

Answer to Question No: 1.

(a)

Cconciliation means "the settling of disputes without litigation". Conciliation is a process by which dispute between parties is kept going through the participation of a conciliator. The main difference between arbitration and conciliation is that in arbitration proceedings the award is the decision of the Arbitral Tribunal while in the case of conciliation the decision is that of the parties assisted at which the assistance of the conciliator. The law relating to conciliation has been codified for the first time in India on the basic pattern of UNCTRAL Conciliation Rules.

Part III of the Act provides the one party to a dispute may invite the other party to settle the disputes through conciliation. When the other party accepts, the proceedings will start by appointing a conciliator who is a mutually accepted person. The conciliator's role is to provide assistance in an independent and impartial manner to the parties to reach an amicable settlement of their dispute and to conduct the conciliation proceedings in such a manner as he considers appropriate. If there exist elements of a settlement likely to be accepted by the parties for their observations.

After receiving the observations of the parties, the conciliator may formulate the terms of a possible settlement in the light of such observations. If the parties reach agreement on the settlement of a dispute, the final settlement is drafted and the parties sign it.

As per section 74 of the Act the settlement

agreement has the same status and effect as if it is an arbitral award based on mutual agreement. Under Section 30. The parties should not resort to arbitral or judicial proceedings when the Conciliation proceedings are in progress. Thus, Conciliation proceedings are given binding effect under the Act.

(b)

Any law needs to be interpreted as the law is written in a few words and not like a novel. Each word used in a law may have various meanings and it needs an authenticity of a court to explain the law whenever it becomes necessary. There are various rules of interpretation and there is no specific law which provides how a law should be interpreted.

The court considers the circumstances. Sometimes the word used in the law, the intention of law maker etc. While interpreting the law one of such rule of interpretation is known as Liberal Construction or Golden Rule of Interpretation.

According to this rule, the words, phrase and sentence of a law should be given a natural meaning understood in a natural use unless it leads to an absurd situation which would not have been intended by the law maker. It also means that no word should be rejected if it has not been used in the statute. Similarly every word should be given meaning as the law maker does not use a word unless it has some relevance.

Thus, to put it precisely giving simple and straight forward meaning is the best way that a law can be interpreted according to Golden Rule of Interpretation.

(c)

Article 29(1) of the Constitution guarantees to the citizen of India the six fundamental freedoms including inter-alia freedom of speech and

exercised by them ~~themselves~~ ^{the government} ~~was~~
India. But none of these freedoms is absolute or uncontrolled, for each is liable to be curtailed by imposing reasonable restriction by the state to the extent mentioned in clause (2) to (6) of Article 19. Such reasonable restriction can be made in the interest of —

- (1) The Sovereignty and integrity of India.
- (2) The Security of the State.
- (3) Friendly relations with Foreign States.
- (4) Public Order.
- (5) Decency.
- (6) Morality.

(7) In relation to contempt of Court, defamation or incitement to an offence. In applying the test of reasonableness, which is the most crucial consideration, the broad criterion is whether the law strikes a proper balance between social control on the one hand and the rights of the individual on the other hand. The Court must take into account the following aspects: —

- (a) Nature of the right infringed.
- (b) Underlying purpose of the restriction imposed.
- (c) Evils sought to be remedied by the laws, its extents and urgency.
- (d) How far the restriction is or is not proportionate to evil, and
- (e) Prevailing conditions at the time.

Freedom of speech and expression is one of the basic rights in a democratic country. It covers the right to make a good or bad speech. In *Association of Bengal U. Ministry of Information and Broadcasting*, the Supreme Court had held that this freedom includes the right to communicate through any media, whether print, electronic or audio visual.

speech

(a)

Section 32(a) of the Indian Evidence Act, 1860

Evidence that statements written or verbal of deceased made by a person who is dead are themselves relevant. Falls in the following case -
When the statement is made by a person who is dead -
Cause of the death or as to the circumstances of the transaction which resulted in his death, in case in which the cause of that person's death comes into question.

Section 32(1) is an exception to the rule that hearsay evidence should not be permitted and it makes admissible the statement of a deceased person whether the death is homicidal or suicidal provided the statement relates to the cause of death, the reasons for admitting such evidence are (a) that it is the best evidence available and (b) the occasion as shown on the dying declaration. However, as witness statement to believe upon it, minor have been made. The conditions in Section 32 are:

(a) It must be a statement written or verbal.
Verbal means anything does not mean oral but also as including gestures made by a dying man capable to speak, in answer to the question put to him.
(b) The statement must relate to the cause of the death or the circumstances of the transaction which resulted in his death and not the cause of the death of someone else.
(c) The cause of the person's death must be in question. A dying declaration would be relevant in any proceeding civil or criminal where the cause of death comes into question.

When the declarant survives, the declaration cannot be used as dying declaration, yet it would be the proper statement of witnesses.

one accepted standard. Can make this in it for the purpose of cross-examining and corroborating the evidence.

(b)

As per section 2(1)(p) of the Information Technology Act, 2000 "digital Signature" means an authentication of any electronic record by a subscriber by means of an electronic method or procedure as per Section 3 of the Act. It is an encryption and decryption process which helps in identifying the author of an electronic message. It also helps in finding out whether the message has a secret private key which has a corresponding public key. The public key certificate is given by the concerned authority based on which the user will create a secret private key.

"NET WORK SERVICE" provider as per Section 79 of the Information Technology Act, 2000 means, an intermediary with regard to any particular electronic message or provide any service regarding that message on behalf of another person. Section 79 provides exemption from liability to network service provider is not liable for any third party information or data made available by him.

Answer to Question no. 23

(a)

"Charges" has been defined U/s 100 of Transfer of property Act as follows. "Where immovable property of one person is by the act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property."

As is evident from the above definition, a Charge came into existence either by the act

of parties or by operation of law.

A charge may be floating as well as fixed. A fixed charge is a charge on specific property but a floating charge is an equitable charge on the assets for time being of a going concern.

Distinction Between Mortgage and Charge

Mortgage

(i) A Mortgage is transfer of an interest in the property made by the mortgagor as security for the loan.

Charge

The charge is not the transfer of interest in property though it is security for the payment of an amount.

(ii) A mortgage can only be created by act of the parties.

A charge can be created by act of the parties as well as operation of law.

(iii) A mortgage must be registered and altered by two witnesses.

Charge need not to be made in writing, and if reduced to writing, it need not be altered or registered.

(iv) In certain types of Mortgage the mortgagor can foreclose the mortgaged property.

In charge, the charge holder cannot foreclose though he can get the property sold as in a simple mortgage.

(b)

The Central Information Commission^(CIC) is to be constituted by the Central Government through a Gazette notification. The CIC consist of the Chief Information Commissioner and Central Information Commissioners not exceeding 10. They shall be appointed by the President of India.

The Chief Information Commissioner and

Information Commissioner shall be the person of eminence in public life with wide knowledge and experience in law. The CIC/IC shall not be a member of Parliament or Member of the legislature of any state or union territory.

The general superintendence, direction and Management of the affairs of the Commission vests in the Chief Information Commissioner who shall be assisted by the Information Commissioners. Commission shall have its Headquarters in Delhi.

Powers of the Central Information Commission

The CIC has a duty to receive complaints from any person —

- Who has not been able to submit an information request because a PIO has not been appointed.
- Who has been refused information that was requested.
- Who has received a response to his/her information request within the specified time limits
- Who thinks the fee charged is unreasonable
- Who thinks information given is incomplete or false or misleading; and
- any other matter relating to obtaining information under this law.

If the Commission feels satisfied, an enquiry may be initiated and while initiating an enquiry, the Commission has same powers as vested in a civil Court.

Answers to Question No 4

(a)

Section 18 of the Limitation Act, 1963 deals with the effect of acknowledgement of liability in respect of property or right on the period

(a) Limitation is per section 32 of the Act; following requirements should be present for a valid acknowledgement:

- (1) There must be an admission or acknowledgement.
- (2) Such acknowledgement must be in respect of any property or right.
- (3) It must be made before the expiry of period of limitation; and
- (4) It must be in writing and signed by the party against whom such property or right is claimed.

(b)

(i) without legal justification

(ii) Rule of Interpretation of Statute

(iii) Null and void ab initio

(iv) Two

(v) Contingent Transfer

(c)

(i) (a) By Statute (like, Small Causes Court)

(b) By territorial area fixed by the Government

(c) Based on pecuniary value of the suit.

(ii) (d) To provide legal recognition for transactions carried by means of electronic data interchange or E-commerce.

(iii) (a) A decree where by any right as to any property or a legal character of a person is judicially ascertained.

(iv) (a) within one year from the date on which the debt became due and payable.

(V)(c) Confession made before a Judicial Magistrate.

Answers to Question No : 5.

(a)

Section 34 of Arbitration and Conciliation Act, 1996 provides that whenever any party applies to the Court and proves that he was not given proper notice of the arbitral proceedings and thus he could not present his case properly, then the Court may order setting aside of the award. For this purpose, application for setting aside the award must be given within three months of receiving the arbitral award which is challenged.

In this case, Vivek applied after 45 days of receiving the award. It is well within the limitation period. His grounds are justified. If he proves them, then Court may set aside the award u/s 34 of the Act.

(b)

Section 5 of the Limitation Act, 1963 provides that any appeal or application may be admitted after the prescribed period of limitation if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within the limitation period. Sufficient cause has not been defined but the Court must be convinced of the reasons for the delay. This section does not apply to suits.

In the given case, impignorment may be treated by the Court as sufficient cause and the Court may be justified in extending the period of limitation.

(c)

Sections 45 and 47 of the Indian Evidence Act, 1872 make provisions for providing the handwriting or signature found as a document. Section 45 enables the Court to take the assistance of handwriting

experts for their opinions in deciding about the handwriting of a person. Similarly, Section 47 permits the Court to take the opinion of any person acquainted with the handwriting of the person in whom it is supposed to be written or signed. Their opinions will be considered as relevant facts.

In given case Anthony denies the execution as well as the signature on the gift deed. All the attesting witnesses have died. The only option available with Binny to prove the gift deed is through the opinion of handwriting experts or the opinion of persons acquainted with the handwriting of Anthony.

(d)

In the given case, before the date of agreement to sell, the delivery of possession of the house has been given. As per Indian Stamp Act, 1899 both acts will be treated as part of the same transaction. For the purpose of stamp duty, agreement to sell will be treated as sale deed. The facts are similar to U.L. Narasimha Rao v. K.T. Pentalaiah, in which the Court has held as above.

Therefore the agreement dated July, 2nd 2002 is to be treated as sale deed. The parties must have stamped the document based on what is applicable for agreement to sell. The party should pay the deficient duty to admit the document in evidence.

Answer to Question No 6.

(a)

It amounts to renewal of 15 years from month to month.

Section 16 of the Transfer of Property Act specifying effect of holding over says, if a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee and the lessee is the legal

accept rent the lessee or under-lessee, or otherwise accords to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 116. The given problem is an illustration appended to Section 116 of the Transfer of Property Act, 1882.

(b)

Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Primary evidence as per Section 62 of the Evidence Act means the "document itself produced for the inspection of the Court".

The Explanation 2 appended to Section 62 of the Evidence Act says where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the text but where they are all copies of a common original, they are not primary evidence of the contents of the original.

The given problem is an illustration appended to Section 62 of the Indian Evidence Act.

(c)

This statement may not be taken into consideration by the Court against A as B is not being jointly tried. In the case of joint trial, the Court may consider the effect of this confession as against B.

The given problem is an illustration appended to Section 30 of the Indian Evidence Act 1872. Section 30 of the Indian Evidence Act says when more persons than one are being tried jointly for the same offence, and a confession made by one of such person is

provided the Court may take into consideration
such confession as against such other person
as well as against the person who makes
such confession.