of Property Act, 1882.
- (iii) What are 'cyber offences' under the Information Technology Act, 2000 ?
- (iv) State the documents which are required to be compulsorily registered under the Registration Act, 1908.
- (v) Explain the consequences of the instruments which are not duly stamped under the Indian Stamp Act, 1899. (4 marks each)

Answer 2(i)

Section 13 of the Transfer of Property Act, 1882 permits transfer of property in favour of a unborn person.

As per Section 13 of the Transfer of Property Act where on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect unless it extends to the whole of

the remaining interest of the transferor in the property. Thus if a property is given to an unborn person, two conditions should be satisfied:

- (i) it should be preceded by a life estate in favour of a living person, and
- (ii) it should comprise the whole of the remaining interest of the transferor so that there can be no further interest in favour of others.

The sum and substance of Section 13 is that property can be transferred to an unborn person provided the transfer is supported by a prior life estate and the unborn person is given an absolute estate.

Answer 2(ii)

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 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(iii)

Cyber offences

Chapter 11 of the Information Technology Act, 2000 (Sections 65-78) prescribes the offences relating to computers etc. and connected matters. The offences listed in this Chapter are the following—

- (a) Tampering with computer source documents;
- (b) “Hacking” with computer systems;
- (c) Publishing of obscene information in electronic form;
- (d) Securing access to any computer, computer system or computer network declared by the appropriate Government to be a “protected system”;

- (e) Misrepresentation about a material fact to, or suppression of a material fact from, the Controller or the Certifying Authority;
- (f) Breach of confidentiality and privacy, by a person who has, in the exercise of a power conferred by the Act, secured access to electronic record, book, register etc.;
- (g) Publishing a digital signature certificate, which is false in certain particulars;
- (h) Knowing, creating, publishing etc. a Digital Signature Certificate, for any fraudulent or unlawful purpose.

Answer 2(iv)

Documents whose registration is compulsory

According to Section 17 of the Registration Act, 1908, documents whose registration is compulsory are the following:

- (a) *Instruments of gift of immovable property*

In a case where the donor dies before registration, the document may be presented for registration after his death and if registered it will have the same effect as registration in his life time. On registration the deed of gift operates as from the date of execution.

- (b) Other non-testamentary instruments (other than instruments of gift of immovable property) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title of interest whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property situated in a district in which this Act is in force.

Whether an instrument requires registration under Section 17(1)(b) depends upon whether it operates or purports to bring about a change in legal relation in respect of some property.

- (c) Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title or interest.

This clause requires an acknowledgement in the form of a receipt to be registered, but not an acknowledgement of the fact that a transaction has taken place. To be registrable under this clause a receipt must satisfy the following two conditions:

- (i) it must be the receipt of a consideration; and
- (ii) it must on the face of it be an acknowledgement of payment or some consideration on account of the creation, declaration, assignment, limitation or extinction of an interest of the value of Rs. 100 or upwards in immovable property.

Answer 2(v)

Consequences of the instruments not duly stamped

Chapter IV of the Indian Stamp Act, 1899 (consisting of Sections 35 to 48) provides for the consequences that follow where instruments are not duly stamped.

Section 33 contains a mandate on certain officials to impound an instrument which is not duly stamped. Section 33(1) provides that every person having by law or consent of parties, authority to receive evidence and every person in charge of a public office, except an officer of police before whom any instrument, chargeable in his opinion, with duty is produced or comes in the performance of his functions, shall, if it appears to him that the instrument is not duly stamped, impound the same.

Section 35 of the Indian Stamp Act, 1899 stipulates that no instrument chargeable with duty shall be—

- (i) admitted in evidence for any purpose whatsoever by any person authorised by law (such as judges or commissioners) or by the consent of the parties (such as arbitrators) to record evidence; or
- (ii) shall be acted upon; or
- (iii) registered; or
- (iv) authenticated by any such person as aforesaid or by any public officer unless such instrument is duly stamped.

An insufficiently stamped instrument is not an invalid document and it can be admitted in evidence on payment of penalty.

The proviso appended to Section 35 envisages certain circumstances whereunder an instrument shall be admissible in evidence.

Question 3

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

- (i) 'Summons cases' and 'warrant cases'.
- (ii) 'Bailable offences' and 'non-bailable offences'.
- (iii) 'Battery' and 'assault'.
- (iv) 'Condition precedent' and 'condition subsequent'.
- (v) 'Primary evidence' and 'secondary evidence'. (4 marks each)

Answer 3(i)

Summons cases and warrant cases

"Summons case" as defined under the provisions of Criminal Procedure Code means a case relating to an offence and not being a warrant case. [Section 2(w)]

A "Warrant case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. [Section 2(x)]

Actually summons case relate to the offences for which punishment is the imprisonment for a term not exceeding two years i.e., petty nature of offences.

Warrant case relates to serious offence and serious punishment. Thus, a case assumes the character of a 'summons case' or a 'warrant case' according to the nature and measure of punishment which the law attaches to the offence. However, the difference is only for the purpose of a procedure for trial.

Answer 3(ii)**Bailable Offence and Non-bailable Offence**

As per Section 2(a) of the Criminal Procedure Code a "bailable offence" means an offence which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being in force.

"Non-bailable" offence means any other offence.

Answer 3(iii)**Battery and Assault**

Any direct application of force to the person of another individual without his consent or lawful justification is a wrong of battery. To constitute a tort of battery, therefore, two things are necessary: (i) use of force, however, trivial it may be without the plaintiff's consent, and (ii) without any lawful justification.

Even though the force used is very trivial and does not cause any harm, the wrong is committed. Thus, even to touch a person in anger or without any lawful justification is battery.

Assault is any act of the defendant which directly causes the plaintiff immediately to apprehend a contact with his person. Thus, when the defendant by his act creates an apprehension in the mind of the plaintiff that he is going to commit battery against him, the tort of assault is committed. The law of assault is substantially the same as that of battery except that apprehension of contact, not the contact itself has to be established.

Answer 3(iv)**Condition precedent and condition subsequent**

When an interest is created on the transfer of property but is made to depend on the fulfillment of a condition by the transferee, the transfer is known as a conditional transfer. Such a transfer may be subject to a condition precedent or a condition subsequent. If the interest is made to accrue on the fulfillment of a condition, the condition is said to be condition precedent.

A transfer may also be made subject to a contingency which may or may not occur. Thus, an interest may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen. This is known as condition subsequent. Condition subsequent is one which destroys or divests the rights upon the happening or non-happening of an event.

Answer 3(v)**Primary and Secondary Evidence**

As per the Indian Evidence Act, "Primary evidence" means the document itself produced for the inspection of the Court (Section 62). Where a document is executed in several parts, each part is primary evidence of the document. Where a number of

documents are all made by one uniform process, as in the case of printing photography, or photography, each is primary evidence of the contents of the rest. If a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

"Secondary evidence" is generally in the form of compared copies, certified copies or copies made by such mechanical processes which in themselves ensure accuracy of the copy. Section 63 of the Indian Evidence Act defines the kinds of secondary evidence permitted by the Act. According to Section 63, "secondary evidence" means and includes.

- (1) certified copies given under the provisions hereafter contained;
- (2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
- (3) copies made from or compared with the original;
- (4) counterparts of documents as against the parties who did not execute them;
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

Question 4

Write notes on **any four** of the following:

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

Answer 4(i)

E-governance

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. (Section 4)

The term "information", as defined in Section 2(1) (v) of the Act, includes data, text, images, sound, voice, codes, computer programmes, software and data-bases or micro-film or computer-generated "micro-fiche".

Private transactions: Section 4 of the Information Technology Act, practically equates electronic record with a manual or typed or printed record. The next Section proceeds to achieve the same object with regard to signature. 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. (Section 5)

Public records: The Act brings in the regime of electronic records and digital signature the 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. (Section 6)

Answer 4(ii)

Setting aside of an Award

Under Section 34 of the Arbitration and Conciliation Act, 1996 the parties can approach the Court for setting aside the Award. The grounds for setting aside an arbitral award have been spelled out in Section 34(2) of the Act. Section 34(2) of Arbitration and Conciliation Act, 1996 envisages the following grounds on which an arbitral award may be set aside.

- (i) Incapacity of a party;
- (ii) Invalidity of the arbitration agreement;
- (iii) Arbitral tribunal not properly constituted;
- (iv) Party applying not given proper notice of the appointment of the arbitrator or of the arbitral proceedings;
- (v) Award not in accordance with the terms of submission to arbitration in regard to dispute;
- (vi) Arbitral tribunal not properly constituted or the arbitral procedure not in accordance with the agreement of the parties or with the Act;
- (vii) The subject matter of the dispute not capable of settlement by arbitration under the law;
- (viii) Award being in conflict with the public policy of India.

Section 34(3) of the Act prescribes a time limit of three months for making an application for setting aside the arbitral award. The prescribed period of three months could be extended to a maximum period of 30 days by the Court if it is satisfied that the applicant was prevented by sufficient cause from making the application within the said period.

Answer 4(iii)

Perpetual injunction

Specific Relief Act, 1963 grants specific relief called Preventive Relief i.e., preventing a party from doing that which he is under an obligation not to do.

Preventive relief is granted at the discretion of the court by way of an injunction. The injunction may be temporary or perpetual.

The temporary injunctions are granted under Order 39 Rules 1-2 of the Civil Procedure Code while perpetual injunctions are dealt within Section 38 of the Specific Relief Act.

Section 38(1) dealing with granting of perpetual injunction states that subject to the other provisions contained in or referred to by this chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour whether express or by implication.

Sub-section (2) states that a perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of right, or from the commission of an act, which would be contrary to the rights of the Plaintiff.

The cases in which the perpetual injunction may be granted are of two classes. The object is to prevent the breach of an obligation existing in favour of the applicant, but such obligation may either arise out of a contract or otherwise. In case of contractual agreement principles governing specific performance will apply and in other cases, the injunction would be granted if the plaintiff can show that the defendant has a legal duty or obligation towards him and that by the non-performance of such duty the right to enjoyment of property has been materially affected. Such cases are where the defendant is trustee of the property of the plaintiff or where the injunction is necessary to prevent multiplicity of judicial proceedings, etc.

Answer 4(iv)

Rectification of an Instrument

Section 26 of the Specific Relief Act, 1963 deals with rectification of instruments. Rectification means correction of an error in an instrument in order to give effect to the real intention of the parties. Where a contract reduced into writing in pursuance of previous agreement, fails to express real intention of the parties, the court will rectify instrument in accordance with their true intention. Here, there must be an existence as between the parties, a complete and perfectly unobjectionable contract; but the writing designed to embody it, either from fraud or mutual mistake is incorrect or imperfect and the relief sought is to rectify the writing so as to bring it into conformity with the true intention. In such a case, if such instrument is enforced, one party will suffer and if it is rescinded altogether both the parties will suffer but if it is rectified and enforced neither party will suffer. The principle on which the Courts act in correcting instruments is that parties are to be placed in the same position as they would have stood if no error had been committed (*Sudha Singh v. Munshi Ram*, A.I.R 1927 Cal. 605). There must have been a complete agreement prior to the instrument. It should be in writing and there must be clear evidence of mutual mistake or fraud.

Answer 4(v)

Specific Performance of a Contract

Specific performance is an equitable relief given by the court in case of breach of a contract. It is the form of a judgement by the court ordering the defendant to

actually perform the contract according to its terms and stipulations. The stipulations in the contract may be positive, i.e. to do a certain thing, or negative, i.e., not to do a certain thing. The term specific performance is generally confined to the positive stipulations, i.e., fulfillment of positive obligations.

Section 10 of the Specific Relief Act, 1963 provides the cases in which specific performance of contract is enforceable. It says that except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the Court, be enforced (a) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done, or (b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief. The explanation provides that unless and until the contrary is proved, the Court shall presume:

(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money, and (ii) that the breach of a contract to transfer movable property can be so relieved except in the two cases: (a) where the property is not an ordinary article of commerce or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market, and (b) where the property is held by the defendant as the agent or trustee of the plaintiff.

So, under this Section, contracts for sale of patent right, copy right, shares of a company which are not easily available, future property, chattels of special value, etc., are specifically enforceable.

Question 5

- (a) *A document was executed outside India and it was presented for registration after a lapse of four months from the date of its arrival in India. Whether the document may be accepted for registration by the Registrar ? Decide. (6 marks)*
- (b) *Choose the most appropriate answer from the given options in respect of the following:*
 - (i) *Under the Transfer of Property Act, 1882, the transfer of property may be made—*
 - (a) *Orally*
 - (b) *By written document*
 - (c) *By written document with its registration*
 - (d) *By delivery of property except where transfer is required to be in writing under the law.*
 - (ii) *The right to foreclosure is available to the mortgagee when it is—*
 - (a) *English mortgage*
 - (b) *Simple mortgage*
 - (c) *Mortgage by conditional sale*
 - (d) *Usufructuary mortgage.*
 - (iii) *The income of transferred property may be accumulated for an unlimited time where the property is transferred with condition—*
 - (a) *For the payment of debts taken by the transferor*

- (b) *For the maintenance of the property itself*
 - (c) *For the maintenance of the descendants of the transferor generation after generation*
 - (d) *All of the above.*
- (iv) *under the Specific Relief Act, 1963, the relief of cancellation of a written instrument is available—*
- (a) *When an instrument is void or voidable at the option of the plaintiff*
 - (b) *Where the plaintiff may apprehend serious injury if the instrument is left outstanding*
 - (c) *Where the instrument requires registration but is not registered*
 - (d) *Where conditions mentioned (a) and (b) above are fulfilled.*
- (v) *The definition of the 'State' as given under Article 12 of the Constitution of India includes—*
- (a) *The Central Government and Parliament of India*
 - (b) *The Government and the Legislature of each State*
 - (c) *All local or other authorities within India and under the control of the Government of India*
 - (d) *All of the above.* (1 mark each)
- (c) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):*
- (i) *Perpetual injunction is granted under section _____ of the Specific Relief Act, 1963.*
 - (ii) *A police officer may arrest an accused without warrant in case of _____.*
 - (iii) *The Court of a Judicial Magistrate of the First Class is authorised to pass a sentence of _____.*
 - (iv) *The right to maintenance under section 125 of the Code of Criminal Procedure, 1973 is available to _____.*
 - (v) *The application of revision under the provisions of the Code of Civil Procedure, 1908 is made to _____. (1 mark each)*

Answer 5(a)

The document may not be accepted for registration as it has been presented for registration after the lapse of four months.

As per Section 26 of the Registration Act, 1908 if a document purporting to have been executed by all or any of the parties out of India is presented for registration within the prescribed time, the Registering Officer may, on payment of proper registration fee, accept such document for registration if he is satisfied that:

- (a) the instrument was executed out of India.
- (b) the instrument has been presented for registration within four months after its arrival in India.

Answer 5(b)

- (i) (d) By delivery of property except where transfer is required to be in writing under the law.
- (ii) (c) Mortgage by conditional sale
- (iii) (d) All the above
- (iv) (d) Where conditions mentioned (a) and (b) above are fulfilled
- (v) (d) All the above

Answer 5(c)

- (i) Section 38
- (ii) Cognizable offence
- (iii) Imprisonment up to 3 years or a fine of Rs.5000 or both
- (iv) Wife, children legitimate or illegitimate unable to maintain themselves and parents unable to maintain themselves
- (v) The High Court

Question 6

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

- (i) *The Constitution of India makes a few exceptions in which the Parliament is authorised to make the laws even on the subjects included in the State List.*
- (ii) *Article 174 of the Constitution of India empowers the Governor of the State to dissolve the State legislature.*
- (iii) *The Right to Information Act, 2005 confers on all citizens of India a right to information.*
- (iv) *Certain categories of information have been exempted from disclosure under the Right to Information Act, 2005.*
- (v) *Under certain circumstances, a person is liable for the torts committed by another.*
- (vi) *On the same cause of action, a fresh suit is barred by law.*
- (vii) *Decree is a formal expression of an adjudication, whereas an order is the decision of the court.*
- (viii) *The procedure provided under any special or local law is not affected by the procedure given under the Code of Civil Procedure, 1908.*

(2 marks each)

Answer 6

- (i) **Correct:** The Constitution of India makes a few exceptions in which Parliament is authorized to make laws even on the subjects enumerated in the State List.
- (ii) **Correct:** Article 174 of the Constitution empowers the Governor of the State to dissolve the State Assembly

- (iii) **Correct:** The Right to Information Act, 2005 confers on all citizens the right to information subject to provisions of the Act.
- (iv) **Correct:** Certain categories of information have been exempted from disclosure under the Act. These categories have been mentioned under section 8 of the Act.
- (v) **Correct:** In the case of vicarious liability, the person is liable for the tort committed by another. For example, a master is vicariously liable for the tort of his servant, principal for the tort of his agent and partners for the tort of a partner
- (vi) **Correct:** Section 10, 11 and 12 of CPC bars the fresh suit on the same cause of action.
- (vii) **Correct:** 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.
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.
- (viii) **Correct:** Section 4 of the CPC provides that in the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

Question 7

- (a) *Ashok sells a house to Vinay by a written document and delivers possession to Vinay, but the document is not registered. After one year, Ashok sues Vinay to take back the possession of the property on the ground that non-registration of a document has no validity. Will Ashok succeed ? Which doctrine of law can be invoked by Vinay in his defence?* (6 marks)
- (b) *Kamal transfers his property worth Rs.10,000 to Shyam and by the same instrument asked Shyam to transfer his property worth Rs.5,000 to Manoj. Kamal dies before Shyam made his election. Can Manoj get compensation ? If so, from whom and how much?* (5 marks)
- (c) *Alok contracts to sell a piece of land to Vimal consisting of 100 bighas for Rs.10 lakh and it turns out that only 50 bighas of land belongs to Alok. Who can demand specific performance of contract and who cannot ? If there is a demand of specific performance from rightful party, what will be the consideration?* (5 marks)

Answer 7(a)

Ashok will not succeed. Vinay will not be allowed to suffer simply because the formality of registration has not been through. The legislature grants some relief to such a transferee under section 53A of the Transfer of Property Act, 1882 which embodies "the doctrine of part-performance". This doctrine prohibits the transferor to get back the possession from the transferee because legal requirements have not been satisfied.

Answer 7(b)

This problem is based on doctrine of election stipulated under Section 35 of the Transfer of Property Act, 1882.

Kamal dies before Shyam made his election as a result of which Manoy is at loss as he won't be receiving the property by this transfer. Here heirs of Kamal have to compensate Manoy from the Kamal's property to the extent of Rs. 5,000. Shyam's property worth Rs.5, 000 was intended by Kamal to be transferred to Manoy.

Answer 7(c)

50 bighas of land is a substantial part of the contract. Alok cannot demand specific performance of contract but Vimal can demand specific performance of contract to get 50 bighas of land from Alok by paying the full consideration i.e. Rs. 10 lakhs.

Question 8

- (a) *Anil was a trustee of a trust. After Anil's death, Brij wrongfully takes the possession of the trust property. Chandan, the son of Anil files a suit for recovery of possession of the property against Brij as the legal heir of Anil in his individual capacity. But Chandan did not succeed. Then Chandan files another suit for recovery of trust property against Brij in the capacity of trustee as he was appointed as trustee after the death of Anil. Whether the second suit is barred by the doctrine of constructive res judicata ? Explain.*

(6 marks)

- (b) *Mohan filed a suit against Sohan and Rohan for partition of coparcenary property 'P-1'. The suit has been decided. Mohan files another suit against Sohan and Rohan for the partition of coparcenary property 'P-2', which was in existence at the time of filing of the first suit. Decide.*

(5 marks)

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

(5 marks)

Answer 8(a)

The present problem pertains to the doctrine of res judicata as provided under section 11 of the CPC. The doctrine applies only when the parties of both the suits are same and litigating under the same title.

In the problem, the first suit is filed by Chandan in his individual capacity i.e. as legal heir of his deceased father to recover the possession of property. The second suit is filed by him in his representative capacity i.e. as trustee of the trust property. Therefore second suit is not barred by the doctrine of constructive res judicata.

Answer 8(b)

This problem pertains to O-2, Rule 2 of C.P.C. according to which in a suit filed by the plaintiff, the whole claim or all the remedies available should be included in the

suit. If not included, for the rest, the second suit is barred. In this problem, the first suit filed by Mohan should include all the coparcenary property i.e. P-1 and P-2. Therefore, the second suit for P-2 cannot be filed because this property should be included in the first suit.

Answer 8(c)

The present problem pertains to Section 122 of the Evidence Act which gives privilege to the married couple for not disclosing any communication made during marriage period.

In this problem Kamini gives the information regarding theft before marriage to Ajay. Therefore, this communication does not come within the preview of the privilege given under Section 122 of the Evidence Act. Therefore Ajay may disclose the communication made to him by Kamini.
