

EXECUTIVE PROGRAMME EXAMINATION

DECEMBER 2011

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 21 of the Constitution of India has been so transformed by the judiciary that it now encompasses all conceivable rights within its ambit." Discuss. (8 marks)
- (b) What do you understand by the expression 'State' under Part-III of the Constitution of India ? Explain with the help of decided case law on the point. (6 marks)
- (c) Explain 'delegated legislation'. State the circumstances in which delegated legislation is possible. (6 marks)

Answer 1(a)

Article 21 of the Indian Constitution confers on every person the fundamental right to life and personal liberty. It says that "no person shall be deprived of his life or personal liberty except according to procedure established by law". Thus, Article 21 seeks to prevent encroachment upon personal liberty by the Executive except in accordance with law and in conformity with the provisions of law. Prior to *Menaka Gandhi v. Union of India*, AIR 1978 SC 597, Article 21 was understood to guarantee the right to life and personal liberty to citizens only against the arbitrary action of the executive and not against legislative action. The State could interfere with the liberty of the citizens if it could support its action by a valid law. But after *Menaka Gandhi's* decision, Article 21 now protects the right to life and personal liberty of citizens from legislative action also on certain grounds.

"Personal Liberty" under Article 21 means freedom from physical restraint to persons by incarceration or otherwise. It also includes all the varieties of rights which together make up a man's personal liberties other than those which are already included in the various clauses of Article 19. In *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27, a narrow meaning was given to the expression "personal liberty" confining it to the liberty of the person, i.e. of the body of a person. This restricted interpretation of the expression "personal liberty" preferred by the majority in *A.K. Gopalan's* case namely, that the expression "personal liberty" means only liberty relating to or concerning the person or body of the individual, has not been accepted by the Supreme Court in later cases. The expression "personal liberty" is not limited to bodily restraint or to confinement to prison only, is well illustrated in *Kharak Singh v. State of U.P.*, AIR 1962 SC 1295.

It was reiterated in *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, that personal liberty within the meaning of Article 21 includes within its ambit the right to go abroad and no person can be deprived of this right except according to procedure prescribed by law.

In *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express* AIR 1989 SC 190, the Supreme Court read into Article 21 the right to know. The Supreme Court held that right to know is a necessary ingredient of participatory democracy.

Procedure established by law: The expression “procedure established by law” means procedure laid down by statute or prescribed by law of the State.

Following *Maneka Gandhi's case*, the Supreme Court has widened the ambit of Article 21 in many of its decisions as for example, solitary confinement is inhuman (*Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579); right to speedy trial is included in Article 21 (*Hussainara Khatoon v. Home Secretary Bihar*, AIR 1979 SC 1369); detenu's right to have interviews with his lawyers and family members is included in Article 21 (*Francis Coralie Mullin v. The Administrator, U.T. of Delhi*, AIR 1981 SC 746); right to free legal service is included in Article 21 (*Superintendent & Remembrancer of Legal Affairs, West Bengal v. S. Bhowmick*, AIR 1981 SC 917); non payment of minimum wages is violation of Article 21 (*People's Union For Democratic v. Union Of India & Others*, AIR 1982 SC 1473 (also known as *Asiad Project Workers' case*); right to education is included in Article 21 (*Unni Krishnan v. State of Andhra Pradesh*, AIR 1993 SC 2178); Article 21 includes the right to information (*Reliance Petrochemicals Ltd. v. Proprietors of Indian Express*, AIR 1989 SC 190); the right to life enshrined in Article 21 includes the right of enjoyment of pollution free water and air (*Subhash Kumar v. State of Bihar*, AIR 1991 SC 420) etc. Thus, Article 21 as interpreted to encompass numerous facets of the human personality go far beyond the narrow concept of physical liberty.

Answer 1(b)

The expression ‘State’ under the Constitution of India

Under Article 12 of the Constitution of India the expression “State” includes—

- (a) The Government and Parliament of India;
- (b) The Government and the Legislature of each of the States; and
- (c) All local or other authorities:
 - (i) Within the territory of India; or
 - (ii) Under the control of the Government of India.

The expression ‘local authorities’ refers to authorities like Municipalities, District Boards, Panchayats, Improvement Trusts, Port Trusts and Mining Settlement Boards. The Supreme Court has held that ‘other authorities’ will include all authorities created by the Constitution or statute on whom powers are conferred by law and it is not necessary that the authority should engage in performing government functions (*Electricity Board, Rajasthan v. Mohanlal*, AIR 1967 SC 1957). The Calcutta High Court has held that the electricity authorities being State within the meaning of Article 12, their action can be judicially reviewed by this Court under Article 226 of the Constitution of India. (In re: *Angur Bala Parui*, AIR 1999 Cal. 102). It has also been held that a university is an authority (*University of Madras v. Shanta Bai*, AIR 1954 Mad. 67). The Gujarat High Court has held that the President is “State” when making an order under Article 359 of the Constitution (*Haroobhai v. State of Gujarat*, AIR 1967, Guj. 229). The words “under the control of the Government of India” bring, into the definition of State, not only every

authority within the territory of India, but also those functioning outside, provided such authorities are under the control of the Government of India. In *Bidi Supply Co. v. Union of India*, AIR 1956 SC 479, State was interpreted to include its Income-tax department.

The Supreme Court in *Sukhdev Singh v. Bhagatram*, AIR 1975 SC 1331 and in *R.D. Shetty v. International Airports Authority*, AIR 1979 SC 1628, has pointed out that corporations acting as instrumentality or agency of government would become State as they are subjected to the same limitations in the field of constitutional or administrative law as the government itself.

In *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111, a seven Judge Bench of the Supreme Court by a majority of 5:2 held that CSIR is an instrumentality of “the State” falling within the scope of Article 12. The multiple test which is to be applied to ascertain the character of a body as falling within Article 12 or outside is to ascertain the nature of financial, functional and administrative control of the State over it and whether it is dominated by the State Government and the control can be said to be so deep and pervasive so as to satisfy the court “of brooding presence of the Government” on the activities of the body concerned.

In *Zee Telefilms Ltd. v. Union of India*, (2005) 4 SCC 649, the Supreme Court applying the tests laid down in *Pradeep Kumar Biswas* case held that the Board of Control for cricket in India (BCCI) was not State for purposes of Article 12 because it was not shown to be financially, functionally or administratively dominated by or under the control of the Government and control exercised by the Government was not pervasive but merely regulatory in nature.

Judiciary although an organ of State like the executive and the legislature, is not specifically mentioned in Article 12. However, the position is that where the Court performs judicial functions, e.g. determination of scope of fundamental rights vis-a-vis legislature or executive action, it will not occasion the infringement of fundamental rights and therefore it will not come under ‘State’ in such situation (*A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602). While in exercise of non-judicial functions e.g. in exercise of rule-making powers, where a Court makes rules which contravene the fundamental rights of citizens, the same could be challenged treating the Court as ‘State’.

Answer 1(c)

Delegated Legislation

Delegated legislation may be defined as “rules of law making under the authority of an Act of Parliament”. Although laws are to be made by legislature, the legislature by statute may delegate its powers to other body or persons. Such statute is known as the enabling Act and lays down the broad principles and leaves the detailed rules to be provided by regulations made by a Minister or other body of persons. Delegated legislation exists in the form of rules, regulations, orders and bye laws.

The system of delegated legislation has become very popular because it has the advantage of flexibility, elasticity, expedition and opportunity for experimentation.

The increasing complexity of modern administration and the need for flexibility capable of rapid readjustment to meet changing circumstances which cannot always be foreseen, in implementing socio-economic policies pursuant to the establishment of a welfare

state as contemplated by the Constitution, have made it necessary for the legislatures to delegate its powers. Further, the Parliamentary procedure and discussions in getting through a legislative measure in the Legislatures is usually time consuming.

The three relevant justifications for delegated legislation are:

- (i) The limits of the time of the legislature;
- (ii) The limits of the amplitude of the legislature, not merely its lack of competence but also its sheer inability to act in many situations, where direction is wanted; and
- (iii) The need of some weapon for coping with situations created by emergency.

The delegation of the legislative power is what Hughes, Chief Justice called, flexibility and practicability (*Curran v. Wallace* 83 L. ed. 441).

Question 2

Comment on any four of the following :

- (i) *"Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it."*
- (ii) *"Heydon's rule is not always operative in interpretation of statutes."*
- (iii) *"A contract may not always be specifically enforceable."*
- (iv) *"Conciliation is an informal process in which the conciliator (the third party) tries to bring the disputants to agreement."*
- (v) *"An instrument admitted in evidence is not to be questioned."*

(4 marks each)

Answer 2(i)

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 Section is based on the general principal that once a right to sue has accrued and time has started running, it could not stop unless there was some direct obstruction to the remedy itself, or unless the case fell within some of the exceptions provided in the Limitation Act. The statute of Limitation Act is a self-contained statute and no equitable consideration can be imported in it, apart from the provisions made therein.

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". 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.

It may be pointed out that Section 9 refers only to subsequent disability or inability to sue or make an application. It has nothing to do with a case where execution has been stayed by an order. The time during which the execution cannot go on because of an order resulting in the stay of execution is expressly excluded by Section 15(1) of the Limitation Act.

Answer 2(ii)

When the material words in a statute are capable of bearing two or more constructions, one of the most firmly established rule of construction of such words is the rule laid down in the *Heydon's case* which has 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".

The Supreme Court in *Commr. of Income-tax M.P. Bhopal v. Sodra Devi*, AIR 1957 SC 832, stated 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.

It was further held that in applying the rule in *Heydon's case*, it is important to remember that the recourse to the object and policy of a statute or the consideration of the mischief and defect which the statute purports to remedy is only permissible when the language is capable of two constructions.

The correct principle is that after the words have been construed in their context and it is found that the language is capable of bearing only one construction, the rule in *Heydon's case* ceases to be controlling and gives way to the plain-meaning rule.

Answer 2(iii)

Section 14 of the Specific Relief Act, 1963 lays down the contracts which cannot be specifically enforced. They are : (i) a contract for the non-performance of which compensation in money is an adequate relief; (ii) a contract which runs into such minute and numerous details that the court cannot enforce specific performance of its material terms or which is dependant upon the personal qualification or volition of the parties or a contract from its nature is such that the court cannot enforce specific performance; (iii) a contract which is in its nature determinable; (iv) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise.

The very foundation of specific performance of a contract is that an award for damages does not afford the aggrieved party a complete remedy. If in the opinion of the Court damages will be an adequate remedy, specific performance of the contract cannot be decreed [*Ramji Patel v. Rao Kishore*, (1929) P.C. 190].

In such a case pecuniary compensation is equated with the specific performance of the contract. It can be decreed only when the remedy at law is not adequate or is defective. The court may come to the conclusion that the ends of justice will be served better by awarding the damages instead of the specific performance of the contract.

Answer 2(iv)

Conciliation is a facilitative process in which disputing parties engage a neutral third party who acts as a Conciliator in their dispute. The Conciliator brings the parties to the dispute to an agreement by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement. Conciliation brings about harmony and resolves conflict keeping in tact cordial relationship between the parties.

The Conciliator assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute. He is guided by the principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

Answer 2(v)

Section 36 of the Indian Stamp Act, 1899 exempts an instrument admitted in evidence from being questioned. It provides that where an instrument has been admitted in evidence, such an admission shall not (except as provided in Section 61) be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

If notwithstanding any objection, the trial court admits the document, the matter ends there and the court cannot subsequently order the deficiency to be made and levy penalty. (*Bhupathi Nath v. Basanta Kumar*, AIR 1936 Cal. 556; AIR 1933 Lah. 240.

Question 3

Distinguish between any four of the following :

- (i) 'Decree' and 'order'.
- (ii) 'Facts in issue' and 'issues of fact'.
- (iii) 'Movable property' and 'immovable property'.
- (iv) 'Sale' and 'exchange'.
- (v) 'Computer' and 'computer system'. (4 marks each)

Answer 3(i)**'Decree' and 'Order'**

Distinction between *decree* and *order* is as under :

- (i) Decree is the formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. An order is the formal expression of any decision of a Civil Court.
- (ii) Decree originates from a suit instituted by presenting a plaint; an order may not originate through a suit.
- (iii) Decree may be either preliminary or final, no such distinction of orders.
- (iv) Every decree is appealable, but every order is not.

- (v) Second appeal lies in High Court, no second appeal lies in case of an order even if it is appealable.

Answer 3(ii)

‘Facts in issue’ and ‘issues of fact’

According to Section 3 of the Indian Evidence Act, 1872, the expression "*facts in issue*" means and includes any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceedings, necessarily follows.

Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an "*issue of fact*", the fact to be asserted or denied in the answer to such issue is a "*fact in issue*".

A "*fact in issue*" is called as the principal fact to be proved or *factum probandum* and the relevant fact the evidentiary fact or *factum probans* from which the principal fact follows. The fact which constitute the right or liability called "*fact in issue*" and in a particular case the question of determining the "*facts in issue*" depends upon the rule of the substantive law which defines the rights and liabilities claimed.

Under Civil Procedure Code, the Court has to frame issues on all disputed facts which are necessary in the case. These are called "*issues of fact*" but the subject matter of an issue of fact is always a "*fact in issue*". Thus when described in the context of Civil Procedure Code, it is an "*issue of fact*" and when described in the language of Evidence Act it is a "*fact in issue*".

Answer 3(iii)

‘Movable property’ and ‘Immovable property’

The Transfer of Property Act, 1882 does not define the term '*moveable property*'. However, it has been defined in the General Clauses Act, 1897 as to mean "property of every description except immoveable property". The Registration Act, 1908 defines '*moveable property*' to mean and include property of every description excluding immoveable property but including standing timber, growing crops and grass.

The term '*immoveable property*' is also not defined under the Transfer of Property Act, 1882. However, it is defined in the negative sense as "the immoveable property does not include standing timber, growing crops, or grass." Standing timber are trees fit for use for building or repairing houses. This is an exception to the general rule that trees are immovable property. Growing crops include all vegetable growth which have no existence apart from their produce such as pan leaves, sugarcane etc.

General clauses Act defines the term "*immoveable property*" but not exhaustively. It states "immoveable property shall include land, benefits arising out of land and things attached to earth or permanently fastened to something that is attached to earth. The Indian Registration Act expressly includes under immovable property, the benefits arising out of land, hereditary allowances, right of way, lights, ferries and fisheries.

Taken from these definitions together the meaning of Immoveable property would be land, benefit to arise out of land such as rent, and things attached to the earth or

permanently fastened so something that is attached to earth like trees and buildings but not standing timber, growing crops and grass. The last three things are regarded as severable from the land on which they stand and, therefore, they are not included in the term "*immoveable property*".

Answer 3(iv)

‘Sale’ and ‘Exchange’

Under Section 54 of the Transfer of Property Act, 1882 "*Sale*" has been defined as a transfer of ownership in exchange for a price paid or promised or part paid and part-promised.

As per Section 118 of the Transfer of Property Act, 1882, when two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "*Exchange*". A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

The difference between a "*Sale*" and an "*Exchange*" is that in a sale the price is paid in money while in an "*Exchange*" it is paid in another property by way of barter. "*Sale*" is always for a price, which means money or the current coin of the realm while no price is paid in an exchange, there being only a transfer of one specific property for another. And in a transaction of exchange, although payment of price may be made in addition to the transfer of property, by way of equality of exchange, such payment does not make the exchange lose its character as such. A transaction of sale must be made in consideration for a price paid or promised or part paid and part promised. Also, there must be present a money consideration in case of sale. If the consideration is not money but some other valuable consideration, then the transaction may be an exchange or barter but not a sale.

Answer 3(v)

‘Computer’ and ‘Computer System’

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) (l) of the Act "*computer system*" means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data, and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions.

Question 4

Attempt any four of the following :

- (i) *State the instruments which are chargeable with duty under the Indian Stamp Act, 1899.*

- (ii) *Mention the documents which are not required to be registered compulsorily under the Registration Act, 1908.*
- (iii) *“Law of limitation bars the remedy, but does not extinguish the right.” Explain the statement with its exceptions.*
- (iv) *State the effects of ‘acknowledgement’ and ‘payment against debt’ on the period of limitation.*
- (v) *Discuss briefly the right of redemption.* (4 marks each)

Answer 4(i)

Instruments chargeable with duty

Instruments chargeable with duty have been stipulated under Section 3 of the Indian Stamp Act, 1899. It provides that subject to the provisions of the Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with a duty of the amount indicated in that Schedule as the proper duty therefor, namely:

- (a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;
- (b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after the date and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated in India; and
- (c) every instrument (other than a bill of exchange or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day and relates to any property situate, or to any matter or thing done or to be done in India and is received in India.

Answer 4(ii)

Documents which are not required to be registered compulsorily

Section 18 of the Registration Act, 1908 specifies the documents of which registration is not compulsory but optional. They are as follows:

- (1) Instruments, (other than instruments of gift and will) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, vested or contingent, of value less than Rs.100/- to or in immovable property;
- (2) Instrument acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitations or extinction of any such right, title or interest;
- (3) Leases of immovable property for any term not exceeding one year;
- (4) Instruments transferring or assigning any decree or order of a court or award when they purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest of a value less than one hundred rupees, to or in immovable property;

- (5) Instruments (other than will) which create, declare, assign, limit or extinguish any right, title or interest to or in movable property;
- (6) Wills; and
- (7) Other documents not required to be registered under section 17.

Answer 4(iii)

The principle upon which the law of limitation is based is *vigilantibus non dormientibus leges subvenient*, i.e., the law aids the diligent and not the indolent. It thus helps and promotes vigilance and alertness in exercise of rights and frowns upon inordinate laches. If a man has been negligently sleeping over his rights for an undue length of time, law does not allow him to litigate in respect of those rights.

The law of limitation only bars the remedy by way of a suit, i.e., if the period of limitation expires, the party entitled to file the suit for enforcement of a right is debarred from doing so. However, his original right on which the suit was to be based is not barred. Where the limitation period of any suit, appeal or application expires, then the suffered person is prevented to seek the remedy through the court of law, but the right remains intact. For example the limitation period to recover a debt is 3 years. After the expiration of 3 years, the creditor is prevented to recover the debt through the court of law by filing a suit but the right to recover the debt through other means is not extinguished. Therefore, if a claim is settled outside the court after expiry of limitation period that is not illegal.

The law of limitation does not either create or extinguish rights. Its intention is not to give a right where there is none (nor to extinguish a right where there is none) but to interpose a bar after a certain period to a suit to enforce an existing right.

The Limitation Act, 1963 makes specific provisions for exclusion of certain time in some cases for computation of the prescribed period of limitation. These provisions are as under:

1. Exclusion of time in legal proceedings (section 12).
2. Exclusion of time during which leave to sue or appeal as a pauper is applied for (Section 13).
3. Exclusion of time *bona fide* taken in a court without jurisdiction (Section 14).
4. Exclusion of time in certain other cases (Section 15, 16 17).

Answer 4(iv)**Effect of 'acknowledgement' and 'payment against debt' on the period of limitation**

Section 18 of the Limitation Act, 1963 deals with the effect of acknowledgement of liability in respect of property or right on the period of limitation. The following requirements should be present for a valid acknowledgement as per Section 18 :

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.

As per Section 19 of the Act 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 authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made. The proviso says that, save in the case of payment of interest made before the 1st day of January, 1928 an acknowledgement of the payment must appear in the handwriting of, or in a writing signed by the person making the payment.

According to the explanation appended to this Section:

- (a) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;
- (b) 'Debt' does not include money payable under a decree or order of a court for the purpose of this Section.

Thus, according to this section a fresh period of limitation becomes available to the creditor from the date of part payment when part-payment of debt is made by the debtor before the expiration of the period of limitation.

Answer 4(v)

Right of redemption

The first and the most important right of the mortgagor is the right to redeem i.e., take back the mortgaged property by paying the mortgage money at any time after the stipulated date for repayment. Section 60 of the Transfer of Property Act, 1882 provides that any time after the principal amount has become due; the mortgagor has a right to redeem the property. Although the Act gives him the right to redeem any time after their debt has become due, it enjoins upon the mortgagor the obligation to exercise this right (i) before the right is extinguished by the Act of parties or by a decree of Court, or (ii) before it is barred by the Limitation Act. According to the Law of Limitation, the mortgagor can redeem the property within 60 years after the money has become due. This right to redeem the property even after the time of payment has elapsed is called the Right or Equity or Redemption. But the mortgagor is not entitled to redeem before the mortgage money becomes due on the date fixed for repayment of the loan. His right to redeem arises only when mortgage money becomes due and not before.

For example, A borrows money on a mortgage and agrees to pay it back after 5 years. A has won a lottery and wants to pay the loan at the end of 3 years and redeem his property. He cannot do so, because the right to redeem arises only when the money has become due at the end of 5 years. This is so because the mortgagee cannot file a suit against the mortgagor for the repayment of the loan. That is why it is said that the rights of the mortgagor and the mortgagee are co-extensive.

Question 5

(a) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*

- (i) *A 'reference' may be made by the subordinate court to _____ under the provisions of the Code of Civil Procedure, 1908.*
- (ii) *Cyber Appellate Tribunal is to be presided over by a person who is or has been qualified to be a _____.*
- (iii) *An application for obtaining information under the Right to Information Act, 2005 is to be submitted to _____.*
- (iv) *In the interpretation of statutes, where the rule applies that the general words following the particular or specific words, such rule is called _____.*
- (v) *A person liable for the torts committed by other person is called _____ under the law of torts.*
- (vi) *A document executed outside India is not valid unless it is _____.*
- (vii) *Whoever commits 'hacking' shall be punished with _____.*
- (viii) *Digital signature is recognised as a valid method of _____.*

(1 mark each)

(b) *Write the most appropriate answer from the given options in respect of the following :*

- (i) *The definition of 'legal representative' under the Code of Civil Procedure, 1908 means —*
 - (a) *A person who represents the deceased*
 - (b) *A person who represents in law the estate of the deceased*
 - (c) *A person who intermeddles with the estate of the deceased*
 - (d) *Both (b) and (c) above.*
- (ii) *The mortgagee has the right to sell out the mortgaged property without intervention of the court in the —*
 - (a) *English mortgage*
 - (b) *Usufructuary mortgage*
 - (c) *Mortgage by conditional sale*
 - (d) *Simple mortgage.*
- (iii) *The Right to Information Act, 2005 confers on all citizens a right to receive information. This is now a —*
 - (a) *Legal right*
 - (b) *Constitutional right*
 - (c) *Fundamental right*
 - (d) *Human right.*

- (iv) *The conciliation proceedings shall be terminated —*
 - (a) *By signing of the settlement agreement by the parties*
 - (b) *By a written declaration of the conciliator*
 - (c) *By a written declaration of the parties for termination*
 - (d) *All the above.*
- (v) *Where warrant remains unexecuted, the Code of Criminal Procedure, 1973 provides the remedy(ies) of —*
 - (a) *Issuing a proclamation*
 - (b) *Attachment and sale of property*
 - (c) *Sale of the property*
 - (d) *Both (a) and (b) above.*
- (vi) *Any magistrate of the first class and of the second class is specially empowered to take cognizance of an offence upon —*
 - (a) *His own knowledge that such offence has been committed*
 - (b) *Receiving a complaint of facts constituting such offence*
 - (c) *Information received from a police officer*
 - (d) *Both (a) and (b) above.*
- (vii) *Certain categories of information have been exempted from disclosure under the Right to Information Act, 2005 —*
 - (a) *Where the disclosure prejudicially affects the sovereignty and integrity of India*
 - (b) *Where disclosure would cause a breach of privilege of the Parliament or the State Legislature*
 - (c) *Information received in confidence from foreign government*
 - (d) *All the above.*
- (viii) *Appointment of an arbitral tribunal under section 11 of the Arbitration and Conciliation Act, 1996 has to be made by an agreement between the parties within —*
 - (a) *30 Days*
 - (b) *45 Days*
 - (c) *60 Days*
 - (d) *None of the above.*

(1 mark each)

Answer 5(a)

- (i) A 'reference' may be made by the subordinate court to **High Court** under the provisions of the Code of Civil Procedure, 1908.
- (ii) Cyber Appellate Tribunal is to be presided over by a person who is or has been qualified to be a **High Court Judge or a member of Indian Legal Service who has held a post in Grade I of the service for at least 3 years.**

- (iii) An application for obtaining information under the Right to Information Act, 2005 is to be submitted to **Public Information Officer (PIO)** .
- (iv) In the interpretation of statutes, where the rule applies that the general words following the particular or specific words, such rule is called **Rule of Ejusdem Generis**.
- (v) A person liable for the torts committed by other person is called **Vicarious Liability** under the law of torts.
- (vi) A document executed outside India is not valid unless it is **Registered in India**.
- (vii) Whoever commits 'hacking' shall be punished with **Imprisonment upto three years or fine which may extend to Rs. 2 lakh or with both**.
- (viii) Digital signature is recognised as a valid method of **Authentication**.

Answer 5(b)(i)

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

Answer 5(b)(ii)

- (a) English Mortgage

Answer 5(b)(iii)

- (a) Legal Right

Answer 5(b)(iv)

- (d) All the above

Answer 5(b)(v)

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

Answer 5(b)(vi)

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

Answer 5(b)(vii)

- (d) All the above

Answer 5(b)(viii)

- (a) 30 days.

Question 6

- (a) *Explain strict or absolute liability under the law of torts. (6 marks)*
- (b) *What do you understand by 'Public Information Officer' (PIO) under the Right to Information Act, 2005 ? What are the duties of PIO under the said Act ? (5 marks)*
- (c) *Discuss the remedies available to a person who has been refused to register a document by a sub-registrar. Can registration of documents be refused on the ground of under-valuation of stamp duty ? (5 marks)*

Answer 6(a)**Strict or absolute liability under the law of torts**

In some torts, the defendant is liable even though the harm to the plaintiff occurred without intention or negligence on the defendant's part. In other words, the defendant is held liable without fault. These cases fall under the following categories:

- (i) *Liability for Inevitable Accident* – Such liability arises in cases where damage is done by the escape of dangerous substances brought or kept by anyone upon his land. Such cases are where a man is made by law an insurer of other against the result of his activities.
- (ii) *Liability for Inevitable Mistake* – Such cases are where a person interferes with the property or reputation of another.
- (iii) *Vicarious Liability for Wrongs committed by others* – Responsibility in such cases is imputed by law on grounds of social policy or expediency. These cases involve liability of master for the acts of his servant.

The rule of strict liability was laid down in *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330. As per this rule is 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.

Later in the case of *Read v. Lyons* [(1946) 2 All. E.R. 471 (H.L.)], it has been explained that two conditions are necessary in order to apply the rule in *Ryland v. Fletcher*, these are:

- (i) *Escape* : from a place of which the defendant has occupation or over which he has a control to a place which is outside his occupation or control or something likely to do mischief if it escapes; and
- (ii) *Non-natural use of Land* : The defendant is liable if he makes a non-natural use of land.

If either of these conditions is absent, the rule of strict liability will not apply.

Exceptions to the Rule of Strict Liability

The following exceptions to the rule of strict liability have been introduced in course of time, some of them being inherent in the judgment itself in *Ryland v. Fletcher*:

- (i) *Damage due to Natural Use of the Land* : Water collected in the reservoir in large quantity, was held to be non-natural use of land.
- (ii) *Consent of the plaintiff* : Where the plaintiff has consented to the accumulation of the dangerous thing on the defendant's land, the liability under the above rule does not arise.
- (iii) *Act of Third Party* : If the harm has been caused due to the act of a stranger, who is neither defendant's servant nor agent nor the defendant has any control over him, the defendant will not be liable.

- (iv) *Statutory Authority*: Public bodies storing water, gas, electricity and the like are by statute, exempted from liability so long as they have taken reasonable care.
- (v) *Act of God*: If an escape is caused, through natural causes and without human intervention, then there is then said to exist the defence of Act of God.
- (vi) *Escape due to plaintiff's own Default*: Damage by escape due to the plaintiff's own default was considered to be good defence.

Answer 6(b)**Public Information Officer (PIO) and his duties under the Right to Information Act, 2005**

As per Section 5 of the Right to Information Act, 2005 every public authority has to—

- (i) Designate in all administrative units or offices Central or State Public Information Officers to provide information to persons who have made a request for the information.
- (ii) Designate at each sub-divisional level or sub-district level Central Assistant or State Assistant Public Information Officers to receive the applications for information or appeals for forwarding the same to the Central or State Public Information Officers.

The PIO deals with requests from persons seeking information and where the request cannot be made in writing, to render reasonable assistance to the person to reduce the same in writing. (Section 5 and 6).

If the information requested for is held by or its subject matter is closely connected with the function of another public authority, the PIO shall transfer, within 5 days, the request to that other public authority and inform the applicant immediately. [Section 6(3)]

PIO may seek the assistance of any other officer for the proper discharge of his/her duties. [Section 5 (4)]

As per section 7, the PIO, on receipt of a request, shall as expeditiously as possible, and in any case within 30 days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified. Where the information requested for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request. If the PIO fails to give decision on the request within the period specified, he shall be deemed to have refused the request. Where a request has been rejected, the PIO shall communicate to the requester - (i) the reasons for such rejection, (ii) the period within which an appeal against such rejection may be preferred, and (iii) the particulars of the Appellate Authority.

PIO shall provide information in the form in which it is sought unless it would disproportionately divert the resources of the Public Authority or would be detrimental to the safety or preservation of the record in question. [Section 7 (9)]

If allowing partial access, the PIO shall give a notice to the applicant. If information sought has been supplied by third party or is treated as confidential by that third party,

the PIO shall give a written notice to the third party within 5 days from the receipt of the request. (Section 10 and 11)

Answer 6(c)

According to Section 72(1) of the Registration Act, 1908 an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order. This does not apply where the refusal is on the ground of denial of execution.

If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in Sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration. [Section 72(2)]

Registration cannot be refused on the ground of under-valuation for stamp or any other extraneous reason. [Mulla (1998), page 308]

Question 7

State, with reasons in brief, whether the following statements are true or false:

- (i) *'Actionable claim' as defined in the Transfer of Property Act, 1882 is a property and transferable.*
- (ii) *The provisions relating to 'fundamental rights' given in the Constitution of India are subject to amendment.*
- (iii) *Arbitration is the means by which the parties to a dispute get the same settled through the intervention of a third person.*
- (iv) *The limitation for taking cognizance of certain offences has been prescribed by the Code of Criminal Procedure, 1973.*
- (v) *Where a suit is pending in the jurisdictional civil court, a fresh suit cannot be proceeded with on the same cause of action between the same parties in another court in India.*
- (vi) *Questions arising between the parties and the representatives relating to execution, satisfaction and discharge of the decree will be decided by the executing court.*
- (vii) *Any person who is aggrieved by a decision of the Public Information Officer (PIO) may file an appeal under the Right to Information Act, 2005.*
- (viii) *Under the provisions of the Code of Criminal Procedure, 1973, the magistrate is empowered to issue search warrant for searching a document, parcel or other things in the custody of the postal or telegraph authority.*
(2 marks each)

Answer 7

- (i) **True** : According to Section 3 of the Transfer of Property Act, 1882, actionable claim includes all kinds of unsecured debts and beneficial interest in movable

property which is not in the possession of claimant. Actionable claim can be transferred by execution of an instrument in writing signed by the transferor or his duly authorized agent.

- (ii) **True** : In *Kesavananda Bharti v. State of Kerala* (AIR 1973 SCC 225), the Supreme Court upheld the validity of 24th Constitutional Amendment holding that parliament can amend any part of the Constitution including Fundamental Rights. But the court made it clear that parliament cannot alter the basic structure of framework of the constitution.
- (iii) **True** : Arbitration is the means by which parties to a dispute get the same settled through the intervention of a third person but without recourse to a court of law. Parties by agreement appoint the Arbitrator who settles their dispute outside the court. The parties repose confidence in the judgement of Arbitrator and show their willingness to accept the decision.
- (iv) **True** : Chapter XXXVI (Section 467 to 473) of the Code of Criminal Procedure, 1973 prescribes limitation period for taking cognizance of certain offences. Except as otherwise provided in the Code, no court shall take cognizance of an offence after expiry of the period of limitation mentioned below:
 - (a) Six months, if the offence is punishable with fine only,
 - (b) One year if offence punishment with imprisonment for a term not exceeding one year; and
 - (c) Three years, if offence punishable with imprisonment for a term exceeding one year but not exceeding three years;
- (v) **True** : Section 10 of the Code of Civil Procedure, 1908 deals with the doctrine of res sub judice. It provides that the Civil Court shall stay the proceeding of any suit if the cause of action of such suit is directly and substantially same to the former suit which is pending in the same court or other competent court, between the same parties, litigating under the same title and the former court where the suit is pending, is competent to provide the remedy claimed in the present suit.
- (vi) **True** : Section 47 of the Code of Civil Procedure, 1908 provides that questions relating to execution, satisfaction and discharge of the decree arising between the parties or their legal representative will be decided by the executing court and not by separate suit. Thus under this section, the executing court is empowered to decide all kinds of the matters relating to execution of the decree.
- (vii) **True** : As per Section 19 of the Right to Information Act, 2005, any aggrieved person may file first appeal to the officer who is senior in rank to the Public Information Officer (PIO) in the concerned public authority within 30 days from the expiry of prescribed time limit. Delay may be condoned if sufficient cause is shown. Second appeal lies to the Central Information Commission or the State Information Commission, as the case may be, within 90 days of the date on which decision is given; delay may be condoned on sufficient cause, if shown.
- (viii) **False** : As per Section 93 of the Code of Criminal Procedure, 1973, search warrant shall not be issued for searching a document, parcel or other thing in the

custody of the postal or telegraph authority, by a magistrate other than a District Magistrate or Chief Judicial Magistrate.

Question 8

- (a) *A confession made by an accused on the faith of a promise made by the police officer making the investigation that he would get off if he made a disclosure of the offence committed by him or would get pardon. Whether such a confession made by the accused is admissible in evidence ? Answer citing the relevant provisions of law. (6 marks)*
- (b) *Arun, a Hindu, who has separated from his father Bharat, sells three fields X, Y and Z to Chandan representing that Arun is authorised to transfer the same. Of these fields, Field-Z does not belong to Arun, which was retained by Bharat during partition. On the death of Bharat, Arun obtains the possession of Field-Z. What are the rights of Chandan now ? (5 marks)*
- (c) *Amit is the resident of Jaipur and Babita is of Delhi. The marriage between two was solemnised at Ajmer. Both Amit, husband and Babita, wife lived together at Udaipur. Amit treated his wife Babita with cruelty. Babita, the wife comes to you as an advocate to file a suit against Amit for divorce on the ground of 'cruelty'. Advise Babita, in which court Babita has the right to file the suit. Decide citing the relevant provisions of law. (5 marks)*

Answer 8(a)

The problem pertains to Section 24 of the Indian Evidence Act, 1872. According to Section 24 of the Act a confession can only be admitted if it is made voluntarily. However, if confession is obtained by inducement, threat or promise held out by a person in authority, it is not be admitted in evidence. The inducement must be proceeded from the person in authority.

In the present problem, the police officer making the enquiry induces the accused to get off the offence if he makes confession and consequently, the accused makes the confession and hence it comes within the purview of this section. Therefore, the confession made by the accused is inadmissible.

Answer 8(b)

The given problem is an illustration appended to Section 43 of Transfer of Property Act, 1882.

Section 43 of Transfer of Property Act lays down the doctrine of feeding the grant by estoppel. As per this doctrine where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property or proposes to transfer such property for consideration, such transfer shall, at the option of transferee operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Thus, 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. Thus Chandan, not having rescinded the contract of sale may require Arun to deliver field Z to him.

Answer 8(c)

Section 20 of the Code of Civil Procedure, 1908 lays down the provisions relating to jurisdiction of the civil courts.

Section 20 provides that subject to the limitations provided by Section 15 to 19, any other suit may be instituted in any court in whose jurisdiction (a) the defendant, at the time of the commencement of the suit, actually and voluntarily resides or personally works for gain or carries on business; or (b) the cause of action arises wholly or in part.

In the given problem, Babita is filing a suit for cruelty. As is evident from the facts of the case, both Amit and Babita after their marriage at Ajmer stayed together as husband and wife at Udaipur. It is obvious that the offence of cruelty is committed at Udaipur itself where both of them stayed together.

In the light of the legal provisions cited above as well as in view of the factual position of the case, the cause of action has arisen at Udaipur. So, Babita can file the suit for divorce in the court at Udaipur.
