

Paper-1
General and Commercial Laws
June 2013

1. (a) **The Doctrine of Severability:** This Doctrine is contained in Article 13 of the Constitution of India. According to this doctrine, the part of a statute which is not compatible with the fundamental rights provided for in the Constitution will be severed and declared invalid. This helps to maintain both constitutionality and saves the statutes from being struck down completely. The rest of the act that is allowed to exist can operate separately. The only thing to be considered here is whether the leftover portion is enough to still fulfill the objectives of the Act. This doctrine is a very useful one, used in both contract and common law, as it is useful in saving redundancy of contracts and acts. Under this, Courts construct the meaning of a contract or act by severing the troubling part, if it is severable and only if severability is not possible, the entire act is scrapped (Article 154). Similarly, the courts have the power to sever an unconstitutional provision in a statute and enforce the remainder of the statute if it can exist without the severed part (Article 155). This doctrine has been provided to increase the usability of statutory acts and legal contracts, so as to prevent redundancy and to make future use possible.
1. (b) Article 30 of the Constitution of India enshrines minority rights. As per the Constitution, minorities include both religious and linguistic minorities. This Article gives the following rights to minorities:
 - Right to setup and run educational institutions.
 - Right to be duly compensated in case of compulsory acquisition of property of such minority institutions.
 - Right against discrimination by the State in giving aid to educational institutions, on the grounds of an institution being governed by a minority faction.

Case: T.M.A. Pai Foundation v. State of Karnataka.
1. (c) **Rule of Ejusdem Generis:** It is one of the basic principles of interpretation. The term itself means 'of the same kind' and helps when the statute is not clear as to the implications and coverage. The rule says that when there is a specific class or classes of acts or things or persons defined in an Act, any word occurring subsequently will be bound by their coverage, i.e. a wider meaning than the one defined cannot be taken. For example, under the Central Excise Tariff Act, there are lists of items that come under the same head. If one of the lists say that it is to include textile articles, viz, clothing, sheets, bed covers, etc., it can in no way be inclusive of articles that cannot be termed strictly as being made of textile, like sheets made majorly of a synthetic fibre, though containing a small percentage of cotton fibre. Hence, if the list is an exhaustive or fairly indicative list, a wider meaning cannot be given to it.
If, however, there is no specific list, or the class is not that well defined, the application could cover a wider scope. The universal logic behind this

principle is that if a statute had been intended for a general coverage, it would not have included specific words to define the scope of its usage. It is essential though, that this rule should be used with discretion, because there exists the practical risk of the act becoming too specific for actual use.

2. (a) Promissory note **Promissory note** A promissory note is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or the bearer of the instrument. A promissory note is a written promise to pay a debt. It is an unconditional promise to pay on demand or at a fixed or determined future time a particular sum of money to or to the order of a specified person or to the bearer.

Essentials of a promissory note.

The promissory note:-

1. must be in writing;
2. must be signed by a maker;
3. must contain an undertaking to pay;
4. must be a promise to pay unconditionally on demand or at a fixed or determinable future time;
5. payee must be certain;
6. maker must be certain;
7. sum payable must be certain;
8. must contain a promise to pay money and money only;
9. must be payable to or to the order of a certain person or to the bearer.

Indian Stamp Act, 1899 has also defined the word Promissory note. Promissory note means a promissory note as defined by the Negotiable Instruments Act, 1881;

"It also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen."

2. (b) Remedies available to a person against whom ex parte decree has been passed:

An ex parte decree is a decree passed in the absence of the defendant (in absentia). Where the plaintiff appears and the defendant does not appear when the suit is called out for hearing and if the defendant is duly served, the court may hear the suit ex parte and pass a decree against him. Such a decree is neither null and void nor inoperative but is merely voidable and unless and until it is annulled on legal and valid grounds, it is proper, lawful, operative and enforceable like a bi parte decree and it has all the force of a valid decree.

REMEDIES

The defendant, against whom an ex parte decree has been passed, has the following remedies available to him:

- (1) Apply to the court by which such decree is passed to set it aside: Order 9 Rule 13; or
- (2) Prefer an appeal against such decree: Section 96(2) (or to file a revision under Section 115 where no appeal lies);
- (3) Apply for review: Order 47 Rule 1; or
- (4) File a suit on the ground of fraud.

The above remedies are concurrent and they can be prosecuted simultaneously or concurrently. "Where two proceedings or two remedies are provided by a statute, one of them must not be taken as operating in derogation of the other."

2. (c) Preventive detention and safeguards against it:

'Preventive detention' implies the detention of a person without trial in cases where the evidence before the authority is not enough to make out a fully drawn legal charge or to secure the conviction of the detenue by legal proof, but is sufficient enough to justify his detention.

The aim of preventive detention is to check a person from doing something that the evidence implies that he might do. Hence, this measure operates simply on the basis of suspicion or belief or probability of something that might be done by the detained person. In order to prevent abuse of power by the authorities under this provision, the framers of the Constitution provided that if the proper process is not followed, the detention will be deemed to be invalid.

According to Article 22 of the Indian Constitution, no person shall be detained in custody without being informed, as early as possible, of the grounds for such arrest. He shall also be assured of the right to consult and to be defended by a legal practitioner of his choosing. Upon arrest, such a person is to be produced before the nearest magistrate within a period of twenty-four hours of such arrest. This time is exclusive of the time needed for such journey from the place of arrest to the court of magistrate. A person can be detained in custody beyond the said period only with the permission of the magistrate, and upon sufficient cause being shown.

It is not a punitive but a preventive measure. While the object of the punitive detention is to punish a person for what he has already done, the object of preventive detention is not to punish a man for having done something but intercept him/her before he/she does it and prevent him/her from doing it. No offence is proved nor any charges is formulated. The sole justification of such detention is suspicion or reasonable probability of the detenue committing some act likely to cause harm to society or endanger the security of the Government, and not criminal conviction which can only be warranted by legal evidence.

Constitutional Safeguards Against Preventive Detention Laws:

Though the Constitution has recognised the necessity of laws as to preventive detention, it has also provided safeguards to mitigate their harshness by placing fetters on legislative power conferred on the

Legislature. The power of preventive detention is acquiesced in by the Constitution as a necessary evil and therefore hedged in by diverse procedural safeguards to minimise as much as possible the danger of its misuse. It is for the reason that Article 22 has been given a place in the Chapter on "guaranteed rights". Clauses (4) to (7) guarantee the following safeguards to a person arrested under preventive detention law :

- (a) review by Advisory Board;
- (b) grounds of Detention and Representation; and
- (c) composition and Procedure of Advisory Board.

3. (i) **Specific performance and injunction:**

The basic differences are as follow:

- **Performance/ non-performance:** Injunctions are an order by the court not to do a specific act, i.e. an order for non-performance, whereas an order for specific performance is issued to make someone do the very thing mentioned in the order.
- **Types of cases:** Injunctions are normally for torts and other civil wrongs; specific performance is generally used in case of contracts.
- **Necessity of contract:** In case of injunctions, there is no need for prior contracts, as they are issued mainly for acts done without the other party agreeing to or even knowing about them. Specific performance, on the other hand, requires a contract to be entered into first, the breach of which gives right to the need for specific performance as a remedy. [The only exception here is an agreement of forbearance; in this case, injunctions might be issued.]

3. (ii) **Battery and assault**

- **Battery:** Battery implies the unlawful beating of another. It includes every willful, angry, violent or negligent touching of another's person or clothes, or anything attached to his person or held by him.
- **Assault:** It is a threatened or attempted physical attack by someone who appears to be able to cause bodily harm if not stopped. An assault is any unlawful attempt or offer with force or violence to do a corporal hurt to another, whether from malice or wantonness; for example, by striking at him or even holding up the fist at him in a threatening or insulting manner, or with other circumstances as denote at the time. It indicates an intention, coupled with a present ability, of actual violence against his person, as by pointing a weapon at him when he is within reach of it.

3. (iii) **Set off and counter claim**

‘Set off’ means a settlement where both the plaintiff and the defendant have some claims to be collected from each other. What one party owes to another might be used to discharge all or a part of the debt he is owed by the other party.

‘Counterclaim’ means a reverse claim made by one party against the other, where both claims are heard as part of the same proceedings. In set-off proceedings, there is a single judgement, whereas in case of counterclaims, there are separate judgements for each claim.

There are various types of set-offs. One of these is an 'equitable set-off'. It implies the rights of set-off arising from the same transaction instead of from different ones. Hence, the legal action takes the form of a single lawsuit instead of two different ones.

3. (iv) **Review and revision**

'Review' means a reconsideration of the judgement given by a court in the form of a decree or an order. This is usually done when the person aggrieved with the judgement feels that the court has not given due consideration to the facts of the case, or when new facts are discovered, or when there is some obvious mistake in the records.

'Revision' is when the High Court calls for the records of a case in which no appeal lies and if it feels that the lower court has passed a judgement which it is not entitled to pass for want of jurisdiction, or did not use its valid jurisdiction, or used it illegally or improperly.

3. (v) **Summons and warrant of arrest**

The summons is issued by the Court to compel the accused or the witness to appear before it or produce the necessary evidence. Every summons issued by the Court shall be in writing, in duplicate and it must be signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court.

Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant. The summons shall be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons. Every person on whom a summons is so served shall sign a receipt on the back of the other duplicate, if so required by the serving officer. When a person sought to be summoned is employed abroad the Court can send summons to the concerned embassy for the official purpose.

A 'summons case' is one that is punishable with imprisonment upto and including two years. The procedure for the trial of these cases is as per Chapter XX of the Code of Criminal Procedure, 1973. They normally relate to minor offences, and are heard or resolved not through the normal route but using the summary procedure. This remains, as of today, the judge's discretionary power though.

A written order issued by a judicial officer or other authorized person commanding a law enforcement officer to perform some act for the administration of justice.

Warrants are recognized in many different forms and for a variety of purposes in the law. Most commonly, police use warrants as the basis to arrest a suspect and to conduct a search of property for evidence of a crime. Warrants are also used to bring those persons to court that have ignored a summons or a court appearance.

‘Warrant cases’ are those punishable with an imprisonment of more than two years or with a life sentence or a death sentence. Chapter XIX of the Code of Criminal Procedure, 1973, covers the trial of warrant cases.

4. (a) **Evidentiary value of an instrument not duly stamped:**

Section 35 of the Indian Stamp Act, 1899 covers instruments not duly stamped. It provides the following:

- An instrument insufficiently stamped will not be admitted as evidence or recognized as valid by any government official unless it is duly stamped.
- It can, subsequently, be stamped with stamps of proper amount, and be rendered duly stamped according to the Indian Stamp Act, 1899.
- An agreement or contract that is made up of various parts contained in separate letters would be deemed to be properly stamped if any one part of all the documents bears stamps of proper description and value.
- The exclusion of insufficiently stamped instruments shall not apply to criminal proceedings.
- The Collector of Stamps can be presented with such an instrument and the proper stamp duty paid on it, so that it becomes a proper and valid instrument.

4. (b) **The offence of hacking**

‘Hacking’ means done by unlawful access of a computer resource or system owned or controlled by another and altering, deleting or adding unauthorized information. Such a change might result in the lessening or loss of the value of the original information contained in the system. The punishment for this offence as per the Information Technology Act, 2000 is three years of imprisonment and/or fine upto rupees two lakhs. (Section 66)

Hacking definitely affects the financial returns of a company, since the hacker takes a large slice of the profits. It might also cause loss of reputation to the company whose Id is hacked, or it may even cause company secrets to be brought out into the open if the confidential information of the company is accessed.

Section 43 of the IT Act defines hacking:

- If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,- accesses or secures access to such computer, computer system or computer network downloads, copies or extracts any data, computer data base information from such computer, computer system or computer network including information or data held or stored in any removable storage medium.
- introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;
- damages or causes to be damaged and computer, computer system or computer network, data, computer database or any other

programmes residing in such computer, computer system or computer network;

- disrupts or causes disruption of any computer, computer system or computer network;
- denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;
- provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder;
- charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system or computer network he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected.

4. (c) **The meaning and characteristics of immovable property:**

The term has not directly been defined under the Transfer of Property Act. However, the act says that it includes everything but the property that is permanently affixed to land, immovable property or attached to the earth. Severing it would result in loss in value or functionality of the property.

The Interpretation clause as per Section 3 of the act provides that unless there is something repugnant in the subject or context,:

" **immovable property**" does not include standing timber, growing crops or grass;

" attached to the earth" means:

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached;

Jnan Chand Chugh vs Jugal Kishore Agarwal And Ors.

4. (d) **The rule of Lis Pendens:** The Doctrine of 'Lis Pendens' asserts that while a suit is pending, a property, which is the subject matter of the suit, cannot be transferred. If it is transferred, then the transferee would acquire the property subject to the decision of the suit (Section 52 of the Transfer of Property Act, 1882).

The important points to be kept in mind in this regard are:

- Only suits in Indian courts would operate as Lis Pendens, not those filed or ongoing in foreign courts.
- It must not be a vexatious suit.
- It should relate to the immovable property in question.
- The subsequent transfer must be with regard to rights that might be affected by the outcome of the pending suit.

For example: if Ram and Shyam were fighting a case in the High Court regarding the ownership of land, which Ram transfers to Balram while the suit is still under process, this transfer would not give Balram full rights until and unless Ram gets a clear title in the suit.

5. (a) (i) immovable
5. (a) (ii) impressed
5. (a) (iii) digital signature
5. (a) (iv) fine
5. (a) (v) citizens
5. (a) (vi) defamation
5. (a) (vii) An explanation
5. (a) (viii) interest in the property
5. (b) (i) (d) both a and b above
5. (b) (ii) (a)
5. (b) (iii) (d)
5. (b) (iv) (a)
5. (b) (v) (a)
5. (b) (vi) (b)
5. (b) (vii) (c)
5. (b) (viii) (d)
6. (i) **True:** Based on Article 21 of the Constitution of India, the Supreme Court decided in the case of S.P. Gupta v. Union of India that the right to information is within the constitutional right to know. Also, as per Article 19 (1) (a), Right to freedom of speech and expression necessarily includes the right to be informed.
6. (ii) **False:** The most marked difference is the incidence of probability. It is enough in civil cases to decide on the basis of probability, whereas in criminal matters, a decision is taken without being certain of the facts to a large extent.
6. (iii) **False:** The courts in India are bound by the Limitation Act, 1963, as they are bound to accept cases only if filed within a particular time frame. The only exception is when the courts condone the delay for sufficient cause, which is also allowed within set time frames.
6. (iv) **False:** This is covered under Section 20 of the RTI Act, 2005, which provides for a penalty of ₹ 250 per day increasing upto ₹ 25000.
6. (v) **False:** The time prescribed for this purpose within the Registration Act, 1908 is four months counting from the date of each execution.
6. (vi) **False:** The existence of arbitration clause in an agreement does not bar the jurisdiction of the Civil Court automatically. If a party wants to go to court, he/she has to raise objection not later than the first submission of the statement of defense on the matter. [Mahesh Kumar v. Rajasthan State Road Corporation].
6. (vii) **True:** This is included within the cases provided in Section 6 of the Transfer of Property Act, which provides a list of properties that cannot be transferred.
6. (viii) **False:** In the case of Kalyan Sundaram v. Kumarappa, it was decided that a gift is entirely valid as from the date of acceptance, regardless of its registration taking place at a later date. Although in case of immovable properties, registration of gift becomes mandatory, but still a later registration will not postpone its operation.

7. (a) As per Section 37 of the Indian Stamp Act, 1899, an instrument that is stamped with the proper amount but wrong description of stamps, may, by the State Government Rules, be certified as duly stamped on payment of the right duty.

The date of execution of this instrument will be deemed to be the date of actual execution, and not the date of proper stamping. The reason behind this is that there is no revenue loss to the government and if the mistake is bonafide, the right description of stamps can be subsequently put to use.

7. (b) Section 17 of the Transfer of Property Act, 1882, provides a list of instruments that are compulsorily registrable. Section 49 of the Registration Act, 1908 provides that no such instrument shall be admitted as evidence or put to any use unless registered.

(i) Since the instrument is unstamped, it cannot be used as evidence. However, if the same is duly stamped and registered, it can be so admitted subsequently.

(ii) Such an instrument can be admitted as evidence, as per Section 49 as mentioned above.

7. (c) Section 122 of the Indian Evidence Act, 1872 says that no one can be compelled to disclose private conversations with his/her spouse that took place during marriage, as the information is privileged information. This can be done with the consent of the spouse.

According to the case of Nagaraj vs. State of Karnataka, Section 120 allows a spouse to bear witness against a spouse if the case is not between them, or does not arise out of criminal prosecutions. However, the privilege under Section 122 of the Indian Evidence Act extends to all communications made to a spouse during subsistence of marriage; the communication need not be confidential. Moreover, the privilege is not accorded to the witness, but to the spouse.

In M.C. Verghese v. T J. Ponnamm it was said that if the marriage was subsisting at the time when the communications were made, the bar prescribed by Section 122 will operate. In Moss v. Moss 15 it was held that in criminal cases, subject to certain common law and statutory exceptions, a spouse is incompetent to give evidence against the other, and that incompetence continues after a decree absolute for divorce or a decree of nullity.

Hence, such a communication cannot be treated as privileged information, and Rajendra can disclose such communication made to him by Ragini.

8. (a) According to Section 30 of the Indian, confessions normally bind only the person making them, except in cases covered under Section 30, i.e. when the confession is made before a magistrate in the native state; it binds not only the person confessing but also the co-accused. Admissions have the capacity to bind both-the party making them as well as the co-accused. The person who is making the confession and the person on whose behalf he is admitting the guilt, i.e. who according to his confession is a co-accused needs to be tried jointly with him, only then his confession will

bind both. Hence, a joint trial is one of the pre-requisites for the confession to be binding on the co-accused also.

In this case, as both Mohan and Sohan are jointly tried, the confession of Mohan will be binding against Sohan also, and the Court may consider the effect of this confession as against Mohan.

8. (b) This case pertains to the Law of Torts, i.e. the law pertaining to vicarious liability. Under these rules, the principal is liable for the wrongs of his agents, based on the maxim – *Qui facit per alium facit per se* (He who acts through an agent acts himself, i.e. even if someone is acting through an agent, and the agent is acting as per the principal's directions, it can be assumed that the principal is acting himself.).

In this case, the employer will be liable for the acts of his agent, i.e. the driver. This matches the case of *Century Insurance Co. Ltd. v. Northern Ireland Road Transport Board*, in which it was decided that the driver although doing an authorized work, was doing it in an unauthorized manner. This will not, however, exempt the employer and the employer will be held liable for the wrong of the driver.

8. (c) Section 151 of the Code of Criminal Procedure, 1973 says that an arrest made by a police officer to prevent cognizable offences is valid. Such an act does not require any orders from the Magistrate or any warrants. Such powers have been provided to prevent the happening of serious or cognizable offences.