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Mains Evaluation



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Shivani Purohit

Law Paper 1 (12th Feb, 2022)

1 1/5 / 3

Ques. 1

Sec. 21 (1), of Code of Civil procedure provides that, no objection as to place of suing will be allowed by an appellate or revisional court unless following conditions are satisfied :

* Rule of Convenience
* Maxim vigilantibus non dormientibus jura subvenient

Court of first Instance

1. The objection was taken at first instance in court
2. It was taken at earliest possible opportunity and in cases where issues are settled at or before settlement of issues; and
3. There has been consequent failure of justice

Ques 2. Reservation of posts in government services is a broad and infamous subject. The basis of reservation was always to bring every class of people on equal footing majorly on financial and social aspects. So the basis and limit of reservation should still be the financial status as discrimination on caste and class level has been decreased but financial gap has been increased from past recent years.

* Provision missing Art. 16, 335, 338, 334, 341 & 342
* Indira Sawhney case
* Balaji Vs State of Mysore

1 1/5 / 3

Ques 3 No, a remand order cannot confer jurisdiction on the subordinate court when such court originally do not have such power. It is settled principle that no appellate court can confer jurisdiction on a subordinate court, however high appellate court may be as, jurisdiction of a court is determined by statue. In case of Venkatarama v Angathayammal it is held that

2 1/3

(1)

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an appellate court remanding a case to an inferior court cannot confer jurisdiction on court if it inherently lacked the same.

Ques 4.

* Start with Sec 9 of CPC along with explanations of the section
* Meaning of Civil Suit
→ Kehar Sinha V/s Custodian General Narayan
→ Shankar Narayan Potti V/s K. Sreedevi

A suit is of civil nature if the principal question therein relates to the determination of a civil right and its enforcement.

It is subject matter of suit which determines whether it is suit of civil nature or not.

In a suit in which right to property or to an office is contested whether it is of civil nature or not, what needs to be determined is whether it entirely depends on religious rites or ceremonies or not? If its decision doesnot entirely depends on religious rites or ceremonies it is a suit of civil nature.

(i) Right to take out religious procession is a suit of civil nature

(ii) Right of Pardanasheen Lady to observe parda is a suit of civil nature

(iii) Right to franchise is a suit of civil nature

11/5/3

Ques 5

* Provision
* Maxim

Doctrine of res judicata applies between co-defendant only if plaintiff claimed any relief and he cannot get his relief without trying and deciding a case between the co-defendants. However it has been revealed that requisite conditions should be fulfilled to apply principle of resjudicata as between defendants and that are:

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1) There must be conflict of interest between the defendants concerned
2) it must be necessary to decide the conflict in order to give the reliefs which plaintiff claims.
3) the question between plaintiff the defendants must have been finally decided.
4) the co-defendants were necessary or proper party in former suit. (Govindammal by LRs vs Vaidyanathan)

* Sec 11 CPC

Res judicata

- suit which is finally decided by competent court
- In this a case is heard & finally decided
- Subsequent suit on same subject matter is prohibited
- Objective is to prevent multiple litigation

* section 10 CPC

Res subjudice

- A suit which is pending in a competent court
- In res subjudice, case is pending in court
- subsequent suit on same subject matter is stayed.
- Objective is prohibition of concurrent justice

2/3

Maxims / Nemo debet bis vexare pro una et eadem causa

Manohar Lal vs Seth Hiralal

Res judicata

- In this suit is finally heard & decided which cannot be presented further as a suit
- Object is to prohibit multiplicity of litigation
- It is result of judgment of court

Re Estoppel

→ Sec 115 IEA
→ Pickard vs Sears

- In this a person cannot be allowed to change his position if he makes another to believe in good faith
- Its object is to protect right of such person who acts in good faith
- It is based on act of parties

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Ques 6

* Mention sec 22-25

General powers of a court to transfer suits or appeals is provided under sec-24 of CPC. It empowers District Judge and High Court to transfer cases.

D looks like P

* It also talks about the power of withdrawal

Yes ~~they~~, a party can apply for such transfer as the provision of sec-24 provides that such power can be used ~~as~~ suo moto or on application of any of the parties

by the Court

The power of transfer can be used by court on application of parties after notice of it is sent to other party & after hearing such of them.

1.5/3

In case of suo moto no notice is required.

District court or High court may at any stage

- transfer any suit, appeal or other proceeding for trial or disposal to any subordinate court
- May add new issues
- May refer cases for arbitration
- May decide case as per arbitration
- May issue decree ~~for~~ ~~ex~~ proceed for execution of decree.

Ques 7

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12/3

Ques 8

Sale of immovable property as defined in sec 54 is transfer of ownership in exchange for price paid or promised or partly paid or partly promised.

* Mentioned in chapter 9, Essentials of sale

Draw a line for division

Sale	Contract for sale
• It is transfer of immovable property	• It is merely an agreement for sale of property in future on terms agreed between the parties
• after the sale all rights & liabilities of owner is transferred to vendee	• No interest of vendee is created. Ownership remains with vendor
• Sale creates right is rem	• It creates right in personam where only purchaser can compel the seller to execute the promise
• It conveys a legal title to Purchaser	• It does not convey legal title to purchaser.

* Sale how made

* State of Madras V. Gannon Dunkerly

* No, purchaser do not acquire any right or charge upon the property sold by virtue of contract for sale of such property.

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N Nishtha Singh

★★★★★ 09/12/2022

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Garvit Dave

★★★★★ 25/08/2021

Dear ma'am Greetings of the day! On a personal note, Edzorb law helped me a lot, rather it helped me immensely in my preparation. As we all know that standard books for the preparation are very bulky & language is also hard but the way Edzorb team has put effort to explain the concept through pictorial example which are related to our day to day life, thus making it very simple and easy to understand various provision. With regards to notes, I would contend that they are very simplified and provide in depth knowledge of every subject, one can never feel tired while studying. The best thing is the highlighted portion of it. To summarise The course, is very helpful for quick revision. Thank you EDZORB for your extreme efforts. With best regards Garvit dave



Nisha Singh

★★★★★ 02/01/2023

Edzorb law is a digital app that helps simplify preparation.I adore and recommend the app as it provides overall preparation tactics. Even if you are traveling you can just access it from anywhere. The simplified notes are the best way to revise Bare Act, and the Q bank is designed to ensure full coverage of topics for an overall preparation. I am grateful to be a member of the Edzorb family.

Ques 9 Recent Judicial Trends? $\frac{1\frac{1}{5}}{3}$

Penal statue	Remedial statue
1. It deals with the wrongs against state	1. It deals with the wrongs against an individual
2. It provides punishment for public wrong	2. It provides remedy for infringement of private civil rights of an individual
3. Duty is fixed by state	3. Here duty is fixed by parties
4. Action is taken by state	4. Action is taken by injured party
5. It receives strict construction.	5. It receives beneficial or liberal construction

Noor Saba Khatoon V/S Mohd Qasim
JK (Bombay) Ltd V/S Bharti Maha Mishra

Ques 10 Internal aids to interpretation are those which may be contained in the statue itself forming a part of it. They are taken as an aid to interpretation whenever there is ambiguity in language of statue and meaning of words are not clear

or may not form the part of the statute

full copy from Internet

Some of the internal aids ~~are~~ to interpretation are

Title - it gives description of act.
- further divided into short title & long title

Won't work with us

Short title ex: Transfer of Property Act

In Manoharlal v. State of Punjab - it was observed that scope of act can be decided with help of long title & help can be taken from it for interpretation

Long title ex: The preamble of the Act

Preamble - it tell us about true intention of legislature for which act was enacted.

$\frac{1\frac{1}{5}}{3}$

Marginal notes, Provisos, headings, etc are few of them

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External aid to interpretation comes into play when internal aid fails. Internal aid is considered more valuable as compared to external aid. They do not form part of enactment, but helps to ascertain intention of legislature as generally they talk about history of enactment and reasons for its introduction

Dictionaries, statement of Object & Reasons, parliamentary history & facts, reports, textbooks etc are few of them

fails 'it looks like facts

Case law & P. Prabhakar Rao v/s state of A.P

→ Some example of External aids are:
→ dictionaries
→ statement of object & Reasons.

Ques 11

Revision	Review
1. Power of revision can be exercised only by High Court	1. It is done by court which has passed the order
2. It is exercised ~~on~~ when no appeal lies to High Court	2. Review of an order or decree can be made even if appeal lies to High Court
3. This power can be exercised by High Court by its own motion	3. For review an application is required to be filed by aggrieved party
4. The order ~~granting~~ passed on ~~the~~ revisional jurisdiction is not appealable	4. The order ~~passed~~ on granting review is appealable
5. It is dealt under Sec-115 CPC	5. It is dealt under Sec-114 of CPC

Provision of laws missing

CrPC → S.399 & 401 → HC's power

session court's power

2/4

mention this on top and not last

* Too short for 4 marks

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Ques 12 No A do not have any remedy against B as the promise of dropping prosecution against B by A in consideration of restoring articles is a void agreement. Its object is unlawful according Sec- 23 of Indian contract Act thus the agreement is void and void agreement do not have any remedy

Too short for 4 marks → should be minimum 100-150 words

Ques 13 Generally limitation bars the remedy but does not extinguish the title. So the object of this limitation Act is to prevent rearing up of the claim with large gap of time when evidence are lost. It keeps the person in need to claim any remedy to be alert of its rights. This Act is based on maxims Vigilantibus non dormientibus jura subveniunt which means law assist the vigilant and not those who sleep over its rights, and interest reipublicae ut sit finis litium - that is interest of state requires that a period should put an end to litigation

However it only extinguishes the legal remedy but not the right. for example if a payment of time barred debt is made by debtor in ignorance, he cannot recall that on plea of debt that the debt was barred by limitation and creditor has not right to appropriate his payment made in ignorance of bar.

Nonetheless there is an exception to this rule Under Sec-27 of the Act which bars both remedy and right if not

claimed their right in prescribed time.

S.5 missing sufficient cause

cases ?

2/4

No mention of law of Extension of period of limitation mentioned in S.5

Ques 14

In undisclosed principle is a person who uses an agent for his negotiations with a third party, often when agent pretends to be acting for him. As a result third party does not know about real principal and considers agent as real principal.

• Mention the name of the chapter

The Act! of the section on w/c the Question is asked in the beginning only.

2/4

According to sec-231 of ?, if an agent makes a contract with a person who neither knows, nor has reason to suspect that he is an agent, his principal has right to require performance of contract. But the other contracting party has, as against principal same right as he would have had against the agent if he had been the principal

However right to require performance of contract by undisclosed principal is subject to rights and obligations subsisting between the agent and the other party as per sec-232. of ?

Illustration - 'A' who owes 500 Rs B to B, sells 1000 Rs worth of rice to B. A is acting as agent for C, in in the transaction, but B has no knowledge or reasonable ground of suspicion that such is case. C cannot compel 'B' to take the rice without allowing him to set off A's debt

Thus, before undisclosed principal may enforce any right or be liable for any obligation under a contract apparently made between the agent and third party, two condition have to be met -

1) The agent must have actual authority, whether expres or implied, to enter into the contract in question

2) The agent on entering into contract with third party must have intented to act on behalf of undisclosed principal, nor for his own benefit.

Further - undisclosed principal remains liable to a third party for price of goods or services provided under the contract made in agent's name with third party.

- Where identity of principal is disclosed, and third party is to take action for recovery of any amount payable to him in contract, he can elect to sue either agent or undisclosed principal

- There are cases where undisclosed principal may not be sue or be sued by third party under contract made between the agent & in the agent's name & third party. Following are few examples of such cases-

1) A promise by agent to third party to lend money to agent personally cannot be enforced by an undisclosed principal

2) A contract involving strictly personal skill or service cannot be performed by an undisclosed

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Ques 15. The law relating to exclusion of time in legal proceedings is under limitation act is provided under sec - 15. S.12

It states that in computing period of limitation of:

- Institution of suit or execution of decree is stayed by injunction or order -

  following time period shall be excluded

  1. time of continuance of injunction of order
  2. Day on it was issued
  3. Day of its withdrawal

- Suit for which notice has been given or previous sanction or consent of government or any authority is required - time required for such sanction or consent shall be excluded

Further its explanation provides that, in excluding the time, - date on which application was made &
- date of receipt of order of government shall also be counted

- In any suit or application for execution of a decree by any receiver or interim receiver appointed in proceedings for adjudication of person as insolvent or by any liquidator appointed in proceeding for winding up of company - period of beginning with the date of institution of such proceeding and ending with expiry of 3 months from date of appointment of such receiver shall be excluded

- In suit for possession by purchaser at sale of execution of decree - time during which proceeding set aside shall be excluded

A The Question is about exclusion of time in legal proceedings S.15 talks about exclusion of time in other cases.

1/4

A S.15 would have been added in extra

A The main focus should have been on S.12

• time for which defendant has been absent from India or territories outside India is excluded

Ques 16

Right of redemption means the right of return or repossession of property offered as security upon payment of mortgage debt or charge. It is a right of a mortgagor against mortgagee to redeem the mortgaged property

More Content of S.60 should be mentioned

Amount

Sec-60 of Transfer of Property Act provides for right of mortgagor to redeem. It states that, it is an act of buying back the property after tendering the amount due to creditor. Mortgagor has right to redeem his property after paying off the debt amount.

It is based on term - Once a Mortgage always a mortgage

not term, It's a rule

It suggest that mortgagor's right of redemption is an indefeasible right that cannot be taken away from him by any law or contract

This right of mortgagor cannot be detached from the mortgage and it can be redeemed any time after principal money has become due.

But the mortgagor can redeem his property before his equity of redemption has actually been foreclosed i.e till suit of foreclosure has been passed against him

3/6

You can put heading

Once a Mortgage always a Mortgage

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This implies that mortgagor's right of redemption and the mortgagee's right of foreclosure or sale are co-extensive. As when mortgagor's right to redeem accrues, the mortgagee has right to enforce his security. However the terms of mortgage may limit the rule and where the limitation not unreasonable, it will be given effect

This right of right redemption will have effect of return of documents and return of possession of mortgaged property under Sec-60 & 62

The mortgagor may also require that instead of reconveying property to mortgagor, mortgagee shall assign the mortgage debt to third person named by him U/sec 60A.

Along with it Mortgagor becomes entitled to -

- accession to mortgaged property under S-63
- improvements made thereon under S-63A
- to renewed mortgage lease U/sec-64

for foreclosure section can be put S.67 of TPA

Ques 18

Agreement between husband and wife to live separately permanently & husband agreeing to pay 5000 p monthly is a separation agreement. India legal system do not hold it ground for enforcement in court. In many cases courts have held that separation agreement has no legal sanctity. But this doesn't mean it is altogether worthless

* Not sufficient for 16 marks - should have maximum 200 (13) words

could have mentioned s.10 of ICA

Thus the separation agreement is not legally binding but can be used for figuring out the intention of couple seeking a divorce

What agreements are contracts? s.10

Ques 19

4/6

A Best Answer till now

Limited period Tenancy under Rajasthan Rent Control Act 2001 is provided under Sec 8.

It states that - a landlord may let out the premises for residential purposes for a limited period not exceeding 3 years.

For that Tenant & landlord has to submit joint petition before a Rent Tribunal for -

- permission to enter into limited ~~tenancy~~ period Tenancy
- grant of certificate of recovery of possession

- The Rent Tribunal shall grant permission immediately. It is issue certificate for recovery of possession of such premises executable on expiry of period mentioned in the certificate.
- However such permission shall not be granted for more than three times for same premises
- Further proviso of the section provides that certificate for recovery of possession issued shall lapse if petition for execution has not been filed before the tribunal within 6 months from date of such certificate becomes executable

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Sec 10 provides for right of landlord to recover immediate possession in certain cases. It states that a landlord shall, on a petition being filed in this behalf in the Rent Tribunal, be entitled to recover immediate possession of a residential premises if the landlord -

(a) required by armed forced personell after retirement -
- such petition should be filed within 1 year prior to or subsequent to date of retirement, release or discharge or
- within a period of 1 year from date of commencement of this Act

(b) required by government employee after retirement, whether of central government or state government or of local body.
- such petition should be filed within period of 1 year prior to or subsequent of his retirement

(c) landlord become a senior citizen, he should file the petition after expiry of three years from date of letting out of premises

In cases where landlord has let out more than one premises, he can file petition in respect of only one rented premises. Such premises can only be chosen by landlord and petition under sub sec(1) shall be maintainable only if he is not residing in his own

* Include case laws
* defination of landlord & Tenant is can be mentioned

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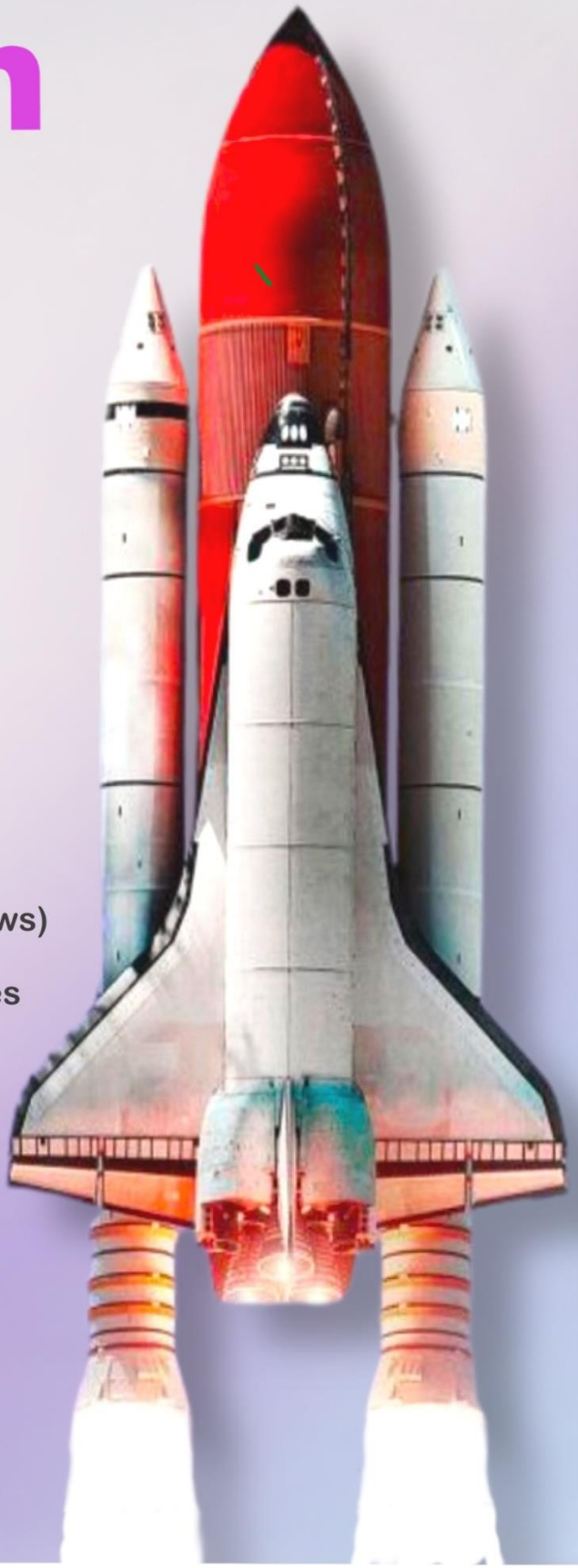

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Ques 24 (a) Right of private defence of property extend to causing of death

Such right of private defence of property extending to cause death is dealt under Sec 103 of Indian Penal Code. It permits a person to extend its right of private defence to cause death only under certain circumstances as mentioned under the provision of the Code. Such circumstances are

1. When robbery is committed
2. When offence of housebreaking by night is committed
3. When mischief by fire committed on any building, tent or vessel, which is used as human dwelling or as a place for the custody of property
4. When theft, mischief or house trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be consequence, if such right of private defense is not exercised.

This right commences as soon as a reasonable apprehension of danger to body arises from an attempt, or threat to commit offence, although offence may not have committed but not until there is that reasonable apprehension. the right lasts as long as reasonable apprehension exist

Amar Nath v. State of Kerala.

S. 104 & S. 105 should also be mentioned

* Case law without principal useless (S. 105)

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(b) Police officer's report after completing investigation

Police Off Officers submits its report after completing investigation under sec 173 of code of criminal proceeding. It is stated that every investigation should be completed without unnecessary delay. In case investigation relates to an offence under sec 376, 376 A, 376 B, 376, AB, 376 C, 376 D, 376 DD or 376 E of Indian Penal code it ~~shall~~ should be completed within 2 months which shall be calculated from date of information was recorded by officer incharge of police station

Such report shall be forwarde from officer incharge of police station to Magistrate empowered to take cognizance of offence under Sec 173 (2) of IPC

Such report shall be in format or form as prescribed by state government. Shall

It will contain following details

1. Nature of information
2. Name of the parties
3. Name of person acquainted with case
4. Offence which appears to have been committed?
5. If so, by whom
5. Whether accused has been arrested
6. Whether released on bond or sureties
7. Whether he has been forwarded in custody under sec 170
8. Medical report of a woman.

definition of police report in 2(r) of CrPC can be mentioned

don't mention the act if you are not sure

IPC or CrPC ?

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According to sec-173(3) In case superior officer of police has been appointed under sec 158 and State government by order directs, then report shall be submitted through that officer
While orders of Magistrate are pending, such an Officer may also direct officer in charge of police to make further investigation if required.

(c) Doctrine of election with illustration
Section 35 of Transfer of Property Act discusses the doctrine of election. It states that when a person / transferor in same transaction confers benefit on owner of property and to transferee, the owner is put to election either to accept benefit of transfer or refuse it.
Its essentials are - that transfer should be in same transaction
- Benefit & burden must come from same transaction.
- benefit is directly given to owner

For example, ashwini proposes to transfer property of Rohan to Divyansh and gives 10,000 to husband wife of Rohan. This is not case of direct benefit to Rohan thus Rohan has no duty to elect
As stated benefit and transfer must be inseparable and interdependent

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And in case person refuses to such transfer, he has to relinquish all the benefit so transferred and such benefits shall be reverted back to transferor or his representative

(d) missing ?

Such property is reverted back when

- transfer is gratuitous
- transfer has before election died or became incapable of fresh transfer
- In all cases where transfer is for consideration

Include Cooper V/s Cooper

Landmark Case on election

Owner of property has choice either to elect by express mode or impliedly from contract.

Express election is final & conclusive in nature

In case where owner has full knowledge of circumstance and he being aware of his duty to elect accepts the benefit, it is implied that he has chosen in favour of transaction

But such owner has to signify his conformation or dissent from transfer within 1 year after date of transfer.

~~There are certain exceptions to it~~ -

Should be mentioned at top

If this doctrine is based on equity. If two rights are endowed on a person under any instrument in a manner that one right is more preferable than other, he is bound to elect or chose only one of them.

This doctrine is based on maxim - qui approbat non reprobate which means one cannot approbate

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3. Missed out on lot of Questions.
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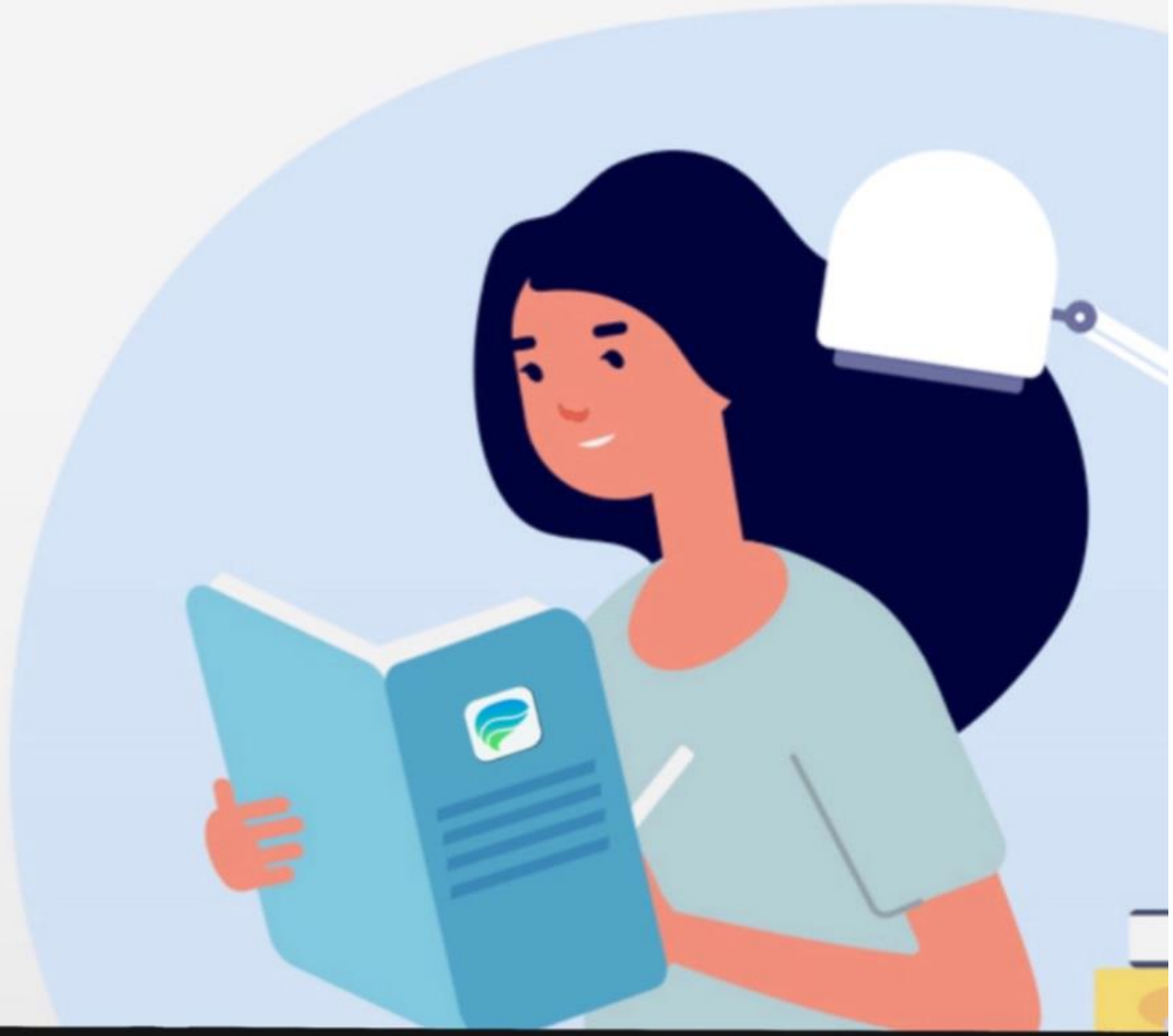

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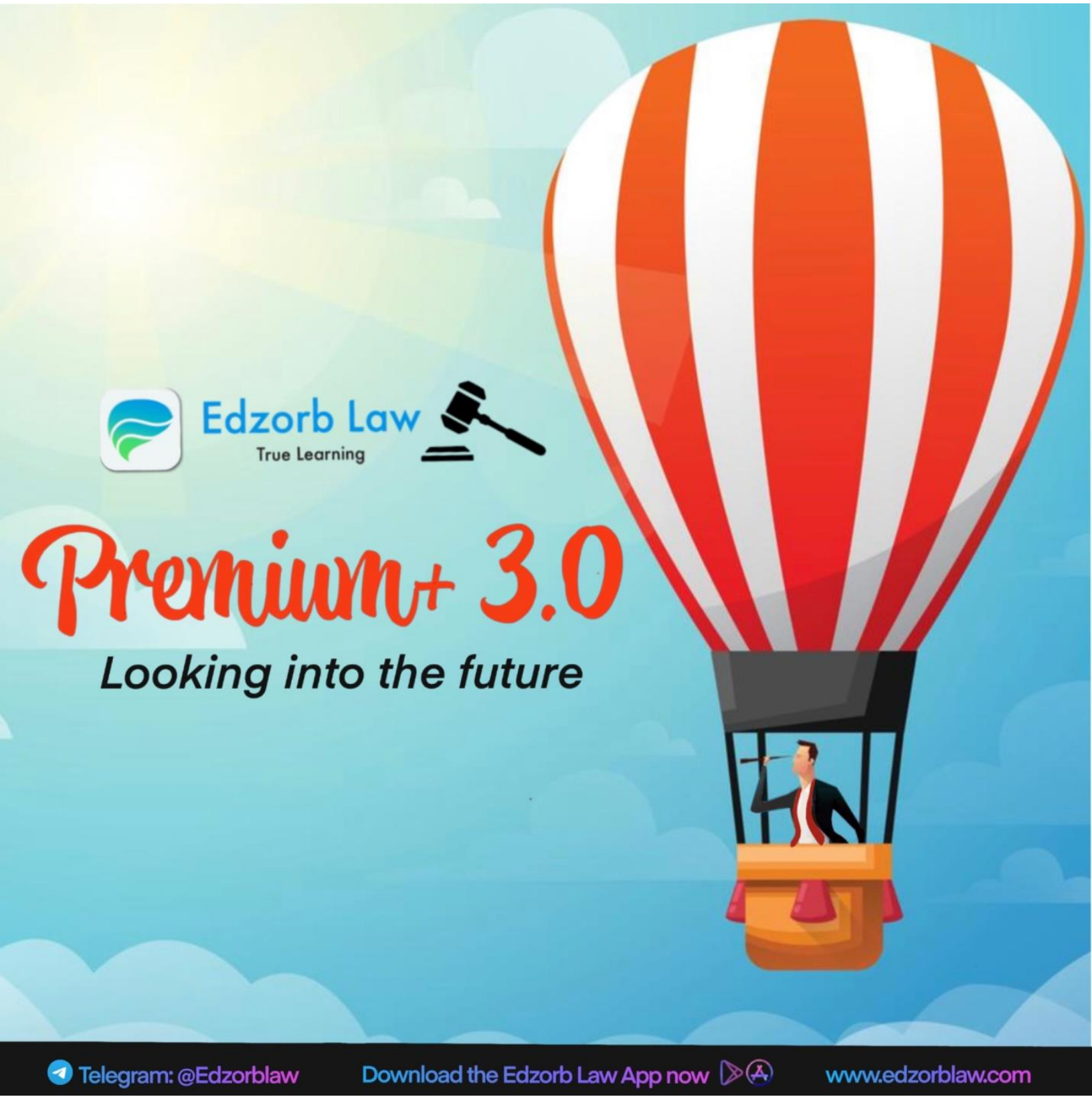

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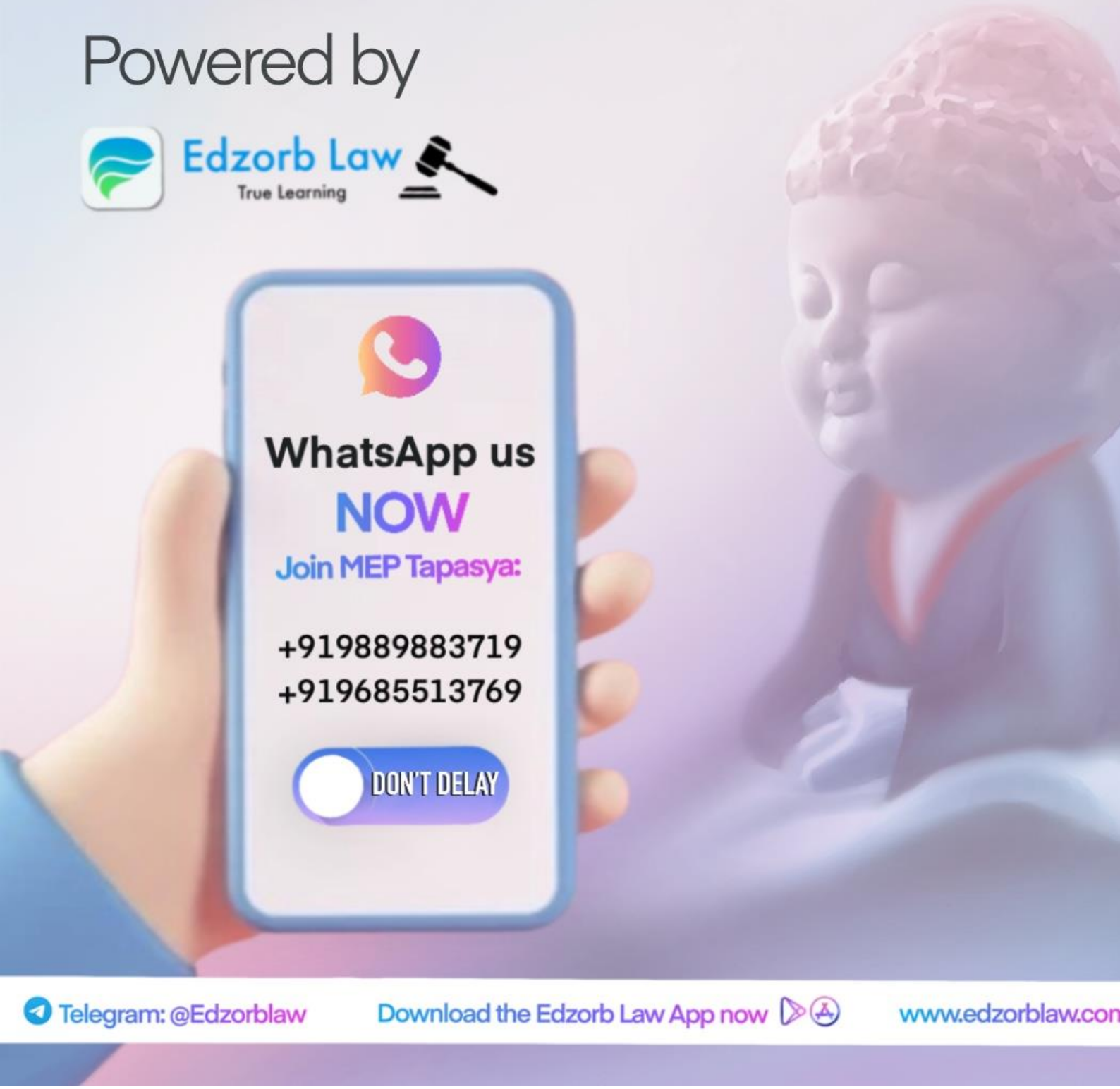

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