

## EXECUTIVE PROGRAMME EXAMINATION

JUNE 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) Explain powers of the Parliament to enact laws on subjects enumerated in the State List. (8 marks)
- (b) Is it correct to say that Directive Principles of State Policy have to conform to and run as subsidiary to Fundamental Rights ? Discuss. (6 marks)
- (c) Write in brief the importance of the writ of habeas corpus. (6 marks)

#### Answer 1(a)

The Constitution draws three long lists of all the conceivable legislative subjects. These lists are contained in the VIIth Schedule to the Constitution. List I is named as Union List. List II as the State List and List III as the Concurrent List. With respect to subjects enumerated in the Union List, the Union Parliament has the exclusive power to make laws. The State Legislature has no power to make laws on any of these subjects. Regarding subjects enumerated in the State List, the legislature of a State has exclusive power to make laws. Parliament cannot make any law on any of these subjects whether the State makes or does not make any law. For subjects stated under the Concurrent List, Parliament and the State legislatures have the powers to make laws.

As stated above, State legislatures have the exclusive powers to make laws with respect to subjects enumerated in the State List and Parliament has no power to encroach upon them is subject to certain exceptions. Our Constitution makes a few exceptions to this general rule by authorizing the Parliament to make law even on the subjects enumerated in the State list.

The exceptional circumstances areas under:

- (a) *In the National Interest (Article 249)* : If the Upper House of the Parliament i.e. Council of State (Rajya Sabha) declares by two thirds 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 of State List. Such a resolution is valid for one year unless renewed by a fresh resolution.
- (b) *During proclamation of emergency (Article 250)* : While proclamation of emergency is in operation, Parliament shall have the power to make laws for whole or any part of the territory of India on any matter in State List.
- (c) *Break down of Constitutional Machinery in a State (Articles 356 and 354) (President's Rule in a State)* : Parliament can make with respect to all State matters as regards a State in which there is a break-down of constitutional machinery and is under Presidential rule.

- (d) *On request of two or more States (Article 252)* : If two or more States are desirous that on any particular subject included in the State List, there should be a common legislation, then they may make a request to Parliament to make such a law on that particular subject. Such request shall be made by passing resolution in the legislatures of the concerned States. The law thus made by Parliament can be adopted by other States also.
- (e) Legislation for enforcing International Agreements / Treaties/Conventions (Article 253): The Constitution authorizes the Parliament to make any law on any subject included in any list to implement:
  - (i) any treaty, agreement or convention, with any country or countries; or
  - (ii) any decision made at any international conference associations or other body.

To implement such decisions, treaty or agreement, the Parliament may have to pass laws sometimes on State subjects also.

#### **Answer 1(b)**

The Constitution of India seeks to secure to the people “Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and Fraternity assuring the dignity of the individual”. With this object, the fundamental rights are envisaged in Part III of the Constitution. These are :

- (i) Right to Equality-Articles 14 to 18;
- (ii) Right to Freedom- Articles 19 to 22;
- (iii) Right against exploitation- Articles 23 and 24;
- (iv) Right to Freedom of Religion- Articles 25 to 28;
- (v) Cultural and Educational Rights - Articles 29 & 30.
- (vi) Right to Constitutional Remedies - Articles 32.

Fundamental rights are deemed essential to protect the rights and liberties of people of India against the encroachment of the State power. In *Maneka Gandhi v. Union of India*, AIR1978 SC 597 the Supreme Court laid down that these rights represent the values cherished by the people of this country, to protect the dignity of the individual, to create conditions for the dignity of the individual and to create conditions for the fullest development of human personality. Fundamental rights can be enforced in the courts of law.

On the other hand the Directive Principles of State Policy contained in Part IV of the Constitution set out the aims and objects to be taken up by the State in the Governance of the country. The idea of Welfare State can be achieved if the state endeavours to implement them with high sense of moral duty. Articles 36 to 51 provide different kinds of social, economic and community welfare character of Directive principles. The Directive Principles cannot be enforced in the courts of law.

The Directives, however, differ from the fundamental rights or the ordinary laws of the land in the following respects:

- (i) The Directives are not enforceable in the courts and do not create any justiciable rights in favour of individuals.
- (ii) The Directives require to be implemented by legislation and so long as there is no law carrying out the policy laid down in a Directive neither the state nor an individual can violate any existing law.
- (iii) The Directives per-se do not confer upon or take away any legislative power from the appropriate legislature.
- (iv) The courts cannot declare any law as void on the ground that it contravenes any of the Directive Principles.
- (v) The courts are not competent to compel the Government to carry out any Directives or to make any law for that purpose.
- (vi) Though it is the duty of the state to implement the Directives, it can do so only subject to the limitations imposed by the different provisions of the Constitution upon the exercise of the legislative and executive power by the state.

In *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226, the Supreme Court laid down that Chapter on Fundamental Rights is sacrosanct, not liable to be abridged by legislative or executive act or order. In *Tamil Nadu v. Lak Bair*, AIR 1984 SC 326, the Supreme Court held that Directive Principles are not enforceable as such. Yet the court should make a real attempt at harmonizing and reconciling the Directive Principles and Fundamental Rights and any collision between them should be avoided as far as possible.

Fundamental Rights assure political freedom to citizens protecting them from excessive State action whereas Directive Principles aim at securing social and economic freedoms by appropriate State action. Fundamental Rights and Directive Principles together constitute the conscience of the constitution and represent basic rights inherent in people of this country. The Directive Principles of State Policy are not subordinate to Fundamental Rights strictly speaking, but should conform and run as subsidiary to Fundamental Rights.

### **Answer 1(c)**

#### **The writ of Habeas Corpus**

The writ of *habeas corpus* is a remedy available to a person who is confined without legal justification. The words "*habeas corpus*" literally mean "to have a body". This writ is used to secure release of a person who has been detained unlawfully or without legal justification. The great value of this writ is that it enables an immediate determination of a persons' right to freedom. This writ is issued to the authority who has the aggrieved person in his custody. Under Article 32 of the Constitution, the Supreme Court can issue writ of *habeas corpus* against a person/authority who has detained a person without legal justification. Likewise the High Court under Article 226 of the Constitution can issue writ of *habeas corpus* in similar circumstances provided that the person or authority against whom the writ is sought is within the territorial jurisdiction of that High Court on the date of filing the writ petition.

**Question 2**

*Write notes on any four of the following :*

- (i) *Penalties which can be imposed on public information officer under section 20 of the Right to Information Act, 2005*
- (ii) *Temporary and perpetual injunction*
- (iii) *Malicious prosecution*
- (iv) *Res gestae*
- (v) *Primary and secondary evidence.*

*(4 marks each)*

**Answer 2(i)****Penalty on Public Information Officer**

Section 20 of the Right to Information Act, 2005 imposes stringent penalty on a Public Information Officer (PIO) for failing to provide information. Every PIO will be liable for fine of ₹ 250 per day, up to a maximum of ₹ 25,000/-, for -

- (i) not accepting an application;
- (ii) delaying information release without reasonable cause;
- (iii) malafidely denying information;
- (iv) knowingly giving incomplete, incorrect, misleading information;
- (v) destroying information that has been requested; and
- (vi) obstructing furnishing of information in any manner.

The Information Commission (IC) at the Centre and at the State levels will have the power to impose this penalty. They can also recommend disciplinary action for violation of the law against the PIO for persistently failing to provide information without any reasonable cause within the specified period.

**Answer 2(ii)****Temporary and 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.

*Temporary injunction* : The Court may grant temporary injunction to restrain any such act (as set out below) or make such other order for the purpose of staying and preventing the wasting, damaging, alienation or sale or removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit; where it is proved by affidavit or otherwise:

- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

- (b) that the defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors, or
- (c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

It would be necessary for the plaintiff to satisfy the Court that substantial and irreparable harm or injury would be suffered by him if such temporary injunction (till the disposal of the suit) is not granted and that such loss or damage or harm cannot be compensated by damages. (Order XXXIX, Rules 1 and 2, Civil Procedure Code).

Section 37(1) of the Specific Relief Act, 1963 lays down that temporary injunctions are such as are to continue until a specified time, or until the further order of the court and they may be granted at any stage of the suit and are regulated by the Code of Civil Procedure, 1908.

Section 37(2) of the Specific Relief Act 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.

Section 38(1) of the said Act 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.

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 2(iii)**

#### **Malicious Prosecution**

Malicious prosecution consists in instigating judicial proceedings (usually criminal) against another, maliciously and without reasonable and probable cause, which terminate in favour of that other and which results in damage to his reputation, personal freedom or property.

The following are the essential elements of this tort:

- (i) There must have been a prosecution of the plaintiff by the defendant.
- (ii) There must have been want of reasonable and probable cause for that prosecution.
- (iii) The defendant must have acted maliciously (i.e. with an improper motive and not to further the end of justice).
- (iv) The plaintiff must have suffered damages as a result of the prosecution.

- (v) The prosecution must have terminated in favour of the plaintiff.

To be actionable, the proceedings must have been instigated actually by the defendant. If he merely states the fact as he believes them to a policeman or a magistrate he is not responsible for any proceedings which might ensue as a result of action by such policeman or magistrate on his own initiative.

#### **Answer 2(iv)**

##### ***Res gestae***

*Res gestae* means facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction.

Section 6 of the Indian Evidence Act embodies the rule relating to what is commonly known as *res gestae*. Acts or declarations accompanying the transaction or the facts in issue are treated as part of the *res gestae* and admitted as evidence. The obvious ground for admission of such evidence is the spontaneity and immediacy of the act or declaration in question.

For example, A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

#### **Answer 2(v)**

##### **Primary and Secondary Evidence of documents**

*Primary evidence* : "Primary evidence" means the document itself produced for the inspection of the Court (Section 62, Indian Evidence Act, 1872). Where document is executed in several parts, each part is primary evidence. When a number of documents are all made by uniform process as printing photography, each is primary evidence of the content of the rest.

*Secondary evidence* : Secondary evidence is generally in the form of compared copies, certified copies or copies made by such mechanical processes as in themselves ensure accuracy. Section 63 of the Indian Evidence Act defines the kind 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.

Secondary evidence may be given:

- (i) when the original is in the possession of the person against whom it is to be proved.

- (ii) when the existence of the original has been admitted by the person against whom it is to be proved;
- (iii) when original has been destroyed or lost;
- (iv) when the original is not easily movable;
- (v) when a certified copy of original is permitted by Act;
- (vi) when the originals consist of numerous accounts.

### Question 3

- (a) *Mention the circumstances under which refund of stamp duty or penalty may be made by revenue authorities.* (4 marks)
- (b) *State the documents whose registration is optional under the Registration Act, 1908.* (4 marks)
- (c) *Discuss the rule of harmonious construction in the interpretation of statutes.* (8 marks)

### Answer 3(a)

#### Refund of penalty by Revenue Authorities

Section 45 of the Indian Stamp Act, 1899 deals with power of the Revenue Authority to refund the penalty in excess of duty payable on instrument in certain cases. Section 39 of the Act empowers the Collector to refund a part and in some cases, the whole of the penalty paid under the provisions of Section 35. Section 45 further empowers the Chief Controlling Revenue Authority to order refunds. The object of granting such further power to the Chief Controlling Revenue Authority is evidently to set right mistakes or other omissions by the Collector to order refund in deserving cases. The Section provides that where any penalty is paid under Section 35 or Section 40, the Chief Controlling Revenue Authority may, upon application in writing made within one year from the date of payment, order, refund such penalty wholly or in part. Where in the opinion of the Chief Controlling Revenue Authority, stamp duty in excess of that which is legally chargeable has been charged and paid under Section 35 or Section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.

The powers under Section 45 of the Act are purely discretionary one and the Chief Controlling Revenue Authority cannot be compelled to exercise his power by any further proceedings.

### Answer 3(b)

#### Documents of which registration is optional

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 and lesser exempted under section 17;
- (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 u/s 17.

### Answer 3(c)

#### Rule of Harmonious Construction

Where in an enactment, there are two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect may be given to both. This is what is known as the “rule of harmonious construction”.

A statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid “a head on clash” between two sections of the same statute. The courts should construe provisions which appear to conflict in such a manner that they harmonise” (*Raj Krishna v. Pinod Kanungo*, A.I.R. 1954 S.C. 202 at 203).

The Supreme Court applied this rule in resolving a conflict between Articles 25(2) (b) and 26(b) of the Constitution and it was held that the right of every religious denomination or any section thereof to manage its own affairs in matters of religion [Article 26(b)] is subject to a law made by a State providing for social welfare and reform or throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus [Article 25(2)(b)]. (See *Venkataramana Devaru v. State of Mysore*, A.I.R. 1958 S.C. 255)

### Question 4

- (a) *The law of limitation bars the remedy in a court of law when the period of limitation has expired. However, there are certain exclusions in the computation of the period of limitation. Explain.* (4 marks)
- (b) *Distinguish between the following :*
  - (i) ‘Cognizable offence’ and ‘non-cognizable offence’.
  - (ii) ‘Hacking’ and ‘passing off’.
  - (iii) ‘Computer network’ and ‘computer system’.
(4 marks each)



**Answer 4(a)**

The Law of Limitation bars the remedy in a Court of law only when the period of limitation has expired, but it does not extinguish the right that it cannot be enforced by judicial process. Thus if a claim is satisfied outside the Court of law after the expiry of period of limitation, that is not illegal.

Section 3 of the Limitation Act, 1963 provides that any suit, appeal or application if made beyond the prescribed period of limitation, it is the duty of the Court not to proceed with such suits irrespective of the fact whether the plea of limitation has been set up in defence or not. The provisions of Section 3 are mandatory. The Court can suo motu take note of question of limitation.

The Limitation Act makes specific provisions for exclusion of certain time in some cases for computation of the prescribed periods of limitation. These provisions are as follows:

1. *Exclusion of time in legal proceedings* (Section 12). The rules relating to exclusion of time in legal proceeding are as follows:

*Computation of period of limitation for a suit, appeal or application* : In case of any suit, appeal or application, the period of limitation is to be computed exclusive of the day on which the time begins to run.

*Computation of period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgement* : The day on which the judgement complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded [Section 12(2)].

*Computation of period for an application made for leave to appeal from a decree or order* : The time requisite for obtaining a copy of the judgement shall also be excluded [Section 12(3)].

*Computation of Limitation period for an application to set aside an award* : The time required for obtaining a copy of the award shall be excluded [Section 12(4)].

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)  
The following conditions must co-exist for the applicability of this Section:
  - that the plaintiff or the applicant was prosecuting another civil proceedings against the defendant with due diligence;
  - that the previous suit or application related to the same matter in issue;
  - that the plaintiff or the applicant prosecuted in good-faith in that court; and
  - that the court was unable to entertain a suit or application on account of defect of jurisdiction or other like cause.
4. *Exclusion of time in certain other cases* : The Limitation Act, 1963 Act make provisions for exclusion of time in certain cases other than those contained in Sections 12 to 14. These provisions have been laid down under Section 15, 16 and 17 of the Act.

**Answer 4(b)(i)****Cognizable Offence and Non-cognizable Offence**

The two offences can be distinguished on the following basis:

"Cognizable offence" as per section 2(c) of the Cr.P.C. means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant. In a "cognizable offence", no authority is needed to arrest the accused.

"Non-cognizable offence" means an offence for which, and "non-cognizable" case means a case in which, a police officer has no authority to arrest without warrant. A non-cognizable offence needs special authority to arrest by the police officer. [Section 2(l)]

**Answer 4(b)(ii)****Hacking and Passing Off**

*Hacking* : Section 66 of the information Technology Act, 2000 deals with "hacking" with computer system. The term "hacking" with respect of computer terminology denotes the act of obtaining unauthorized access to a computer system. Section 66 of the Information Technology Act, 2000, provides that:

- (1) Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or any person, destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hacking.
- (2) Whoever commits hacking, shall be punished with imprisonment up to three years or with fine which may extend upto two lakh rupees or with both.

The Section imputes intention as per knowledge to the hacker. Modification of the contents of a computer will also be an offence. Modification includes addition, alteration and erasure. As is evident, the maximum punishment prescribed for hacking with computer system under Section 66(2) is imprisonment upto three years or with fine upto two lakh rupees or both.

*Passing Off* : The Information Technology Act does not contain a specific provision, declaring illegal any fraudulent use, by one person, of other person's domain name. However, even in the absence of specific legislation on the subject, such conduct can become actionable under the law of torts. In fact, judicial decisions, both in India and elsewhere, amply demonstrate the potency of the law of torts in this context. The tort of "passing off" is wide enough to afford legal redress (in damages) to a person who is the holder of a particular domain name and who suffers harm as a result of the fraudulent use of his domain name by another person. Such conduct has been regarded as falling under the tort of "passing off".

The crux of the action of "passing off" lies in actual or possible or probable deception. The principles relating to "passing off" were held to be applicable to domain names in *Rediff Communication Ltd. v. Cyberbooth*, (2000) 1 Recent Arbitration Judgements, 562 (Bombay High Court).

The domain name “Rediff” (of the plaintiff) and the domain name “Rediff” (of the defendant) were held to be deceptively similar and capable of causing deception, as the fields of business activity of both the parties were similar. The grant of a temporary injunction, restraining the defendant from using the name in question, was held to be proper.

A similar view has been taken in *Yahoo Inc. v. Akash Arora*, (1999) 2 Recent Arbitration Judgements, 176 (Delhi).

#### Answer 4(iii)

#### Computer Network and Computer System

**Computer Network** : It is an interconnection of one or more computers through various modes. As per Section 2(1) (j) of the Information Technology Act, 2000 “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.

**“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. [Section 2(1) (l)]

#### Question 5

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

- (i) *The publication of defamatory statement through written words is known as \_\_\_\_\_.*
- (ii) *A pending suit, action, petition or the like is known as \_\_\_\_\_.*
- (iii) *The doctrine which underlines the general principle that no one shall be vexed twice for the same cause is known as \_\_\_\_\_.*
- (iv) *A statement given by a judge on the grounds of decree or order is known as \_\_\_\_\_.*
- (v) *Actionable claims are claims to \_\_\_\_\_ debts. (1 mark each)*

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

- (i) *The Constitution of India was enacted on —*
  - (a) *26th November, 1949*
  - (b) *26th January, 1950*
  - (c) *28th January, 1950*
  - (d) *None of the above.*

- (ii) *The Preamble of the Constitution —*
- (a) *Is a part of the Constitution*
  - (b) *Can be used for interpreting the Constitution*
  - (c) *Both (a) and (b)*
  - (d) *None of the above.*
- (iii) *The relief of cancellation of instrument is founded upon the principle of —*
- (a) *Preventive justice*
  - (b) *Protective justice*
  - (c) *Proper justice*
  - (d) *None of the above.*
- (iv) *As per the Transfer of Property Act, 1882, a person is an ostensible owner of an immovable property where he becomes interested therein by —*
- (a) *Express consent*
  - (b) *Implied consent*
  - (c) *Either (a) or (b)*
  - (d) *Both (a) and (b).*
- (v) *Second appeal to the Central Information Commission or the State Information Commission, as the case be, may be filed within —*
- (a) *30 days*
  - (b) *60 days*
  - (c) *90 days*
  - (d) *120 days.*
- of the date on which the decision was given by the First Appellate Authority.*
- (vi) *The right of review has been conferred by the Code of Civil Procedure, 1908. It provides that any person considering himself aggrieved by a decree or order may apply for a review of the judgement to the —*
- (a) *Appellate Court*
  - (b) *High Court*
  - (c) *District Court*
  - (d) *Court which passed the decree or order.* (1 mark each)
- (c) *Define res judicata and state the conditions of its application.* (5 marks)

**Answer 5(a)**

- (i) The publication of defamatory statement through written words is known as **Libel** .
- (ii) A pending suit, action, petition or the like is known as **Lis pendens** .
- (iii) The doctrine which underlines the general principle that no one shall be vexed twice for the same cause is known as **Res Judicata** .

- (iv) A statement given by a judge on the grounds of decree or order is known as **Judgement** .
- (v) Actionable claims are claims to **Unsecured** debts.

**Answer 5(b)**

- (i) (b) 26th of January, 1950
- (ii) (c) Both (a) and (b)
- (iii) (b) Protective justice
- (iv) (c) Either (a) or (b)
- (v) (c) 90 days
- (vi) (d) Court which passed the decree or order

**Answer 5 (c)**

**Doctrine of *Res-judicata***

Section 11 of the Civil Procedure Code, 1908 deals with the doctrine of *res judicata* that is bar or restraint on repetition of litigation of the same issues.

General principle is that no one shall be twice vexed for the same cause. For the applicability of the principle of *res judicata* embodied in Section 11, the following requirements are necessary :

- (i) The matter directly and substantially in issue in former suit shall also be directly and substantially in issue in later suit.
- (ii) The former suit has been decided—former suit means which is decided earlier.
- (iii) The said issue has been heard and finally decided.
- (iv) Such former suit and the latter are between the same parties or litigation under the same title or persons claiming under parties above.
- (v) The Court which determined the earlier suit must be competent to try the latter suit.
- (vi) Any matter which might or ought to have been made a ground of defence or attack in such a former suit shall be deemed to have been a matter directly in issue in such suit.
- (vii) Relief claimed in the plaint but not expressly granted shall be deemed to have been refused.
- (viii) In representation suit any issue has been decided then *res-judicata* shall apply to them.

**Question 6**

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

- (i) *A contract which is dependent upon the personal qualifications can be specifically enforced.*
- (ii) *'Arbitral tribunal' means a sole arbitrator or a panel of arbitrators.*

- (iii) *A mere right to sue can be transferred.*
- (iv) *A complaint in a criminal case is what a plaint is in a civil case.*
- (v) *In a declaratory decree, the right of any person to any property or his legal character is ascertained.*
- (vi) *A writ of certiorari is issued to prevent a lower court from usurping jurisdiction which is not legally vested in it.*
- (vii) *All documents produced for the inspection of the court are known as documentary evidence.*
- (viii) *An instrument not 'duly stamped' can be accepted in evidence by an arbitral tribunal.* (2 marks each)

### Answer 6

- (i) **False** : As per Section 14 of the Specific Relief Act, 1963 a contract which is dependant upon the personal qualification or volition of the parties cannot enforce specific performance.
- (ii) **True** : Section 10 of the Arbitration and Conciliation Act, 1996 provides that, the parties are free to determine the number of arbitrators, provided that such number shall not be an even number. If they fail to determine the number of arbitrators, the arbitral tribunal shall consist of a sole arbitrator.
- (iii) **False** : As per Section 6 of the Transfer of Property Act, 1882 a mere right to sue cannot be transferred.
- (iv) **True** : Complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence.
- (v) **True** : A declaratory decree is a decree whereby any right as to any property or the legal character of a person is judicially ascertained.
- (vi) **False** : It is available to any person, wherever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially in excess of their legal authority.
- (vii) **True** : As per section 3 of the Indian Evidence Act, 1872.
- (viii) **True** : As per Section 35 of the Indian Stamp Act, 1899 instruments not duly stamped are inadmissible 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. But in special cases they may be admitted in evidence after imposing penalty.

### Question 7

- (a) *Alok was running a school at a certain place. Bimal started another school near the school of Alok. As a result of this, most of the students of Alok's school left his school and joined Bimal's school. Due to competition, Alok had to reduce the fees by ₹ 40 per student per quarter thereby suffering huge monetary loss.*

*Alok instituted a suit against Bimal in the court for claiming compensation. Is the suit instituted by Alok maintainable ?* (6 marks)

- (b) *Ashok intentionally and falsely leads Bikram to believe that certain land belongs to Ashok, and thereby induces Bikram to buy and pay for it. Afterwards, the land becomes the property of Ashok, and Ashok seeks to set aside the sale on the ground that at the time of the sale he had no title to the property. Can he be allowed to prove his want of title ?* (5 marks)
- (c) *A document was executed by several persons at different times. The person in whose favour such execution was made, presented the document for re-registration after expiry of three months. Can such document be registered and if so, within what period ?* (5 marks)

#### **Answer 7(a)**

The suit is not maintainable. The present problem is based on the leading case of *Gloucester Grammar School* (1410) Y.B. Hill. 11 Hen, 4, of 47, pp. 21. Under the law of torts, it is not every damage that is a damage in the eyes of law. It must be a damage which the law recognizes as such. There are two maxims, namely, *damnum sine injuria* and *injuria sine damno* that explain this proposition.

The given problem comes under the purview of maxim *damnum sine injuria*. *Damnum* means harm, loss or damage in respect of money, comfort, health, etc. *Injuria* means infringement of a right conferred by law on the plaintiff. The maxim means that in a given case, a man may have suffered damage and yet 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 a legal right of the plaintiff. Common examples are; where the damage results from an act done in the exercise of legal rights.

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

#### **Answer 7(b)**

This case falls under the Doctrine of Feeding the Grant of Estoppel, covered in Section 43 of the Transfer of Property Act, 1882. According to Section 43 of the Transfer of Property Act, 1882 if a person fraudulently or erroneously makes a representation that he is authorised to transfer certain immoveable property while he does not have any authority at that time and he attempts to transfer also, whenever he gets such authority or property itself, he can not deny that he made such representation before, provided the transferee has not rescinded the contract till that time. In other words, he is estopped from denying that he made such fraudulent or erroneous statement before.

In the given case, Ashok knew at the time of sale to Bikram that he was not the owner of the land but he intentionally and fraudulently makes Bikram believe that Ashok is the owner. Therefore, when he subsequently gets the land, he has to transfer it to Bikram if Bikram had not rescinded the contract.

#### **Answer 7(c)**

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

document executed by several persons at different times may be presented for registration and re-registration within four months from the date of each execution.

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

### Question 8

- (a) *A mill owner employed an independent contractor to construct a reservoir on his land to provide water for his mill. There were old disused mining shafts under the site of the reservoir, which the contractor failed to observe because they were filled with soil. Therefore, the contractor did not block them. When water was filled in the reservoir, it burst through the shafts and flooded the plaintiff's coal mines on the adjoining land. Is the mill owner liable to compensate for loss or damage caused to the plaintiff ? Give reasons. (6 marks)*
- (b) *There was a partition of property between a Hindu father and his five sons. The deed provided that if any one of his sons wanted to sell his share, he shall sell it to one of his brothers only and not to any stranger. The consideration for that share shall be ₹ 1,000 only. Are these conditions valid ? Give reasons. (5 marks)*
- (c) *Ram and Shyam entered into an agreement to refer a dispute relating to genuineness of a will to an arbitral tribunal. In spite of this, Shyam commenced proceedings relating to this dispute in the district court of competent jurisdiction. Ram filed an application for stay of legal proceedings under the Arbitration and Conciliation Act, 1996. Will Ram succeed ? Explain. (5 marks)*

### Answer 8(a)

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

In this case it was held that a man acts at his peril and is the insurer of the safety of his neighbour against accidental harm. Such duty is absolute because it is independent of negligence on the part of the defendant or his servants. If a person brings or accumulates on his land anything which, if it should escape may cause damage to his neighbours, he does so at his own peril...."

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

### Answer 8(b)

Section 10 of Transfer of Property Act, 1882 says that when property is transferred, the transfer should not be restrained absolutely from alienating the property. One may give property to another subject to a condition, but the condition should not be one which absolutely prevents the transferee from alienating the property.

The given problem is based on *Trichinopoly Varthaga Sangam v. Shunmoga Sunderam* (1939) Madras 954. In this case it was held that the condition absolutely prevented the son from selling the property to any one for good value. In this case the



market value of the property of the son was far greater than Rs.1,000. Hence, the condition was declared invalid.

**Answer 8(c)**

Generally all disputes which can be decided by a civil court involving private rights can be referred to arbitration. Thus, disputes about property or money or about the amount of damages payable for breach of contract etc. can be referred to arbitration.

However, according to the general practice certain matters are not referred to arbitration. One of them is testamentary matters. testamentary matters for example, questions about the validity of a will are not referred to arbitration.

In this case, Ram will not succeed. The arbitration agreement as such is not valid. The question relating to the genuineness of a will can only be decided with law dealing with probate as given in the Indian Succession Act.

Hence, court can not grant remedy of stay to Ram.

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