

1/2009/GCL (NS) P. T. O.

: 1 : **261**

Roll No.....

Time allowed : 3 hours Maximum marks : 100

Total number of questions : 8 Total number of printed pages : 5

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

1. (a) “A declaration of fundamental rights is meaningless unless there is an effective judicial remedy for their enforcement.” Comment on this statement explaining the judicial remedies which the Constitution of India provides.
(8 marks)

Ans. The judicial remedies which the Constitution of India provides are in the form of writ jurisdiction of the High Courts and the Supreme Court.

Under Article 226 of the Constitution, the High Court has the power to issue not only writs of certiorari, prohibition and mandamus, but also other writs, directions and orders. The Indian High Court has jurisdiction to issue necessary directions and orders to ensure justice and equity. Moreover, this right is not restricted, but spreads to administrative action and judicial or quasi-judicial action also.

When the Supreme Court issues writs under Article 32 of the Constitution, they are mainly for the enforcement of fundamental rights mentioned in the Constitution itself.

The Madras High Court held in *Aditanar Educational Institution v. Assistant Director of Income-tax* (297 I.T.R. 376) that the relief under Article 226 of the Constitution of India can be granted in spite of the availability of alternate remedy under the statute, only based

on undisputed facts. When the High Court finds that factual disputes are involved, it would not be desirable to deal with them in a writ petition. Under Article 32, a writ is preferred in case there is no other recourse available.

(b) When and under what circumstances can the Parliament legislate on matters enumerated in the State List ? Discuss.

(6 marks)

Ans. The Parliament can extend the legislative powers given to it by the Constitution to formulate laws under special situations to include certain subjects of the State List. Some of the conditions under which the Parliament may extend its powers include the situations explained below-

In the National Interest (Under Article 249)

Proclamation of Emergency (Article 250) in any state by the President.

If two states agree that the Parliament can legally make laws with respect to the two states, then the Parliament can make laws relating to any state or states (Under Article 252)

For the implementation of treaties in the international interest of the country (Under Article 253).

Failure of Constitutional Machinery in a State as a result of the inefficiency of a State Legislature, as declared by a proclamation issued by the President (Under Article 356 (1) (b))

Normally both the Union Government and the State Governments operate within the limitations of the powers given to them by the Constitution. They enjoy equal powers to make laws relating to the Concurrent list items, which are of general importance such as succession, transfer of property, preventive detention, education, etc. If there arises a conflict between a law passed by the Union and that passed by one or more State Legislatures,

precedence would be given to the law made by the Union Parliament. However, problem arises when either the Union or a State illegally encroaches upon the powers of the other legislature, or they may arise because the two laws do not coordinate. Only where the legislation is on a matter in the Concurrent List, it becomes important to apply the test of repugnancy and judge which act will apply. Normally the Union law is given precedence, unless the State has reserved a law for the approval of the President, in which case it will supersede the law made by the Union. However, the Union can at all times cause an alteration or amendment in the law.

(c) Briefly mention internal and external aids to interpretation of statute.

(6 marks)

Ans. The internal aids are mostly those elements that form a part of the act itself. Chief among them are –

- (i) Title of the act – There can be a long title and a short title. The long title can be used for understanding the context and brief description of the act, but the short title performs neither of these functions. For example, the Foreign Exchange Management Act gives us an idea that it contains rules about foreign earnings and currency, but FEMA does not give us any idea unless we already know what the acronym stands for.
- (ii) Preamble – The preamble specifies the intention behind the making of the act, i.e. what is the mischief that the makers of the act sought to correct. It can be one of the key starting points when we begin to understand a statute.

- (iii) Chapter heads or separate headings separating the act into parts – This will help be dividing the act into smaller parts, which are logically and sequentially linked to enhance comprehension. Especially if we need to refer to a particular part, and not the whole of the act, these help us in getting to the right portion without losing valuable time.
- (iv) Marginal notes – These are generally not given much weightage if the meaning of the statute is clear I itself, but where there is an ambiguity, these can provide an idea as to the general meaning behind the statute.
- (v) Interpretative clauses – These may be portions where definitions or clarifications regarding the inclusions in sections or definitions of words have been given, as used in the statute. These can be inclusive or exhaustive definitions.
- (vi) Proviso to a section – This gives the treatment of exceptional cases; those which can be called as qualifications, as they are to be treated in a different manner. It is generally in a very language, and without any ambiguity. It has to be kept in mind though, that it provides the exception to that particular section and cannot be applied as a common rule.
- (vii) Examples, illustrations or explanations – If within the coverage of the provision of the section they relate to, they can be treated as valuable aids to interpretation, as they simplify the application of the section. They cannot, in any case, be seen as making any extra provisions not mentioned in the section itself.

- (viii) Schedules – These are there in relation to the act itself as they provide the information mentioned in some part of the act in greater detail, which aids application of the section. They help in making the main act concise and provide a well-organized way of presenting the statute. For example, the XIII Schedule of the Companies Act, 1956.

The external or peripheral aids to interpretation are generally used when the statute is vague or indistinct in meaning. Here, the inner means of interpretation would not serve the purpose and some external means, like the circumstances that prevailed at the time of making of the statute, committee reports, if any, links with other acts, dictionaries or even case histories from other countries, would have to be utilized. If there were other acts leading upto the current one, they could be looked into as well on the assumption that they would shed some light over the current statute.

These external aids, however, have to be used with due care and only in situations where the internal ones prove insufficient in giving an understanding of the statute or its part. This is because firstly, they are extraneous to the statute in question, and however close to the subject matter, they might not give an accurate picture. For example, if an act is made in year 1889 regarding a particular thing, and another is made in year 2008, the earlier act would not give a true picture if used as an aid for interpretation of the new act. This is because the conditions and situations of both acts were different; they were made against different social, political and economic backdrops. This does not mean that it cannot at all be use for shedding light on the subsequent act; it simply means that it should be used in moderation and with care, and the context and underlying situations too

should be kept in mind, while doing so. Only then would be the interpretation be a fair one.

2. Write short notes on **any four** of the following :

(i) Expert opinion - Section 45 of the Indian Evidence Act, 1972 makes the opinions of experts important on points of specialized areas like handwriting analysis, fingerprints, artistic impressions, scientific principles and foreign legal positions. Anyone possessing specialized knowledge in the above mentioned fields would be deemed to be an expert.

Section 73 opines that comparison of signature, seal or handwriting of a person is allowed to see whether they actually belong to the said person. The Court may even ask that person to write before it in order to prove his handwriting. For this purpose, the help of an expert might be taken.

The statement of an expert can even be admitted as evidence in documentary form without his presence being stressed upon; this is known as 'hearsay evidence'.

(ii) Doctrine of feeding the grant by estoppel –

Ans. The Principle of Estoppel is covered in Chapter VIII of the Indian Evidence Act, 1872. Section 115 of this chapter says that when a person declares or leads others to believe a fact or thing to be true, he and his legal representatives are stopped from denying its non-veracity afterwards.

Section 116 says that tenant or anyone claiming under him cannot deny the title of the landlord during the period of his tenancy. Same is the case with a license, when a person to whom it was given cannot deny that the person who gave it does not possess proper title during the continuance of the license.

Section 117 pronounces that an acceptor of a bill of exchange cannot deny that the drawer had no authority to draw or endorse if he has accepted it without demurring earlier. The same condition would apply to a bailee and licensee.

The conditions in which this principle is applied are when a person is alluding to contrary facts at the same time, as a person cannot be allowed to approbate and reprobate at the same time.

(iii) Doctrine of lis pendens –

Ans. 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.

(iv) E-governance –

Ans. Section 4 of the Information Technology Act, 2000 provides that information provided in electronic form, including but not limited to data,

images, databases, texts etc., will be given the same importance and legal recognition as is given to written, printed or typewritten information. This Act provides for e-governance or control and safety of information contained in electronic form. It is also known as digital governance.

(v) Adjudicating officer – It is the officer who has a right to look into the case in hand, examine the evidence and the witnesses and to pass an order regarding the matter. An adjudicating officer has the powers of a Civil Court under most Indian acts, for example, under the Information Technology Act, 2000.

(4 marks each)

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

(i) 'Public key' and 'private key'.

Ans. 'Asymmetric crypto system', according to the definition of Section 2(1)(f) of the Information Technology Act, 2000, means a key pair that provides safety and authenticity to the electronic records being transmitted. The key pair consists of a public and a private key, both of which are needed to 'sign' an electronic document digitally. Digital signatures, a form of electronic signatures, are created and verified using Public Key Cryptography that is based on the concept of a key pair generated by a mathematical algorithm, the public and private keys. The private key, which is used to digitally attach a signature to a document, is securely held by the owner, while the public key is made known to everyone for verifying the digital signature. Together, they form the key pair.

(ii) 'Vested interest' and 'contingent interest'.

Ans. Vested interest as per the Transfer of Property Act, 1882 is both heritable and transferable. Such an interest already exists at the time of the transfer. On the other hand, a contingent interest is one the existence of which depends on the happening of future events. For example, if A is given a property for life, which is afterwards given

to B for life. The interest of B is a vested interest as per the Transfer of Property Act, 1882.

(iii) 'Complaint' and 'FIR'.

Ans. An 'FIR' or 'First Information Report' is the primary report of an offence having been committed. It takes the form of a formal complaint being lodged by the aggrieved or victim, or by someone else acting for him. This can be done either orally or in writing. This report is to be made to the police. The police start the proceedings on the basis of this report. An FIR can be filed by anyone who knows of the commission of a cognizable offence, not just by the aggrieved. Hence, it can even be filed by a police officer or a third party.

A 'complaint', on the other hand, is a report to the Magistrate. This can be in writing or even oral. It does not include the FIR. The intention of making such a report should be to obtain redressal with the aid of the procedures specified under law.

(iv) 'Res judicata' and 'stay of suits'.

Ans. 'Stay of suit' implies the action taken under Section 10 of the Code of Civil Procedure, 1908. It is the Doctrine of *res sub-judice*. The doctrine of *res sub-judice* refers to a matter pending before a judge, or court, or not yet decided. It is a matter under judicial consideration, meaning that a decision regarding the case it pertains to has not been reached yet. The doctrine or rule implies that if a matter is awaiting judicial proceedings and a decision may not be heard in any other court until it has been decided upon in the first court the matter was filed in. This doctrine helps in avoiding duplicity of cases, and prevents opposing judgements being reached in same matters (Section 10 of the Code of Civil Procedure, 1908). When such a case arises, generally a stay operates on the second or following suit.

'The Doctrine of Constructive *Res Judicata*' has been provided in Section 11 of the Code of Civil Procedure, 1908. It prevents further suits being filed for a matter that is at the core of a former suit. The reasons are as below –

- The same party should not be troubled with the same matter again and again.

- There should be a limit to the number of cases filed in a court, i.e. vexatious cases should not be entertained.
- The same matter should not be used for wasting valuable court time repeatedly.

The basic requirement for applying this doctrine is that the matter that is at the core of the former suit should also be the main essence of the latter suit(s).

(v) 'Computer' and 'computer network'.

Ans. According to Section 2(1)(l) of the Information Technology Act, 2000, "Computer System" implies a gadget or a collection of gadgets that are programmable and support external files and data, instructions etc., and are capable of responding to instructions by giving the output as data, images or in any other desired form or format. It performs all the functions from accepting data and information, to storing it, to presenting it in a different mode of output.

Section 2(1)(j) defines 'Computer network' as the connection or linkage between two or more computer systems with the help of any mode – connecting wire or optical media, satellite or remote terminals.

(4 marks each)

4. Attempt **any four** of the following :

(i) State the modes of cancellation of adhesive stamps.

Ans. Section 11 of the Indian Stamp Act provides for the use of adhesive stamps, and states for which instruments it can be used.

Section 12 provides for the method of canceling stamps, so that they cannot be reused. This has to be done either at the time of execution or before it. The commonly acceptable method of stamping is by writing across the face of the stamp.

(ii) State the documents of which registration is optional.

Ans. Section 18 of The Registration Act, 1908 provides for those documents whose registration is optional. These are as under –

- Instruments that create, extinguish or alter any right or interest in immovable property exceeding rupees one hundred in value.
- Instruments that recognize the receipt of any recompense for the above.
- Instruments that create, extinguish or alter any right or interest in movable property.
- Leases for which registration is exempted and the period of which is less than a year.
- Wills
- Instruments create, extinguish or alter any right or interest in immovable property for less than rupees hundred.

(iii) Specify the categories of information that have been exempted from disclosure under the Right to Information Act, 2005.

Ans. According to Section 8 of the Right to Information Act, 2005, information not available for disclosure is information-

- That has the capacity to have a negative effect on the integrity and independence of the country.
- Which if disclosed, is likely to cause a breach of the restrictions put on its disclosure by a court.
- The disclosure of which results in leaking out of information that the Parliament or a State Legislature does not want to render public.
- Has the nature of a trade secret or IPR, which if disclosed, can cause financial losses to the party that controls it.
- Is better not disclosed in the larger interests of the public.
- Is entrusted by the government of a foreign country.
- Is related to the identity of an informant, which if disclosed would endanger the life or property of that person.
- Obstructs any judicial proceedings against an individual or a wrongdoer.
- Counts as the inner workings of the Cabinet or Council of Ministers.
- Is of a personal nature.

If, however, the giving of the information has more benefits for the public than losses for the party who controls the information, the PIO will allow the disclosure of the information.

(iv) What are the cyber offences under the Information Technology Act, 2000 ?

Ans. Hacking and passing off are the main offences under the Act.

‘Hacking’ means causing or attempting to cause loss or damage to anyone by removing or changing any information stored in a computer system or allied resources. This is done by unauthorized access of the information. The punishment for hacking is imprisonment upto three years, or fine upto rupees two lacs, or both. (Section 66 of the Information Technology Act, 2000).

‘Passing off’, although not defined in the Act, means using the domain name registered by someone else in his name. This is punishable as a tort, as it might result in financial and other losses to the person who is the original owner of the domain name. For example, a company opening a website to market its products might face losses if another company uses a similar name to market similar products. People will buy products of the second company thinking they are buying products of the first one. The Marks and Spencer case is a good example of passing off, in which it was judged that any person who deliberately uses a domain name similar to another name for using its popularity to sell its own products is subject to an injunction and is punishable for a tort.

(v) “Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it.” Discuss.

Ans. Section 9 of the Limitation Act, 1963 says that once the calculation or counting of time starts, it shall not be discontinued by any ensuing disability or incapacity that arises can stop the running of time. This condition will hold true only when and if the same conditions persist; when the cause of action has been taken away or a right altered, the very reason for calculation of the limitation period fails.

Applicability –

- It applies to cases where the cause of action continues; when that is varied, a fresh period of limitation will begin from the date of variation.
- This Section applies only to suits and applications, and not to appeals, which are generally allowed unless expressly covered under some other section.
- Cases of property being vested in trusts and in legal representatives will be included only in the instance of the property being vested for a specific purpose.

(v) Explain the maxim *damnum sine injuria* under the law of torts.

Ans. 'Injury' here means 'physical injury' and 'damnum' means 'financial loss' or 'loss of property'. *Damnum sine injuria* implies a legal wrong that causes no actual damage or injury to anyone. For example, a financial wrong caused by one could result in liability to the other, even though no physical harm has been caused to the other.

(4 marks each)

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

- (i) In computing the period of limitation for an application to set aside an award, the time required for obtaining a copy of the award shall not be excluded.

Ans. Incorrect.

As per Section 12 of the Limitation Act, in computing the period of limitation for an application to set aside an award, the time required for obtaining a copy of the award shall be excluded.

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

Ans. Incorrect.

As per Section 24 of The Registration Act, 1908, in case there are several executants, operating at various times to execute a document, the document can be presented for registration and re-registration within four months from the date of each execution.

- (iii) Anubhav sells a property to Balwant for Rs.5 lakh which is subject to a mortgage to Charu for Rs.10 lakh and unpaid interest of Rs.2 lakh. Stamp duty is payable on Rs.17 lakh.

Ans. Correct.

As per Section 24 of The Registration Act, 1908.

- (iv) Suits for compensation for false imprisonment can be filed within two years from the date when the imprisonment ends.

Ans. Incorrect

The period prescribed as per Part VII of the Schedule to the Limitation Act, 1963 is of one year, which is to be computed from the date when the imprisonment ends.

- (v) Article 53 of the Constitution of India lays down that the executive powers of the Union shall be vested in the President of India.

Ans. Correct.

These powers are vested in the President of India as per the Constitution of India, subject to the limitations prescribed therein.

(vi) The rule of 'harmonious construction' is the best rule of interpretation of any provision of any statute.

Ans. Correct.

This rule of interpretation allows the scope for applying all the provisions of a statute.

(vii) Under certain circumstances, the court may award damages in addition to specific enforcement of the contract.

Ans. Correct.

The court might award damages in addition to specific enforcement of the contract, when some damages have already been incurred and need to be compensated.

(viii) Generally orders passed by the court under the Code of Civil procedure, 1908 are not appealable but there are certain exceptions to it.

Ans. Correct

There are four types of appeals provided under the Code of Civil Procedure, 1908.

(2 marks each)

6. (a) Choose the most appropriate answer from the given options in respect of the following :

(i) The Constitution of India came into force on —

(a) 26th November, 1949

(b) 15th August, 1947

(c) 26th January, 1947

(d) 26th January, 1950.

Ans. (d) 26th January, 1950

(ii) The right to alienate the mortgaged property without intervention of the court is available to the mortgagee in the case —

(a) Where the mortgagee is government

(b) Where there is English mortgage

(c) Where there is mortgage by conditional sale

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

Ans. (d) Under both (a) and (b)

(iii) The relief regarding recovery of possession of immovable property is available under —

(a) Provisions of the Code of Civil Procedure, 1908

(b) Provisions of the Specific Relief Act, 1963

(c) Provisions of the Code of Criminal Procedure, 1973

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

Ans. (d) Both (a) and (b)

(iv) In the transfer of property with condition, the condition is void and transfer is valid —

(a) Where transfer is made with void condition

(b) Where transfer is made with the condition restraining absolutely future transfer of such property

(c) Where transfer is made absolutely with the condition restraining enjoyment of such property

(d) Both (b) and (c).

Ans. (d) Both (b) and (c).

(v) Section 20 of the Right to Information Act, 2005 imposes penalty on a public information officer for failing to provide information —

(a) Rs.250 per day

(b) Rs.250 per day to the extent of maximum Rs.50,000

(c) Rs.300 per day to the extent of maximum Rs.25,000

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

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

(vi) The Chief Judicial Magistrate is empowered to pass —

(a) Any sentence authorised by law

(b) Any sentence except a sentence of death

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

(d) Any sentence except a sentence of death and life imprisonment.

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

(vii) The definition of 'decree' as given under section 2 of the Code of Civil Procedure, 1908 includes —

(a) An 'award' passed by the arbitral tribunal under the Arbitration and Conciliation Act, 1996

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

(c) Adjudication of any question raised by any party to the decree during execution proceedings under section 47 of the Code of Civil Procedure, 1908

(d) An order of which appeal lies like an order.

Ans. (d) An order of which appeal lies like an order.

(viii) A magistrate may take cognizance of any offence upon —

(a) His own knowledge

(b) The information of police officer

(c) The information of any person other than police officer

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

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

(1 mark each)

(b) Re-write the following sentences after filling-in the blank spaces with appropriate

word(s)/figure(s) :

(i) Temporary injunction is granted under order XXXIX of the Code of Civil Procedure, 1908.

(ii) Declaratory decree is granted under Section 34 of the Specific Relief Act, 1963.

(iii) A police officer may arrest any person without warrant if he has committed cognizable offence.

(iv) Judgement debtor means any person against whom a decree has been passed or an order capable of execution has been made.

(v) The law of limitation bars the remedy as well as extinguishes the right where the remedy is extinguished by limitation.

(vi) A fresh suit is barred for the same cause of action under section(s) 11 of the Code of Civil Procedure, 1908.

(vii) Application for obtaining information with prescribed fees may be submitted to Public Information officer under the provisions of the Right to Information Act, 2005.

(viii) Central Information Commission is constituted by the Central Government through a gazette notification.

(1 mark each)

7. (a) Ajit, a Hindu, who has separated from his father Baljit, sells to Charanjit three fields X, Y and Z representing that Ajit is authorised to transfer the same. Of these fields, Field-Z does not belong to Ajit, it having been retained by Baljit on the partition of property. But subsequently on Baljit's death, Ajit, as an heir obtains Field-Z. Decide the validity of the sale of the above said fields in a circumstance where Charanjit does not rescind the contract of sale.

Ans. As per the provisions of Section 43 of the Transfer of Property Act, 1882, when a transferor fraudulently represents that he has the right to transfer a property, such transfer will be operational at the option of the transferee, if the contract still subsists.

Hence, in this case, the validity of the sale of the said fields will subsist in a circumstance where Charanjit does not rescind the contract of sale.

(6 marks)

(b) In a case, Hamid was terminated from the police service. Hamid filed a writ petition against termination order on the ground that a reasonable opportunity of being heard was not given to him by the government. The writ petition was dismissed by the court as the government proved that reasonable opportunity of being heard had been given to the petitioner. Afterwards, Hamid filed another writ petition on the ground that as he was appointed by the Director General of Police, termination by the order of Deputy Inspector General of Police was in violation of Article 311(1) of the Constitution of India. Decide the validity of the second writ petition.

Ans. Once the court has dismissed a writ petition, the same may not be presented again to the same court. In this case, the court has dismissed the petition as the government proved that reasonable opportunity of being heard had been given to the petitioner. The second writ Hamid filed, on the ground that as he was appointed by the Director General of Police, and that the termination by the order of Deputy Inspector General of Police was in violation of Article 311(1) of the Constitution of India, hence, is not valid.

(5 marks)

(c) Anurag, a child, entered the botanical garden of a municipality and consumed some attractive looking but poisonous berries. As a result of that, he died. The representatives of the child sued the municipality for damages. Will they succeed? Give reasons.

Ans. They will not succeed in case the plants were properly categorized and the municipality took due care to warn people of the dangerous nature of the berries. If after this, anyone consumes them, and is harmed by that consumption, it is not the responsibility of the municipality.

(5 marks)

8. (a) On 20th March, Kamal told his wife that he was going to Berhampore, as Pankaj's wife has written a letter and asked him to come and receive payments due to him. On 21st March, Kamal left his house in time to catch a train for Berhmpore, where Pankaj lived with his wife. On 23rd March, Kamal's dismembered body was found in a box which had been purchased for Pankaj. Decide whether on the trial of Pankaj for the murder of Kamal, the statement made by Kamal to his wife was admissible in evidence. If so, on what grounds ?

Ans. As per the Indian Evidence Act, Section 122, "No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other." Hence, in this case, if the statement is willingly given by his wife, it is admissible as evidence.

(6 marks)

(b) Arpit took a debt of Rs.10,000 from Bharat on January, 1998 and promised to pay by 31st December, 2003. He could not pay such debt within

the stipulated time. On 1st December, 2006, Arpit paid Rs.500 as interest against such debt to Bharat against receipt. Bharat filed a suit against Arpit to recover such debt on 15th December, 2008. Whether the suit filed by Bharat is within the period of limitation ? Decide with reasons citing relevant provisions of the law.

Ans. As per section 19 of the Limitation Act, 1963, where part payment of debt or interest on debt is made, then a fresh period of limitation begins from that date. The limitation period for loans and contracts is three years. Since the interest is paid on 1st December, 2006, and the suit against Arpit to recover such debt is filed on 15th December, 2008, it is within the limitation period.

(5 marks)

(c) Arjun transfers his property to Bhanu for life and after Bhanu's death to that of his unborn sons as shall first attain the age of 25 years and if no son of Bhanu shall attain that age, to Chandan who is living at the time of the transfer. Decide the validity of this transfer.

Ans. As per Section 13 of the Transfer of Property Act, 1882, transfer of property to an unborn person can only take place if before such a transfer; a life estate is transferred to a person existing at the date of transfer. Moreover, it should not be a partial interest, but the entire interest that is transferred to the unborn. The vesting of absolute interest in favour of an unborn person may be postponed until he attains full age. Such an unborn person should get full rights to that property, and no further rights can be created to that property after those of the unborn.

Hence, the transfer is valid till it pertains to the transfer in favour of Bhanu, but the transfer to Chandan is not valid, as he is living at the time of the transfer, while the sons of Bhanu are as yet unborn.

(5 marks)

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