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**BIHAR JUDICIAL SERVICE (CIVIL JUDGE) MAINS WRITTEN
EXAM-2021**

LAW OF EVIDENCE AND PROCEDURE

GROUP-A

1. (a) Explain the meaning of the following:

(i) Mesne profit

(ii) Indigent person

Source: Edzorb Law, Bihar Mains Blueprint, **Subject:** Civil Procedure Code, **Page No. 8**, 100% Strike Rate

(b) Describe in detail the law relating to place of filing a Civil Suit.

Source: Edzorb Law, Bihar Mains Blueprint, **Subject:** Civil Procedure Code, **Page No. 7**, 100% Strike Rate

2. (a) What is temporary injunction? When and in what matters temporary injunction can be granted?

Source: Edzorb Law, Bihar Mains Blueprint, **Subject:** Civil Procedure Code, **Page No. 10**, 100% Strike Rate

(b) Enumerate various properties which are exempted from attachment in execution of decree under Civil Procedure Code.

Source: Edzorb Law, Bihar Mains Blueprint, **Subject:** Civil Procedure Code, **Page No. 8**, 100% Strike Rate

3. (a) Distinguish between the following:

- (i) Decree and Order
- (ii) Review and Revision

Source: Edzorb Law, Bihar Mains Blueprint, **Subject:** Civil Procedure Code, **Page No. 8**, 100% Strike Rate

(b) Distinguish between the following:

- (i) Counterclaim and Set-off
- (ii) Commission and Receiver

Source: Edzorb Law, Bihar Mains Blueprint, **Subject:** Civil Procedure Code, **Page No. 10**, 100% Strike Rate

GROUP-B

4. (a) What is Dying Declaration? When is a dying declaration admissible in evidence?

Source: Edzorb Law, Bihar Mains Blueprint, **Subject:** Indian Evidence Act, **Page No. 2**, 100% Strike Rate

(b) Write notes on the following:

(i) Hostile witness

(ii) Leading question

Source: Edzorb Law, Bihar Mains Blueprint, **Subject:** Indian Evidence Act, **Page No. 2**, 100% Strike Rate

5. (a) Distinguish between the following:

(i) Patent and Latent Ambiguity

(ii) Judgment in rem and Judgment in personam

Source: Edzorb Law, **Simplified Notes**, **Subject:** Indian Evidence Act, 100% Strike Rate

(b) Discuss the relevancy of evidence of character in criminal and civil cases.

Source: Edzorb Law, Bihar Mains Blueprint, **Subject:** Indian Evidence Act, **Page No. 1**, 100% Strike Rate

6. (a) What do you understand by 'Burden of Proof'? On whom the burden of proof will lie in the following instances?

(i) A has given a loan of Rs.1000 to B. B says that he has returned Rs.500 to A in presence of C. A and B Rs.1000

(ii) A has killed B. The defence of A is that he has exercised his right of private defence.

Source: Edzorb Law, Bihar Mains Blueprint, **Subject:** Indian Evidence Act, **Page No. 3**, 100% Strike Rate

(b) What are the facts which need not be proved by the parties?

Source: Edzorb Law, Bihar Mains Blueprint, **Subject:** Indian Evidence Act, **Page No. 3**, 100% Strike Rate

GROUP-C

7. (a) Discuss the grounds for setting aside an 'Arbitral Award'.

Source: Edzorb Law, Bihar Mains Blueprint, **Subject:** Arbitration & Conciliation Act, **Page No. 12**, 100% Strike Rate

(b) Write notes on the following:

(i) Arbitration Agreement

(ii) Foreign Award

Source: Edzorb Law, Bihar Mains Blueprint, **Subject:** Arbitration & Conciliation Act, **Page No. 12**, 100% Strike Rate

8. (a) What are the rules regarding the removal of arbitrator? Can an appointed arbitrator be removed by any Party or Court?

(b) Distinguish between the following:

(i) Arbitration and Judicial Adjudication

(ii) Conciliation and Negotiation

Source: Edzorb Law, **Simplified Notes**, **Subject:** Arbitration & Conciliation Act, 100% Strike Rate

GROUP-D

9. (a) What is the 'Charge'? Can the Court alter a charge? If so, how and when?

Source: Edzorb Law, Bihar Mains Blueprint, **Subject:** Criminal Procedure Code, **Page No. 6**, 100% Strike Rate

(b) Distinguish between the following:

(i) Cognizable offences and non-cognizable

(ii) Conviction and Acquittal

Source: Edzorb Law, **Simplified Notes**, **Subject:** Criminal Procedure Code, 100% Strike Rate

10. (a) Discuss the procedure for disposal of the cases adopted by the Small Cause Courts under the Provincial Small Cause Courts Act, 1887.

(b) Whether the Small Cause Courts are competent to hear the following cases?

(i) A Suit for relief of Divorce

(ii) A Suit for dissolution of partnership



**BIHAR JUDICIAL SERVICE (CIVIL JUDGE) MAINS WRITTEN
EXAM-2021**

CONSTITUTIONAL AND ADMINISTRATIVE LAW OF INDIA

GROUP A

1. It is fallacious to think that Directive Principles and Fundamental Rights are opposed to each other in their ultimate objectives. They are in fact, 'complementary and supplementary to each other, both striving to secure socio-economic welfare by ensuring a social order in which justice and individual liberty are safeguarded.'

Discuss this statement with the help of decided cases.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Constitution of India, 100% Strike Rate

2. "Freedom of press plays a pivotal role in the democratic setup of the country."

Discuss this statement in the light of relevant provisions of the Indian Constitution along with the aspects of freedom of circulation, commercial advertisement and electronic media, as laid down by the Indian judiciary.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Constitution of India, 100% Strike Rate

3. "Since literal approach of Apex Court in the A. K. Gopalan case, a sea change has taken place while giving meaning and content to the provisions of Article 21 of the Constitution by the courts."

Discuss in detail on the important developments mentioning the changing shape of Article 21 by Apex Court through various pronouncements.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Constitution of India, 100% Strike Rate

4. "Judicial decisions in the matters of appointment of judges and their transfer have resulted in maintenance of Independence of Judiciary." Critically analyse this statement and cite relevant case laws.

5. "The Indian Constitution seeks to create an exclusive area for Centre, exclusive area for States and a common concurrent area for States and Centre."

Explain the distribution of power between the Centre and States in the light of this statement.

GROUP-B

6. On what grounds delegated legislation can be declared substantively ultra vires? Also discuss the permissibility and impermissibility of the rule making powers of the executive. Cite relevant cases.

7. "The most significant and outstanding development of the 20th century is the rapid growth of administrative law. In this century, the philosophy as to the role and function of the State has undergone a radical change."

In the light of this statement, discuss in detail the development and evolution of administrative law.

8. Differentiate among doctrines of legitimate expectation, proportionality, collateral purpose and mala fide with the help of relevant case laws.

9. How the Tribunal is distinct from the Court? Explain the constitution, powers and procedures of administrative tribunals and scope of judicial review.

10. "The term Public Interest Litigation was first used by Professor Abram Chayes in 1976, to refer to cases seeking social change through court's directive which articulated public norms of governance and enforced the public norms."

In the light of the above statement, discuss:

- (a) Meaning and scope of Public Interest Litigation;
- (b) Public Interest Litigation in India with reference to relevant legal provisions and case laws.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Constitution of India, 100% Strike Rate



**BIHAR JUDICIAL SERVICE (CIVIL JUDGE) MAINS WRITTEN
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HINDU LAW AND MUHAMMADAN LAW

PART-I

1. What do you mean by adoption? Explain the requisites of a valid adoption. Discuss the changes brought by the Hindu Adoptions and Maintenance Act, 1956.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Hindu Adoptions and Maintenance Act, 100% Strike Rate

2. Discuss the grounds of divorce under the Hindu law. Whether a Hindu male after his acquittal in trial of Section 498A of the Indian Penal Code, 1860 can seek divorce from his wife under the Hindu law?

Source: Edzorb Law, **Simplified Notes**, **Subject:** Hindu Marriage Act, 100% Strike Rate

3. Who are the guardians under the Hindu law? Discuss their powers and functions with special reference to their power of alienation.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Hindu Minority and Guardianship Act, 100% Strike Rate

4. Write notes on the following:

(a) Antecedent Debts

(b) Restitution of Conjugal Rights

Source: Edzorb Law, **Simplified Notes**, **Subject:** Hindu Marriage Act, 100% Strike Rate

5. What do you mean by partition? Discuss the various modes of effective partition. Under what circumstances partition can be reopened?

Source: Edzorb Law, **Simplified Notes**, **Subject:** Hindu Succession Act, 100% Strike Rate

PART-II

6. What are the various sources of the Muslim Law? Discuss the relevance of modern sources in present scenario.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Muslim Law, 100% Strike Rate

7. "Muslim marriage is not sacrament, but purely a civil contract." Explain. Discuss the approved classification of marriages under the Muslim law.

Source: Edzorb Law, Simplified Notes, **Subject:** Muslim Law, 100% Strike Rate

8. What is guardianship under the Muslim law? Who are entitled to act as guardian under the Muslim law? Distinguish between Guardianship and Hizanat.

Source: Edzorb Law, Simplified Notes, **Subject:** Muslim Law, 100% Strike Rate

9. What do you mean by legitimacy and legitimation under the Muslim law? Discuss the rules of valid acknowledgement with reference to status of adoption under the Muslim law.

Source: Edzorb Law, Simplified Notes, **Subject:** Muslim Law, 100% Strike Rate

10. Discuss the term 'Hiba' with reference to its requisites under the Muslim law. Distinguish between 'Hiba-bil-iwad' and 'Hiba-ba-shart ul-iwaz'.



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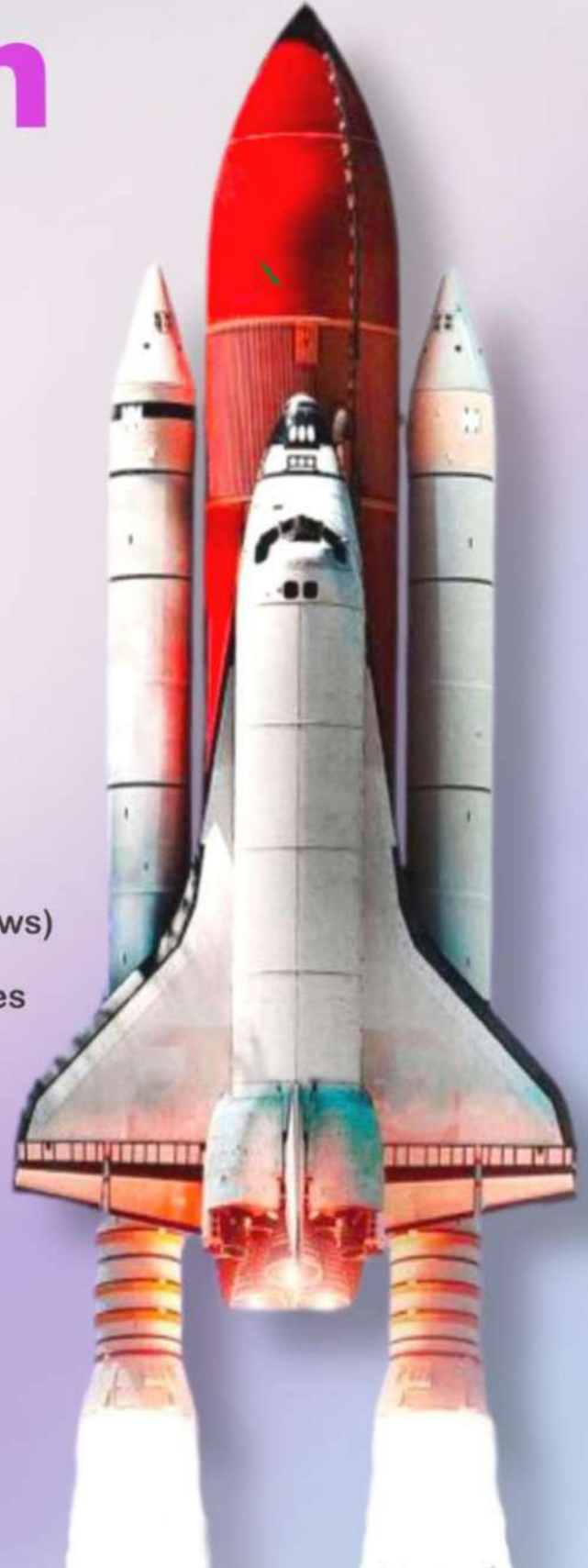
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*Vs Manabhar Singh & Ors.
(2017) 11 SCC 195*

*A child witness shall not be rejected if found
to be evaluated more carefully and with
inspection because a child is susceptible
by what others tell him and that a child
is an easy prey to tutoring.*

*The only thing to be kept in mind is to conduct
preliminary examination of the child.*

*In the preliminary examination the judge would ask the
child questions about his school, friends, hobbies, etc.
such an examination is to check
the criterion of a competent
witness.*

*Thus, a child capable under the said
test, then he is a reliable witness.*



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**BIHAR JUDICIAL SERVICE (CIVIL JUDGE) MAINS WRITTEN
EXAM-2021**

**LAW OF TRANSFER OF PROPERTY AND PRINCIPLES OF
EQUITY INCLUDING THE LAW OF TRUSTS AND SPECIFIC
RELIEF**

PART-I

1. (a) Definition of 'immovable property' in Section 3 of the Transfer of Property Act, 1882 is not complete. It is negative in sense and appears to be an explanation. Explain and give the complete definition in the light of this statement.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Transfer of Property Act, 100% Strike Rate

(b) B had a license to collect fish from a lake of A, the owner of an estate. B had paid the amount for the license to A, the owner of the lake. The Orissa Government passed the Orissa Abolition of Estates Act, 1951, due to this the lake vested in the State of Orissa. Under this Act, the Orissa Government did not recognize B's right to collect fish from the lake. In the petition to claim the right, B's contention

was that fish is a moveable property, hence the Act does not apply. Decide.

2. (a) What do you mean by 'transfer by ostensible owner'? What are the statutory requirements of the rule of transfer by ostensible owner? Whether this rule is subject to the provisions of the Benami Transactions (Prohibition) Act, 1988?

Source: Edzorb Law, **Simplified Notes**, **Subject:** Transfer of Property Act, 100% Strike Rate

(b) A mortgaged his property by a registered deed in favour of B on 1.12.2010 for a consideration of Rs. 15,000. The terms of the mortgage transaction were that:

- (i) the mortgagee and his heirs legal or representatives are hereafter entitled to use, enjoy and lease the said property under the ownership right, and
- (ii) that the executant A shall pay the amount within a period of 5 years. In case, he fails to repay, he, his heirs or his legal representatives will have no right to take back the said property. B was put in possession and he sold a portion of the property to C. A filed a suit to take the property as he paid the amount within 5 years.

Decide the nature of the transaction and the rights of A and C, the mortgagor and the buyer of the portion of the property.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Transfer of Property Act, 100% Strike Rate

3. (a) What is subrogation? Who can subrogate? Discuss the essential conditions of subrogation.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Transfer of Property Act, 100% Strike Rate

(b) When does a right to sue for the recovery of mortgage money accrue in favour of mortgagee?

Source: Edzorb Law, **Simplified Notes**, **Subject:** Transfer of Property Act, 100% Strike Rate

4. (a) How can a lease be determined? Whether notice to the lessee is essential for determination of lease?

Source: Edzorb Law, **Simplified Notes**, **Subject:** Transfer of Property Act, 100% Strike Rate

(b) What are the conditions of a valid gift? Whether, when gift once accepted may be suspended or revoked?

Source: Edzorb Law, **Simplified Notes**, **Subject:** Transfer of Property Act, 100% Strike Rate

5. (a) "Transferability is an essential nature of property, whether by operation of law or by act of parties. But no one can transfer a property in such a manner that it will destroy its essential nature." Discuss.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Transfer of Property Act, 100% Strike Rate

(b) Explain with exceptions, if any, that once a mortgage is always a mortgage.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Transfer of Property Act, 100% Strike Rate

PART-II

6. (a) What do equitable rights and interests mean? Explain the nature characteristics of such rights.

(b) Discuss the classification of equity jurisdiction.

7. Explain the following maxims:

(a) Equity looks to the intent rather than the form.

(b) Equity aids the vigilant, not the indolent.

(c) Where the equities are equal, the first in time shall prevail.

8. (a) Explain conversion and reconversion.

(b) Discuss the equitable relief on the ground of mistake.

(c) Who may be a beneficiary?

9. (a) What is a charitable trust? What are the requirements of a charitable trust? Classify the charitable objects.

(b) A Hindu testator A bequeathed his estate to his wife as a sole executrix, constituting her the owner, and directed that whatever remains of the property after her death, should go to the testator's two daughters in such a manner as she, the executrix, may like. Whether it is a legal trust?

10. (a) A person against whom a relief of specific performance of a contract, is claimed, may plead, by way of defense, any ground which is available to him under any law relating to contract. What are those grounds of defense which are available to person against whom the relief of specific performance of contract is claimed?

Source: Edzorb Law, **Simplified Notes**, **Subject:** Specific Relief Act, 100% Strike Rate

(b) Who may obtain specific performance of a contract?

Source: Edzorb Law, **Simplified Notes**, **Subject:** Specific Relief Act, 100% Strike Rate



**BIHAR JUDICIAL SERVICE (CIVIL JUDGE) MAINS WRITTEN
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LAW OF CONTRACTS AND TORTS

PART-I

1. (a) "The distinction between 'void' and 'illegal' agreements under the Indian Contract Act is clear and logical." Explain referring to the provisions of the Act.

Source: Edzorb Law, Simplified Notes, Subject: Indian Contract Act, 100% Strike Rate

(b) What do you understand by a Wagering Agreement? What are its essential characteristics?

Source: Edzorb Law, Simplified Notes, Subject: Indian Contract Act, 100% Strike Rate

2. (a) "The definition of 'Proposal' as given under Section 2(a) of the Indian Contract Act, 1872 is not that of a valid proposal but it is the definition of all kinds of proposals." Critically evaluate the statement and substantiate your answer with appropriate illustrations.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Indian Contract Act, 100% Strike Rate

(b) State the contracts not specifically enforceable.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Specific Relief Act, 100% Strike Rate

3. (a) The workers of a factory go on strike. The management of the factory announced that additional payments will be made to such workers, who will continue to work during strike period. When the strike ended, the management refused to make additional payments to such workers. Discuss the remedies available to such workers, if any, under the Indian Contract Act.

(b) A, a singer enters into a contract with B, the manager of a club, to sing at his club, two nights in every week during the next two months, and B engages to pay her ₹ 1,000 for each night's performance. On the sixth night, A willfully absents herself from the club. Can B put an end to the contract? Decide giving statutory provisions.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Indian Contract Act, 100% Strike Rate

(c) What is the difference between a general and a specific offer? Explain.

Source: Edzorb Law, Simplified Notes, **Subject:** Indian Contract Act, 100% Strike Rate

4. (a) The principle of law as to contractual competency of a minor established in *Mohiri Bibee vs. Dharmodas Ghose* has been partially modified in a case *Mathai Mathai vs. Mary Joseph*, AIR, 2014 SC, 2277. Do you agree with this? Explain.

Source: Edzorb Law, Simplified Notes, **Subject:** Indian Contract Act, 100% Strike Rate

(b) What is meant by 'standard form of contracts'? What protective devices have been evolved by the courts to save an individual from such contracts? Discuss.

Source: Edzorb Law, Simplified Notes, **Subject:** Indian Contract Act, 100% Strike Rate

5. (a) "A bailment arises by contract. It cannot arise independent of contract." Explain this statement with reference to judicial decisions.

Source: Edzorb Law, Simplified Notes, **Subject:** Indian Contract Act, 100% Strike Rate

(b) What are the obligations which the law creates in the absence of the agreements? Explain with concerning sections with the help of illustrations.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Indian Contract Act, 100% Strike Rate

PART-II

6. (a) "The law sometimes recognizes 'no fault' liability." Discuss. What are the rules laid down by the English and Indian Courts in this connection? What is the measure of damages in such cases?

Source: Edzorb Law, **Simplified Notes**, **Subject:** Law of Torts, 100% Strike Rate

(b) Distinguish between tortious and contractual liability.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Law of Torts, 100% Strike Rate

7. (a) Critically examine the development of the law relating to Remoteness of Damages. Which test you prefer for deciding the questions of remoteness of damages? Give reasons for your answer.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Law of Torts, 100% Strike Rate

(b) A asks for a lift from a motorist B. A is told by B, "I am not an expert driver. I am without a driving licence too. You may travel at your own risk." A travels with B. Later, the motor vehicle collides with a bus due to defective breaks of B's vehicle. A sues B for injuries suffered by him in the accident. B takes the plea of 'Volenti non fit injuria'. Decide, after discussing the whole law relating to the aforesaid maxim.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Law of Torts, 100% Strike Rate

8. (a) Explain the principle of contributory negligence with illustration. What are the defences available in a case of contributory negligence?

Source: Edzorb Law, **Simplified Notes**, **Subject:** Law of Torts, 100% Strike Rate

(b) Explain the following:

(i) Ubi jus ibi remedium

(ii) Actio personalis non oritur actio

Source: Edzorb Law, **Simplified Notes**, **Subject:** Law of Torts, 100% Strike Rate

9. (a) "In order to constitute a public nuisance there must be an act or an illegal omission, and it is not necessary that the act should be illegal." Explain the offence of public nuisance with the help of decided cases.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Law of Torts, 100% Strike Rate

(b) The employees of Telecommunication Department opened a manhole in a street for the purpose of maintaining underground telephone equipment. In the evening, they left the manhole unguarded but covered with a tent. They placed warning paraffin lamps around the tent. A, a boy of eight years, and B, a boy of ten years, took a lamp and entered the manhole. As they entered, the lamp was knocked into the hole and a violent explosion took place with flames shooting 30 feet into the air. A was knocked back into the hole where he sustained serious burns. A's father filed a suit against the Telecommunication Department for damages. Will he succeed?

10. (a) Discuss the principle of law laid down in Rylands vs. Fletcher and state the applicability of this principle in present scenario.

Source: Edzorb Law, Simplified Notes, **Subject:** Law of Torts, 100% Strike Rate

(b) Explain with the help of decided cases the rule of 'Res ipsa loquitur'

Source: Edzorb Law, Simplified Notes, **Subject:** Law of Torts, 100% Strike Rate

(c) Discuss the principle of law laid down in Donoghue vs. Stevenson.

Source: Edzorb Law, Simplified Notes, **Subject:** Law of Torts, 100% Strike Rate





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2021

LAW OF EVIDENCE AND PROCEDURE

साक्ष्य एवं प्रक्रिया विधि

Time Allowed : 3 hours

Maximum Marks : 150

समय : 3 घण्टे

पूर्णांक : 150

Marks are indicated against each question

प्रत्येक प्रश्न के अंक अंत में दिए गए हैं

Answer **six** questions, taking **two** from Group—A,
two from Group—B and **one** each from
Group—C and Group—D

खण्ड—क से दो, खण्ड—ख से दो और खण्ड—ग तथा खण्ड—घ से
एक-एक लेते हुए कुल छः प्रश्नों के उत्तर दीजिए

GROUP—A

खण्ड—क

1. (a) Explain the meaning of the following : 15

निम्नलिखित के अर्थ समझाइए :

(i) Mesne profit

मध्यवर्ती लाभ

(ii) Indigent person

अकिंचन व्यक्ति

- (b) Describe in detail the law relating to place of filing a Civil Suit. 15
दीवानी वाद दायर करने के स्थान से सम्बन्धित विधि का विस्तार से वर्णन कीजिए।

2. (a) What is temporary injunction? When and in what matters temporary injunction can be granted? 15

अस्थायी व्यादेश क्या है? कब और किन मामलों में अस्थायी व्यादेश प्रदान किया जा सकता है?

- (b) Enumerate various properties which are exempted from attachment in execution of decree under Civil Procedure Code. 15

उन विभिन्न सम्पत्तियों को बताइए जो दीवानी प्रक्रिया संहिता के अन्तर्गत आज्ञा के निष्पादन में कुर्की से मुक्त हैं।

3. (a) Distinguish between the following : 15

निम्नलिखित में अन्तर बताइए :

- (i) Decree and Order

आज्ञा और आदेश

- (ii) Review and Revision

पुनरवलोकन और पुनरीक्षण

(b) Distinguish between the following : 15

निम्नलिखित में अन्तर बताइए :

(i) Counterclaim and Set-off

प्रतिदावा और प्रतिसादन

(ii) Commission and Receiver

आयोग और प्रापक

GROUP—B

खण्ड—ख

4. (a) What is 'Dying Declaration'? When is a dying declaration admissible in evidence? 15

'मृत्युकालीन कथन' क्या है? मृत्युकालीन कथन साक्ष्य में कब ग्राह्य होता है?

(b) Write notes on the following : 10

निम्नलिखित पर टिप्पणियाँ लिखिए :

(i) Hostile witness

पक्षद्रोही साक्षी

(ii) Leading question

सूचक प्रश्न

5. (a) Distinguish between the following : 15

निम्नलिखित में अन्तर बताइए :

(i) Patent and Latent Ambiguity

प्रत्यक्ष एवं अप्रत्यक्ष संदिग्धता

(ii) Judgement in rem and Judgement

in personam

लोकलक्षी निर्णय एवं व्यक्तिलक्षी निर्णय

- (b) Discuss the relevancy of evidence of character in criminal and civil cases. 10

आपराधिक एवं दीवानी मामलों में चरित्र के साक्ष्य की सुसंगतता की विवेचना कीजिए।

6. (a) What do you understand by 'Burden of Proof'? On whom the burden of proof will lie in the following instances? 15

'सबूत के भार' से आप क्या समझते हैं? निम्नलिखित उदाहरणों में सिद्ध करने का भार किस पर होगा?

- (i) A has given a loan of ₹ 1000 to B. B says that he has returned ₹ 500 to A in presence of C.

A ने B को ₹ 1000 उधार दिया है। B ने जवाब दिया है कि उसने ₹ 500 C के सामने A को लौटा दिया है।

- (ii) A has killed B. The defence of A is that he has exercised his right of private defence.

A ने B की हत्या की है। A का बचाव है कि उसने अपनी जान बचाने के लिए B को मारा है।

- (b) What are the facts which need not be proved by the parties? 10

वे कौन-से तथ्य हैं जिनको वाद के पक्षकारों को सिद्ध करना आवश्यक नहीं होता है?

GROUP—C

खण्ड—ग

7. (a) Discuss the grounds for setting aside an 'Arbitral Award'. 10

एक 'माध्यस्थ पंचाट' को अपास्त करने के आधारों की विवेचना कीजिए।

- (b) Write notes on the following : 10

निम्नलिखित पर टिप्पणियाँ लिखिए :

(i) Arbitration Agreement

माध्यस्थ करार

(ii) Foreign Award

विदेशी पंचाट

8. (a) What are the rules regarding the removal of arbitrator? Can an appointed arbitrator be removed by any Party or Court? 10

एक मध्यस्थ को हटाने के विषय में क्या नियम हैं? क्या एक नियुक्त मध्यस्थ किसी पक्ष अथवा न्यायालय द्वारा हटाया जा सकता है?

(b) Distinguish between the following : 10

निम्नलिखित में अन्तर बताइए :

(i) Arbitration and Judicial
Adjudication

माध्यस्थता और न्यायिक निर्णयन

(ii) Conciliation and Negotiation

सुलह और वार्ता

GROUP—D

खण्ड—घ

9. (a) What is the 'Charge'? Can the Court
alter a charge? If so, how and when? 10

'आरोप' क्या है? क्या न्यायालय आरोप में परिवर्तन कर
सकता है? यदि हाँ, तो कैसे और कब?

(b) Distinguish between the following : 10
निम्नलिखित में अन्तर बताइए :

(i) Cognizable and Non-cognizable
offences

संज्ञेय और असंज्ञेय अपराध

(ii) Conviction and Acquittal

दोषसिद्धि और दोषमुक्ति

10. (a) Discuss the procedure for disposal of the cases adopted by the Small Cause Courts under the Provincial Small Cause Courts Act, 1887. 10

प्रांतीय लघु वाद न्यायालय अधिनियम, 1887 के अन्तर्गत लघु वाद न्यायालयों द्वारा मामलों को निपटाने के लिए अपनाई जाने वाली प्रक्रिया की विवेचना कीजिए।

- (b) Whether the Small Cause Courts are competent to hear the following cases? 10

क्या निम्नलिखित वादों की सुनवाई हेतु लघु वाद न्यायालय सक्षम हैं?

(i) A Suit for relief of 'Divorce'

'विवाह-विच्छेद' की सहायता का वाद

(ii) A Suit for dissolution of partnership

साझेदारी को समाप्त करने के लिए वाद

2021

CONSTITUTIONAL AND ADMINISTRATIVE
LAW OF INDIA

भारत की सांविधानिक एवं प्रशासनिक विधि

Time Allowed : 3 hours

Maximum Marks : 150

समय : 3 घण्टे

पूर्णांक : 150

All questions carry equal marks

सभी प्रश्नों के अंक समान हैं

Answer six questions, selecting three
from each Group

प्रत्येक खण्ड से तीन प्रश्नों का चयन कर कुल छः प्रश्नों के उत्तर दें

GROUP—A

खण्ड—क

- ✓ 1. It is fallacious to think that Directive Principles and Fundamental Rights are opposed to each other in their ultimate objectives. They are in fact, 'complementary and supplementary to each other, both striving to secure socio-economic

welfare by ensuring a social order in which justice and individual liberty are safeguarded'.

Discuss this statement with the help of decided cases.

यह सोचना उचित नहीं है कि नीति निदेशक तत्व एवं मूल अधिकार उनके मूल उद्देश्यों के मद्देनजर एक-दूसरे के विरोधाभासी हैं। वास्तव में ये 'एक-दूसरे के सहायक और पूरक हैं, क्योंकि दोनों का उद्देश्य एक ऐसी सामाजिक व्यवस्था है जिसमें न्याय एवं सभी की व्यक्तिगत स्वतंत्रता को संरक्षित रखते हुए सामाजिक-आर्थिक कल्याणकारी समाज की स्थापना की जा सके'।

निर्णायक वादों की सहायता से इस कथन को समझाइये।

2. "Freedom of press plays a pivotal role in the democratic setup of the country."

Discuss this statement in the light of relevant provisions of the Indian Constitution along with the aspects of freedom of circulation, commercial advertisement and electronic media, as laid down by the Indian judiciary.

"राष्ट्र की प्रजातान्त्रिक व्यवस्था में प्रेस की स्वतंत्रता की भूमिका बहुत ही महत्वपूर्ण होती है।"

इस कथन की भारतीय संविधान के सुसंगत प्रावधानों के मद्देनजर व्याख्या कीजिये। इसके साथ ही परिचालन की स्वतंत्रता, व्यावसायिक विज्ञापन

और इलेक्ट्रॉनिक मीडिया की स्वतंत्रता के पहलुओं पर भारतीय न्यायपालिका द्वारा प्रतिपादित सिद्धान्तों को भी समझाइये।

"Since literal approach of Apex Court in the A. K. Gopalan case, a sea change has taken place while giving meaning and content to the provisions of Article 21 of the Constitution by the courts."

Discuss in detail on the important developments mentioning the changing shape of Article 21 by Apex Court through various pronouncements.

"ए० के० गोपालन के बाद में उच्चतम न्यायालय की शाब्दिक व्याख्या के बाद भारतीय संविधान के अनुच्छेद 21 की न्यायालयों द्वारा व्याख्या करने में सामुद्रिक बदलाव के साथ उसका अर्थान्वयन एवं व्याख्या की है।"

उच्चतम न्यायालय के विभिन्न निर्णयों की सहायता से हुए महत्वपूर्ण बदलावों को इंगित करते हुए अनुच्छेद 21 में आये बदलावों को विस्तार से समझाइये।

4. "Judicial decisions in the matters of appointment of judges and their transfer have resulted in maintenance of Independence of Judiciary."

Critically analyse this statement and cite relevant case laws.

“न्यायाधीशों की नियुक्ति और उनके स्थानान्तरण के मामलों में न्यायपालिका के निर्णयों ने न्यायपालिका की स्वतंत्रता को बनाये रखा है।”

निर्णीत वादों के संदर्भ में इस कथन का आलोचनात्मक विश्लेषण कीजिये।

5. “The Indian Constitution seeks to create an exclusive area for Centre, exclusive area for States and a common concurrent area for States and Centre.”

Explain the distribution of power between the Centre and States in the light of this statement.

“भारतीय संविधान केन्द्र के लिए अनन्य क्षेत्र, राज्यों के लिए अनन्य क्षेत्र और राज्यों एवं केन्द्र के लिए एक ही समवर्ती क्षेत्र की स्थापना करता है।”

इस कथन के परिप्रेक्ष्य में केन्द्र और राज्यों के बीच में शक्तियों के बंटवारे की व्यवस्था को समझाइये।

GROUP—B

खण्ड—ख

6. On what grounds delegated legislation can be declared substantively ultra vires? Also discuss the permissibility and impermissibility of the rule making powers of the executive. Cite relevant cases.

किन आधारों पर प्रत्यायोजित विधायन को सारभूत रूप से अधिकारातीत घोषित किया जा सकता है? आप यह भी बताइये कि कार्यपालिका को नियम बनाने की अनुज्ञेयता एवं अननुज्ञेयता की शक्तियाँ क्या-क्या हैं? सम्बन्धित वादों का हवाला भी दीजिये।

"The most significant and outstanding development of the 20th century is the rapid growth of administrative law. In this century, the philosophy as to the role and function of the State has undergone a radical change."

In the light of this statement, discuss in detail the development and evolution of administrative law.

"प्रशासनिक विधि का तीव्रतम विकास 20वीं सदी की सबसे महत्वपूर्ण और उत्कृष्ट प्रगति है। इस सदी में राज्य के कार्य एवं उसकी भूमिका के दर्शन में आमूलचूल परिवर्तन हुए हैं।"

इस कथन के परिप्रेक्ष्य में प्रशासनिक विधि के अभ्युदय एवं विकास को विस्तार से समझाइये।

8. Differentiate among doctrines of legitimate expectation, proportionality, collateral purpose and mala fide with the help of relevant case laws.

सुसंगत निर्णयों की सहायता से, विधिसम्मत प्रत्याशा, समानुपातिकता, सांपार्श्विक प्रयोजन एवं असदभावपूर्वक के सिद्धान्तों में भेद बताइये।

9. How the Tribunal is distinct from the Court? Explain the constitution, powers and procedures of administrative tribunals and scope of judicial review.

अधिकरण न्यायालय से किस प्रकार भिन्न है? प्रशासनिक अधिकरणों के गठन, शक्तियाँ और उनके द्वारा अपनायी जाने वाली प्रक्रियाएँ और उनकी न्यायिक समीक्षा की व्याप्ति को समझाइये।

10. "The term Public Interest Litigation was first used by Professor Abram Chayes in 1976, to refer to cases seeking social change through court's directive which articulated public norms of governance and enforced the public norms."

In the light of the above statement, discuss—

- (a) meaning and scope of Public Interest Litigation;
- (b) Public Interest Litigation in India with reference to relevant legal provisions and case laws.

“ऐसे वादों, जिनसे न्यायालय के निर्देश लेकर सामाजिक बदलाव लाया जा सके और जिनसे शासन के लोक प्रमाण (public norms) बनाये जा सकें व उनसे लोक प्रमाणों (public norms) को लागू



1 - 1

किया जा सके, के लिए 1976 में प्रथम बार प्रोफेसर अब्राहम 'लोक हित वाद' शब्द का प्रयोग किया था।”

उपरोक्त कथन के परिपेक्ष्य में समझाइये—

- (क) 'लोक हित वाद' का अर्थ और व्याप्ति;
- (ख) सुसंगत विधिक प्रावधानों एवं निर्णीत वादों के संदर्भ में भारत में लोक हित वाद।

2021

HINDU LAW AND MUHAMMADAN LAW

हिन्दू विधि और मुस्लिम विधि

Time Allowed : 3 hours

Maximum Marks : 150

समय : 3 घण्टे

पूर्णांक : 150

Marks are indicated against each question

प्रत्येक प्रश्न के अंक अंत में दिए गए हैं

Answer **six** questions, taking **three** from each Part

प्रत्येक भाग से तीन प्रश्न लेते हुए कुल छः प्रश्नों के उत्तर दें

PART—I

भाग—I

1. What do you mean by adoption? Explain the requisites of a valid adoption. Discuss the changes brought by the Hindu Adoptions and Maintenance Act, 1956.

25

‘अभिग्रहण’ का क्या अर्थ है? वैध अभिग्रहण के मुख्य तत्त्व क्या हैं? हिन्दू दत्तक तथा भरण-पोषण अधिनियम, 1956 के द्वारा क्या परिवर्तन लाए गए हैं?

2. Discuss the grounds of divorce under the Hindu law. Whether a Hindu male after his acquittal in trial of Section 498A of the Indian Penal Code, 1860 can seek divorce from his wife under the Hindu law? 25

हिन्दू विधि के अन्तर्गत विवाह विच्छेद के क्या आधार हैं? जब कोई हिन्दू पुरुष जो भारतीय दण्ड संहिता, 1860 की धारा 498A के वाद के अन्तर्गत बरी हो गया हो, तो ऐसी अवस्था में क्या वह पुरुष हिन्दू विधि के अन्तर्गत विवाह विच्छेद कराने के लिए सक्षम है?

3. Who are the guardians under the Hindu law? Discuss their powers and functions with special reference to their power of alienation. 25

हिन्दू विधि के अन्तर्गत संरक्षक कौन हो सकता है? हिन्दू विधि के अन्तर्गत संरक्षक के अधिकारों व कर्तव्यों का हस्तान्तरण के तहत वर्णन कीजिए।

4. Write notes on the following : 13+12=25

निम्नलिखित पर टिप्पणियाँ लिखिए :

(a) Antecedent Debts

पूर्ववर्ती ऋण

(b) Restitution of Conjugal Rights

दाम्पत्य अधिकारों का प्रतिस्थापन

5. What do you mean by partition? Discuss the various modes of effective partition. Under what circumstances partition can be reopened? 25

विभाजन का क्या अर्थ है? प्रभावशाली विभाजन के विभिन्न तरीकों पर प्रकाश डालिए। किन परिस्थितियों में विभाजन को पुनः खोला जा सकता है?

PART—II

भाग—II

6. What are the various sources of the Muslim Law? Discuss the relevance of modern sources in present scenario. 25

मुस्लिम विधि के विभिन्न स्रोतों पर प्रकाश डालिए। आधुनिक स्रोतों पर प्रकाश डालते हुए उनकी वर्तमान परिस्थितियों में महत्ता निर्धारित कीजिए।

7. "Muslim marriage is not sacrament, but purely a civil contract." Explain. Discuss the approved classification of marriages under the Muslim law. 25

“मुस्लिम विवाह एक धार्मिक कार्य नहीं है बल्कि एक पवित्र नागरिक अनुबंध है।” व्याख्या कीजिए। मुस्लिम विधि के अन्तर्गत विवाह के मान्य वर्गीकरण पर प्रकाश डालिए।

8. What is guardianship under the Muslim law? Who are entitled to act as guardian under the Muslim law? Distinguish between Guardianship and Hizanat. 25

मुस्लिम विधि के अन्तर्गत संरक्षकता पर प्रकाश डालिए। मुस्लिम विधि के अन्तर्गत वे कौन ऐसे लोग हैं जो संरक्षकता का कर्तव्य निभा सकते हैं? 'संरक्षकता' और 'हिज्जानत' के बीच क्या अन्तर है?

9. What do you mean by legitimacy and legitimation under the Muslim law? Discuss the rules of valid acknowledgement with reference to status of adoption under the Muslim law. 25

मुस्लिम विधि के अन्तर्गत 'वैधता' व 'वैधीकरण' से आप क्या समझते हैं? मुस्लिम विधि के अन्तर्गत वैध अभिस्वीकृति के नियमों पर प्रकाश डालते हुए अभिग्रहण की स्थिति पर प्रकाश डालिए।

10. Discuss the term 'Hiba' with reference to its requisites under the Muslim law. Distinguish between 'Hiba-bil-iwad' and 'Hiba-ba-shart-ul-iwaz'. 25

मुस्लिम विधि के अन्तर्गत 'हिबा' पर प्रकाश डालते हुए इसके मुख्य तथ्यों की विवेचना कीजिए। 'हिबा-बिल-इवाद' व 'हिबा-बा-शर्त-उल-इवाज' के मध्य अन्तर स्थापित कीजिए।

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04/CAL/M-2021-08

2021

LAW OF TRANSFER OF PROPERTY AND
PRINCIPLES OF EQUITY INCLUDING THE
LAW OF TRUSTS AND SPECIFIC RELIEF

सम्पत्ति-अन्तरण विधि और साम्या सिद्धान्त, न्यास
विधि और विशिष्ट अनुतोष सहित

Time Allowed : 3 hours

Maximum Marks : 150

समय : 3 घण्टे

पूर्णांक : 150

Marks are indicated against each question

प्रत्येक प्रश्न के अंक अंत में दिए गए हैं

Answer **six** questions, taking **three** from each Part

प्रत्येक भाग से तीन प्रश्न लेते हुए कुल छः प्रश्नों के उत्तर दें

PART—I

भाग—I

1. (a) "Definition of 'immovable property' in Section 3 of the Transfer of Property Act, 1882 is not complete. It is negative in sense and appears to be an explanation." Explain and give the complete definition in the light of this statement.

20

(2)

“सम्पत्ति अन्तरण अधिनियम, 1882 की धारा 3 में दी गयी ‘अचल सम्पत्ति’ की परिभाषा परिपूर्ण नहीं है। यह नकारात्मक है तथा यह तो स्पष्टीकरण प्रतीत होती है।” स्पष्ट कीजिए तथा इस कथन के परिप्रेक्ष्य में अचल सम्पत्ति की परिपूर्ण परिभाषा दीजिए।

- (b) *B* had a license to collect fish from a lake of *A*, the owner of an estate. *B* had paid the amount for the license to *A*, the owner of the lake. The Orissa Government passed the Orissa Abolition of Estates Act, 1951, due to this the lake vested in the State of Orissa. Under this Act, the Orissa Government did not recognize *B*'s right to collect fish from the lake. In the petition to claim the right, *B*'s contention was that fish is a moveable property, hence the Act does not apply. Decide.

5

B ने एक सम्पदा के स्वामी *A* से उसकी झील में से मछली पकड़ने की अनुज्ञप्ति प्राप्त की थी। *B* ने इसके लिए झील के स्वामी *A* को राशि का भुगतान किया हुआ था। उड़ीसा सरकार ने उड़ीसा सम्पदा उन्मूलन अधिनियम, 1951 पारित किया, जिससे झील उड़ीसा राज्य में निहित हो गयी। उक्त अधिनियम के अन्तर्गत उड़ीसा सरकार ने *B* के अधिकार को मान्यता नहीं दी। अधिकार का दावा करने की याचिका में *B* का कथन था कि मछली चल सम्पत्ति है, इस कारण उक्त अधिनियम लागू नहीं होता। निर्णय कीजिए।

(3)

2. (a) What do you mean by 'transfer by ostensible owner'? What are the statutory requirements of the rule of transfer by ostensible owner? Whether this rule is subject to the provisions of the Benami Transactions (Prohibition) Act, 1988?

20

‘दृश्यमान स्वामी द्वारा अन्तरण’ से क्या तात्पर्य है? इस नियम की विधिक औपचारिकताएँ क्या हैं? क्या यह नियम बेनामी संव्यवहार (प्रतिषेध) अधिनियम, 1988 के प्रावधानों के अधीन है?

- (b) A mortgaged his property by a registered deed in favour of B on 1.12.2010 for a consideration of ₹ 15,000. The terms of the mortgage transaction were that (i) the mortgagee and his heirs or legal representatives are hereafter entitled to use, enjoy and lease the said property under the ownership right, and (ii) that the executant A shall pay the amount within a period of 5 years. In case, he fails to repay, he, his heirs or his legal representatives will have no right to take back the said property. B was put in possession and he sold a portion of the property to C. A filed a suit to take the property as he paid the amount within 5 years. Decide the nature of the transaction and the rights of A and C, the mortgagor and the buyer of the portion of the property.

5

(4)

A ने एक पंजीकृत दस्तावेज के द्वारा अपनी सम्पत्ति ₹ 15,000 प्रतिफल के बदले 1.12.2010 को B को बंधक रखी। बंधक व्यवहार की शर्तों के अनुसार (i) बंधकधारी, उसके उत्तराधिकारी या विधिक प्रतिनिधि स्वामित्व के अधिकार के अन्तर्गत बंधक सम्पत्ति का प्रयोग, उपभोग करने, पट्टा करने के लिए प्राधिकृत होंगे, और (ii) निष्पादक A बंधक राशि का भुगतान 5 वर्ष के अन्दर कर देगा। यदि वह भुगतान करने में विफल रहा, तो उसे, उसके उत्तराधिकारी या विधिक प्रतिनिधि को उक्त सम्पत्ति को वापस प्राप्त करने का अधिकार नहीं होगा। B को सम्पत्ति का आधिपत्य दे दिया जिसने सम्पत्ति का एक भाग C को विक्रय कर दिया। A ने 5 वर्ष की अवधि में उक्त धन का भुगतान कर दिया, इसलिए बंधक सम्पत्ति प्राप्त करने के लिए वाद दायर किया। इस वाद में संव्यवहार की प्रकृति तथा A व C के अधिकारों का निर्णय कीजिए।

3. (a) What is subrogation? Who can subrogate? Discuss the essential conditions of subrogation. 15

प्रत्यासन से क्या तात्पर्य है? प्रत्यासन कौन कर सकता है? प्रत्यासन के लिए आवश्यक शर्तों का विवेचन कीजिए।

- (b) When does a right to sue for the recovery of mortgage money accrue in favour of mortgagee? 10

बंधकधारी के पक्ष में बंधक धन की वसूली के लिए वाद लाने का अधिकार कब प्रोद्भूत होता है?

(5)

4. (a) How can a lease be determined? Whether notice to the lessee is essential for determination of lease? 15

पट्टे का पर्यवसान कैसे किया जा सकता है? क्या पट्टाधारी को पट्टे के पर्यवसान की सूचना देना आवश्यक है?

- (b) What are the conditions of a valid gift? Whether, when gift once accepted may be suspended or revoked? 10

वैध दान की शर्तें क्या-क्या हैं? जब एक बार दान स्वीकार कर लिया जाता है, तो क्या उसका स्थगन या विखण्डन किया जा सकता है?

5. (a) "Transferability is an essential nature of property, whether by operation of law or by act of parties. But no one can transfer a property in such a manner that it will destroy its essential nature." Discuss. 15

“अन्तरणीयता, चाहे विधि के प्रवर्तन से या पक्षकारों के कार्य से, सम्पत्ति की एक आवश्यक प्रकृति है। परन्तु कोई भी सम्पत्ति का इस प्रकार अन्तरण नहीं कर सकता, जिससे उसकी आवश्यक प्रकृति ही नष्ट हो जाए।” विवेचन कीजिए।

- (b) Explain with exceptions, if any, that 'once a mortgage is always a mortgage'. 10

अपवाद सहित, यदि कोई हो, स्पष्ट कीजिए कि 'एक बार बंधक सदैव बंधक' होता है।

(6)

PART—II

भाग—II

6. (a) What do equitable rights and interests mean? Explain the nature and characteristics of such rights. 15
 साम्यिक अधिकारों एवं हितों से क्या तात्पर्य है? इन अधिकारों एवं हितों की प्रकृति तथा विशेषताओं को स्पष्ट कीजिए।

(b) Discuss the classification of equity jurisdiction. 10
 साम्य अधिकार क्षेत्र के वर्गीकरण का विवेचन कीजिए।

7. Explain the following maxims :

निम्न सूत्रों को स्पष्ट कीजिए :

(a) Equity looks to the intent rather than the form. 10
 साम्या प्रारूप नहीं, आशय पर विचार करती है।

(b) Equity aids the vigilant, not the indolent. 10
 साम्या जागरूक की मदद करती है, अकर्मण्य की नहीं।

(c) Where the equities are equal, the first in time shall prevail. 5
 जहाँ साम्या समान है, वहाँ समय में पूर्व साम्या अधिभावी होगी।

(7)

8. (a) Explain conversion and reconversion. 10

संपरिवर्तन तथा पुनः संपरिवर्तन को समझाइए।

(b) Discuss the equitable relief on the ground of mistake. 10

भूल के आधार पर साम्यिक उपचारों का विवेचन कीजिए।

(c) Who may be a beneficiary? 5

हितधारी कौन हो सकता है?

9. (a) What is a charitable trust? What are the requirements of a charitable trust? Classify the charitable objects. 5+5+5=15

धर्मार्थ न्यास क्या है? धर्मार्थ न्यास की क्या औपचारिकताएँ होती हैं? धर्मार्थ उद्देश्यों का वर्गीकरण बताइए।

(b) A Hindu testator A bequeathed his estate to his wife as a sole executrix, constituting her the owner, and directed that whatever remains of the property after her death, should go to the testator's two daughters in such a manner as she, the executrix, may like. Whether it is a legal trust? 10

एक हिन्दू वसीयतकर्ता A ने अपनी सम्पत्ति अपनी पत्नी को, सम्पत्ति का स्वामी सृजित करते हुए, एकमात्र निष्पादक के रूप में वसीयत की तथा निर्देशित किया कि उसकी पत्नी की मृत्यु के बाद, उस सम्पत्ति में जो कुछ शेष रहे, वह वसीयतकर्ता की दोनों पुत्रियों को, जिस प्रकार से निष्पादककर्ता चाहे, उस प्रकार मिले। क्या यह वैधानिक न्यास है?

(8)

10. (a) A person against whom a relief of specific performance of a contract, is claimed, may plead, by way of defense, any ground which is available to him under any law relating to contract.

What are those grounds of defense which are available to person against whom the relief of specific performance of contract is claimed?

15

एक व्यक्ति, जिसके विरुद्ध एक संविदा के विनिर्दिष्ट प्रवर्तन का दावा किया जाता है, वह प्रतिरक्षा के रूप में किसी भी ऐसे आधार का अभिकथन कर सकेगा जो संविदा से संबंधित किसी भी विधि के अधीन उपलब्ध हो।

प्रतिरक्षा के वे कौन-से आधार हैं जो उस व्यक्ति को उपलब्ध होंगे जिसके विरुद्ध किसी संविदा के विनिर्दिष्ट प्रवर्तन का दावा किया गया है?

(b) Who may obtain specific performance of a contract?

10

संविदा का विनिर्दिष्ट प्रवर्तन कौन करवा सकता है?

2021

LAW OF CONTRACTS AND TORTS

संविदा तथा अपकृत्य विधि

Time Allowed : 3 hours

Maximum Marks : 150

समय : 3 घण्टे

पूर्णांक : 150

Marks are indicated against each question

प्रत्येक प्रश्न के अंक अंत में दिए गए हैं

Answer six questions, taking three from each Part

प्रत्येक भाग से तीन प्रश्नों का चयन करते हुए कुल छः प्रश्नों के उत्तर दें

PART—I / भाग—I

(Law of Contracts / संविदा विधि)

1. (a) "The distinction between 'void' and 'illegal' agreements under the Indian Contract Act is clear and logical." Explain referring to the provisions of the Act. 15

"भारतीय संविदा अधिनियम में 'शून्य' तथा 'अवैध' समझौतों का प्रभेद स्पष्ट और तर्कसंगत है।" अधिनियम के उपबन्धों की विवेचना करते हुए समझाइए।

- (b) What do you understand by a Wagering Agreement? What are its essential characteristics? 10

पंडम करार की व्याख्या कीजिए। इसके मुख्य लक्षणों का उल्लेख कीजिए।

2. (a) "The definition of 'Proposal' as given under Section 2(a) of the Indian Contract Act, 1872 is not that of a valid proposal but it is the definition of all kinds of proposals." Critically evaluate the statement and substantiate your answer with appropriate illustrations. 15

“भारतीय संविदा अधिनियम, 1872 की धारा 2(a) के अन्तर्गत दी हुई 'प्रस्थापना' की परिभाषा एक वैध प्रस्थापना की परिभाषा नहीं है, अपितु यह सभी प्रकार की प्रस्थापनाओं की परिभाषा है।” इस कथन का समीक्षात्मक मूल्यांकन कीजिए तथा समुचित उदाहरणों द्वारा अपने उत्तर की सम्पुष्टि कीजिए।

- (b) State the contracts not specifically enforceable. 10

ऐसी संविधाओं का उल्लेख कीजिए जिनका विनिर्दिष्ट प्रवर्तन नहीं कराया जा सकता।

3. (a) The workers of a factory go on strike. The management of the factory announced that additional payments will be made to such workers, who will continue to work during strike period. When the strike ended, the management refused to make additional payments to such workers. Discuss the remedies available to such workers, if any, under the Indian Contract Act. 10

एक फैक्ट्री के कामगार हड़ताल पर जाते हैं। फैक्ट्री के प्रबन्धतन्त्र ने घोषित किया कि जो कामगार हड़ताल के दौरान कार्य करते रहेंगे उन्हें अतिरिक्त भुगतान किया जायेगा। जब हड़ताल समाप्त हो गयी, तो प्रबन्धतन्त्र ने उन कामगारों को अतिरिक्त भुगतान करने से मना कर दिया। ऐसे कामगारों को भारतीय संविदा अधिनियम में उपलब्ध उपचारों, यदि कोई हो, की विवेचना कीजिए।

- (b) A, a singer enters into a contract with B, the manager of a club, to sing at his club, two nights in every week during the next two months, and B engages to pay her ₹1,000 for each night's performance. On the sixth night, A willfully absents herself from the club. Can B put an end to the contract? Decide giving statutory provisions.

10

एक गायिका A क्लब के प्रबन्धक B से अगले दो मास के दौरान में प्रति सप्ताह में दो रात उसके क्लब में गाने की संविदा करती है और B उसे हर रात के गाने के लिए ₹1,000 देने का वचनबद्ध करता है। छठी रात को A क्लब से जानबूझकर अनुपस्थित रहती है। क्या B संविदा का अंत कर सकता है? सांविधिक उपबन्धों का उल्लेख करते हुए निर्णय कीजिए।

- (c) What is the difference between a general and a specific offer? Explain.

5

एक सामान्य तथा एक विशेष प्रस्ताव में क्या अंतर है? स्पष्ट कीजिए।

4. (a) The principle of law as to contractual competency of a minor established in *Mohari Bibee vs. Dharmodas Ghose* has been partially modified in a case *Mathai Mathai vs. Mary Joseph*, AIR, 2014 SC, 2277. Do you agree with this? Explain. 15

एक अवयस्क के संविदात्मक क्षमता के सम्बन्ध में मोहरी बीबी बनाम धर्मोदास घोष में स्थापित विधि के सिद्धांत को मथाई मथाई बनाम मैरी जोसेफ, ए० आई० आर०, 2014 एस० सी०, 2277 के वाद में आंशिक रूप से उपांतरित कर दिया गया है। क्या आप इससे सहमत हैं? स्पष्ट कीजिए।

- (b) What is meant by 'standard form of contract'? What protective devices have been evolved by the courts to save an individual from such contracts? Discuss. 10

'मानकरूपी संविदा' से क्या अभिप्राय है? इन संविदाओं से किसी व्यक्ति को सुरक्षा प्रदान करने हेतु न्यायालयों ने किन उपायों को अपनाया है? विवेचन कीजिए।

5. (a) "A bailment arises by contract. It cannot arise independent of contract." Explain this statement with reference to judicial decisions. 15

"एक उपनिधान संविदा से उत्पन्न होता है। यह संविदा से स्वतंत्र उत्पन्न नहीं हो सकता है।" इस कथन को न्यायिक निर्णयों के सन्दर्भ में स्पष्ट कीजिए।

- (b) What are the obligations which the law creates in the absence of the agreements? Explain with concerning sections with the help of illustrations. 10

वे कौन-सी बाध्यताएँ हैं, जो करारों के अभाव में विधि द्वारा सृजित है? सम्बन्धित धाराओं एवं दृष्टान्तों की सहायता से व्याख्या कीजिए।

PART—II / भाग—II

(Law of Torts / अपकृत्य विधि)

6. (a) "The law sometimes recognizes 'no fault' liability." Discuss. What are the rules laid down by the English and Indian Courts in this connection? What is the measure of damages in such cases? 15

"विधि कभी-कभी 'दोष-रहित' दायित्व को मान्य ठहराती है।" इस बारे में इंग्लिश तथा भारतीय न्यायालयों द्वारा अधिकथित नियम क्या-क्या हैं? ऐसे मामलों में नुकसानी का क्या मापन है?

- (b) Distinguish between tortious and contractual liability. 10

अपकृत्यात्मक और संविदात्मक दायित्व के बीच भेद स्पष्ट कीजिए।

7. (a) Critically examine the development of the law relating to Remoteness of Damages. Which test you prefer for deciding the questions of remoteness of damages? Give reasons for your answer. 15

नुकसानी की परोक्षता से सम्बन्धित विधि के विकास की समीक्षात्मक छान-बीन कीजिए। नुकसानी की परोक्षता के प्रश्न को विनिश्चित करने हेतु आप कौन-से परीक्षण को तरजीह देते हैं? सकारण उत्तर दीजिए।

- (b) A asks for a lift from a motorist B. A is told by B—"I am not an expert driver. I am without a driving licence too. You may travel at your own risk." A travels with B. Later, the motor vehicle collides with a bus due to defective breaks of B's vehicle. A sues B for injuries suffered by him in the accident. B takes the plea of 'volenti non fit injuria'. Decide, after discussing the whole law relating to the aforesaid maxim.

10

A मोटरमालिक B से लिफ्ट माँगता है। B ने A से कह दिया—"मैं कुशल चालक नहीं हूँ। मेरे पास ड्राइविंग लाइसेंस भी नहीं है। आप अपनी स्वयं की जोखिम पर सफर कर सकते हैं।" A ने B के साथ सफर किया। बाद में B का मोटरयान ब्रेक खराब होने के कारण बस से टकरा जाता है। दुर्घटना में पहुँची क्षति हेतु A, B पर वाद चलाता है। B 'वॉलेन्टी नॉन फिट इन्जूरिया' सूक्ति का अभिवाक् करता है। पूर्वोक्त सूक्ति से सम्बन्धित समूची विधि का विवेचन करने के बाद विनिश्चय कीजिए।

8. (a) Explain the principle of contributory negligence with illustration. What are the defences available in a case of contributory negligence?

15

योगदायी उपेक्षा के सिद्धांत की सोदाहरण व्याख्या कीजिए। योगदायी उपेक्षा के मामले में कौन-कौन सी प्रतिरक्षाएँ हो सकती हैं?

(b) Explain the following :

10

निम्नलिखित की व्याख्या कीजिए :

(i) Ubi jus ibi remedium

जहाँ अधिकार है, वहाँ उपचार भी है

(ii) Actio personalis non oritur actio

कारवाई का व्यक्तिगत अधिकार व्यक्ति की मृत्यु के साथ समाप्त हो जाता है

9. (a) "In order to constitute a public nuisance there must be an act or an illegal omission, and it is not necessary that the act should be illegal." Explain the offence of public nuisance with the help of decided cases.

15

"लोक उपताप गठित करने के लिए किसी कार्य का या किसी अवैध लोप का होना आवश्यक है, और यह आवश्यक नहीं है कि कार्य अवैध ही होना चाहिए।" लोक उपताप के अपराध को, विनिश्चित बार्दों की सहायता से स्पष्ट कीजिए।

(b) The employees of Telecommunication Department opened a manhole in a street for the purpose of maintaining underground telephone equipment. In the evening, they left the manhole unguarded but covered with a tent. They placed warning paraffin lamps around the tent. A, a boy of eight years, and B, a boy of ten years, took a lamp and entered the manhole. As they entered, the lamp was knocked into the hole and a violent explosion took place with flames shooting 30 feet into the air. A was knocked back into the hole where he sustained

serious burns. A's father filed a suit against the Telecommunication Department for damages. Will he succeed? 10

दूरसंचार विभाग के कर्मचारियों ने भूमिगत टेलीफोन उपस्कर ठीक करने के प्रयोजन हेतु गली में मैनहोल खोल दिया। उन्होंने सायं को मैनहोल को अरक्षित छोड़ दिया, पर उसे रेंट से ढक दिया। उन्होंने रेंट के चारों ओर चेतावनी के पैराफिन लैम्प लगा दिये। एक आठ-वर्षीय लड़के A तथा एक दस-वर्षीय लड़के B ने लैम्प उठाया और वे मैनहोल में घुस गये। जैसे ही वे घुसे, लैम्प होल में गिर गया और हवा में 30 फीट ऊँची उठती लपटों के साथ घातक विस्फोट हो गया। A टकराकर होल में गिर गया जहाँ वह गंभीर रूप से जल गया। A के पिता ने दूरसंचार विभाग के विरुद्ध नुकसानी हेतु वाद फाइल कर दिया। क्या वह सफल होगा?

10. (a) Discuss the principle of law laid down in *Rylands vs. Fletcher* and state the applicability of this principle in present scenario. 10

राइलैन्ड्स बनाम फ्लेचर के मामले में स्थापित विधिसिद्धांत को स्पष्ट कीजिए एवं वर्तमान परिदृश्य में इसकी प्रयोज्यता को समझाइए।

- (b) Explain with the help of decided cases the rule of 'res ipsa loquitur'. 10
- निर्णीत वादों की सहायता से 'घटनाएँ स्वयं बोलती हैं' के सिद्धांत का विवेचन कीजिए।

- (c) Discuss the principle of law laid down in *Donoghue vs. Stevenson*. 5
- डोनोघ बनाम स्टीवेन्सन के मामले में स्थापित विधिसिद्धांत को स्पष्ट कीजिए।



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must withstand the test
Article 19(1)(a). Freedom of press means
there can be no relationship in the press.
public articles or material relative to the
to exercise the right of the
however, restrictions can be imposed on the
but those restrictions must stand in the interest of
democratic organisation
In *Jennett Case* and *Union of*
India (1972), the Supreme Court
the freedom of the press embodies the right of the

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TOTAL MARKS:- Haryana Judicial Service Exam

Civil law-1

95/200 (Total Marks - 200)

Q1. (a) A agrees to sell and deliver to B 500 kgs of sugar at the time rate of Rs 50 per kg on date X. On the same day, he agrees to sell and deliver to C a like quantity of sugar at the same rate on same date. Can B and C join together as plaintiffs in one suit against A and if not, then why not?

(b) Under which other provisions of CPC besides section 11, a second suit has been barred? Discuss briefly (25 marks)

(a) Introduction - The term 'suit' has not been defined in Civil Procedure Code. It is a civil proceeding instituted by presentation of a plaint.

The essential of suit are -

- 1) Parties to suit
- 2) Cause of Action
- 3) Relief / Remedy.

Parties to suit have been briefly described in Order 1 CPC. It is the first essential of suit. It contains addition, deletion, joinder, mis-joinder & non-joinder of parties.

Joinder of Parties → The joinder of parties may arise with regards to plaintiffs or defendants. The question of joinder of parties arises only when an act is done by 2 or more persons or it affects 2 or more persons.

eg - If A cause damage to B & C or B & C cause damage to A, then question of joinder of plaintiffs or defendants arise.

Joinder of Plaintiff → Order 1 Rule 1 of Civil Procedure Code provides joinder of plaintiff. → State the provision.

Krishnappa Vs. Shivappa - essential requirements of any civil suit.

The presence of opposing parties is one of the essential of any

Joinder of parties is classified into 2 parts: 1) Joinder of parties to the cause

A
B
C
Damage
or

B & C

Damage

A



A enters contract



Refused to deliver

It states that person may be joined as plaintiff if following conditions

1) The right to relief exist in each plaintiff arises out of same act or transaction.

2) Any common question of law or fact arise if such person brought separate suits.

Both of the above conditions should be fulfilled for joinder of plaintiffs. The main purpose behind joinder of plaintiff is to avoid multiplicity of suits and to avoid unnecessary expenses & wastage of time.

Eg - A enters into agreement jointly with X and Y to 500 kg of salt. A refuses to deliver the goods. Here, both X and Y has a right to recover damages from A and said right arises out of same transaction. Also, common question of law & fact would arise. So, X and Y can file a suit jointly as plaintiff against A for damages.

In the given case where A agrees to sell and deliver to B, 500 kgs of sugar at same time, rate & date as to C, only common question of law & fact would arise. The right of B and C is not arising out of same transaction. Hence, B and C cannot jointly file a suit as plaintiff against A as both conditions of joining as plaintiff i.e. Order 1 Rule 1 is not satisfied.

Conclusion -> Joinder of cause of action is also given under Order 1 Rule 3 of Civil Procedure Code. Therefore, where there are 2 or more plaintiff & 2 or more cause of action, they can also be joined in 1 suit.

State the provision. Situation Against Case

(b) Introduction → The doctrine of Res-Judicata under Section

11 of Civil Procedure Code lays down the following 3 principles upon which second suit is barred under CPC -

1) No man should be vexed twice for the same cause

(Nemo Debet Bis Vexari Pro Una et Eadem Causa)

2) There should be an end to litigation (Interest Republicae ut sit finis litium)

3) Judicial decisions should be accepted as correct and final (Res Judicata Pro Veritate Occipitur)

Besides Section 11 of Civil Procedure Code, there are various other provisions where second suit has been barred:

1) Section 12 of CPC - Bar to further suit:

This section also discourages litigation and multiplicity of suit. The party under this section cannot file a second suit for the same cause of action.

2) Order 2 Rule 2 of CPC - Suit to include the whole claim: It states that if the party is instituting a suit then that suit should contain whole claim.

No second suit shall be allowed under this order if the party institute the second suit including other part of the claim which he did not institute in former suit.

3) Order 9 Rule 9 of CPC - Decree against plaintiff bars fresh suit: It states that if the suit is dismissed under Order 9 Rule 8 where only defendant appears before the court on date of hearing, the plaintiff shall be barred from instituting a second

suit on same cause of action. The plaintiff can apply to set aside the dismissal order.

The court will set aside the dismissal order if there was a sufficient cause for non-appearance of plaintiff.

Shree Prasad Singh Vs. Ram Nandan Prasad.

- 4) Order 11 Rule 21 → Non compliance with order for discovery. If the plaintiff fail to comply with any order to answer interrogatories or for discovery/inspection of documents then his suit shall be dismissed for want of prosecution.

And if any suit is dismissed under Order 11 Rule 21, then plaintiff shall be precluded from instituting a second suit on same cause of action.

- 5) Order 22 Rule 9 → Effect of abatement or dismissal:

If the suit is abated or dismissed under this order then plaintiff shall be precluded from instituting a second suit on same cause of action. The plaintiff or his legal representative/assignee/receiver can apply for an order to set aside the abatement or dismissal.

- 6) Order 23 Rule 1 → Withdrawal of suit or abandonment of part of claim: If the plaintiff withdraw or abandon any suit or part of claim without any defect or sufficient ground then he shall be precluded from instituting a second suit on same cause of action.

Conclusion: Res Judicata is the main principle under Section 11 of Civil Procedure Code which directly bars the plaintiff from instituting a second suit but there are also many other provisions which is further based on this principle.

Sec 11 of CPC applies to cont proceeding



Q2 (a) The rules in rejection of a plaint are based ~~as~~ much on substantive grounds as on procedural reasons. Elaborate.

(b) The plaintiff delivered 1000 bags of potatoes to the defendant, the cold storage proprietor on certain conditions for preservation. The defendant did not fulfil all these conditions and thereby committed breach of contract. The plaintiff filed a suit for damages. The defendant filed counter claim. Discuss the effect of counter claim in the light of statutory provision and decided cases. (25 marks)

(a) Introduction: The rules regarding rejection of plaint has been provided under Order 7 Rule 11 of Civil Procedure Code.

→ State the provision.

The plaint shall be rejected for following reasons -

1) Where it does not disclose a cause of action →

Cause of action is the main reason for instituting a suit. So, if any plaint does not disclose a cause of action then it shall be rejected.

2) Where the relief claimed is undervalued →

If the plaintiff has claimed a relief which is undervalued and valuation is not corrected within the prescribed time then plaint shall be rejected by court.

3) Where plaint is insufficiently stamped →

If the plaint is insufficiently stamped and the plaintiff fails to stamp within prescribed time then the plaint shall be rejected.

Soln
Sheet 1 → Plaint is rejected even after numbered & instituted as a suit.

The defendant cannot be asked to file counter statement without deciding on such application.



if instruction 9, 2.

Grounds of case.

O-7 R. 11(d)

4) Where the suit appears from the statement in the plaint to be barred by any law →

In such case, plaint is rejected if suit is barred by law. For eg → If the suit is against government and notice required by Section 80 of Civil Procedure Code has not been given by the plaintiff then plaint shall be rejected.

Procedural

5) Where it is not filed in duplicate: According to Section 26 and Order 4 of Civil Procedure Code, the plaint has to be filed in duplicate. If it is not filed in duplicate then it is rejected.

6) Where the plaintiff fails to comply Rule 9:

Plaint is also rejected when court has ordered plaintiff to present as many copies of plaint to defendant within 7 days of such order and plaintiff fails to comply with this order under Order 4 Rule 9.

Substantive Law refers to the right and liabilities of the parties whereas Procedural Law refers to the procedure for enforcement of those rights and liabilities.

The rules given under rejection of plaint are based on combination of both substantive as well as procedural grounds.

Eg - The rule where the plaint is rejected where it does not disclose cause of action is based on substantive ground whereas the rule where plaint is rejected because it is not filed in duplicate is based on procedural ground.

Conclusion: Civil Procedural Code is a procedural law but the rules contained in rejection of plaint under CPC consists of substantive grounds as well.

O-6 R-16
Partial
Striking
out &
pleading
but not
partial
rejection
of plaint
if not
proper



Rules 6B to 6G
27th Law
Commission
report
Amendment
Act
1976

(b) Introduction: Counterclaim is a claim made by the defendant in a suit against the plaintiff. It has been given under Order 8 Rules 6A to 6G of Civil Procedure Code.

It is a claim independent of the plaintiff's claim which can be enforced by a cross-action. Counter-claim is to be treated as a plaint and the plaintiff can file written statement to answer it.

According to Order 8 Rule 6A of Civil Procedure Code, the right of counter-claim accrue either before or after filing of suit but before the defendant had delivered its defence.

Also, the counter-claim should not exceed the pecuniary limits of the jurisdiction of the court.

When
to
file
counter
claim
↓
Rule
CA

Case law: Rohit Singh vs State of Bihar →

Under this case, features of counter claim was given which are as follows -

- 1) Counter-claim should be directed against the plaintiff.
- 2) It can be filed even after written statement is filed.
- 3) It cannot be filed after framing of issues and closure of evidence.
- 4) It is not maintainable if solely against the co-defendants.

The period of limitation for counter-claim is provided under Section 3(2)(b) (ii) of Limitation Act.

Case law: Ashok Kobra vs Surendra Agnihotri →

Under this case, it was held that Limitation Act treats counter-claim as plaint because like a plaint, the limitation of counter-claim is also given.

Shankar vs. Haldhand case → O.S. - R.C.A. → Not only limited to money suit.



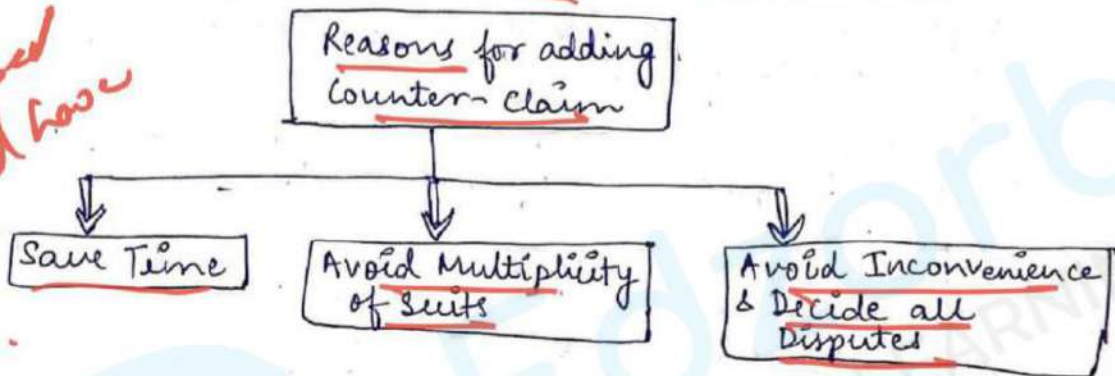
The defendant can set up a counter-claim in addition to his claim to set-off.

Difference between Set off & Counter-Claim →

<u>Set-off</u>	<u>Counter-Claim</u>
1) It has been given under <u>Order 8 Rule 6</u> .	1) It has been provided under <u>Order 8 Rule 6 A to 6 G</u> .
2) It is a defence against <u>plaintiff's action</u> .	2) It is a <u>cross-action</u> against plaintiff.
3) It should arise out of <u>same transaction</u> .	3) It need not arise out of <u>same transaction</u> .

Counter-claim was added by Amendment Act of 1976 on recommendation of Law Commission.

Answered
could have
been
better.



Effect of Counter-claim → According to Order 8 Rule 6 D, even if the suit of plaintiff is dismissed or withdrawn, the counter-claim will be decided on merits and defendant will have a right to get decree for counter-claim under Order 8 Rule 6 F.

Conclusion - counter-claim is an effective defence to defeat the relief sought by the plaintiff.

→ explain how it can act as a tool for unnecessary delay in disposing of suit.



Q3 (a) What do you mean by set-off? Explain equitable set-off. Distinguish b/w legal and equitable set-off.

(b) What should the court do when plaintiff is present and the defendant is absent? What remedies are available to defendant in such cases? Where can an ex-parte decree be passed and when it be set-aside? (25 marks)

a) Introduction - 'Set-off' means a cross-claim which partly offsets the original claim. It has been provided up Order 8 Rule 6 of Civil Procedure Code, 1909.

Conditions require for set-off →

- 1) It should be legally recoverable by the claimant,

- 2) The amount claimed for set-off must be certain amount.

- 3) It must not exceed the pecuniary jurisdiction of the court

- 4) Both the parties should have the same character of the claim for set-off.

Jitendra kumar vs Peerless General Finance

In this case, 2 conditions were stated for application of this rule -

- i) It must be for recovery of money.

- i) It must be for recovery of money.
- ii) The amount for which set-off is claimed must be certain amount.

Types of Set-off

Legal Set-off

Equitable Set-off

Distinction Between Legal and Equitable Set-off

Legal Set-off

1) Legal set off must be for a certain sum.

2) In legal set-off, it is not necessary that the claim arise out of same transaction.

3) Legal set off can be claimed as a right.

4) Legal set off requires a court-fee.

Equitable Set-off

Equitable set off can be also for uncertain sum.

In Equitable set-off, claim arise out of same transaction.

Equitable set-off cannot be claimed as a right.

Equitable set off does not require court-fee.

Equitable Set-off - It is a claim between Plaintiff & Defendant that arise out of same transaction. There should be a connection between suits which makes it inequitable for defendant to file a separate suit.

Conclusion - Equitable set off is not claimed as a right and its court's discretion to allow such claim.

Legal & equitable set off serve as path to protect the interest of defendant.



(b) Introduction - The procedure when only plaintiff is present & defendant is absent is given under Order 9 Rule 6 of Civil Procedure, Code, 1909.

Order 9 Rule 6 - Procedure when only plaintiff appears -

1) When summons were duly served - In this case, the court may make an order that suit shall be heard ex-parte.

2) When summons are not duly served - In this case, the court shall direct to issue summons again to defendant.

3) When summons served but not in due time - In this case, the court shall postpone the hearing of the suit.

4) Where summons were not served due to plaintiff's fault - The court shall order the plaintiff to pay the costs for such default.

Remedies available to defendant -

1) When defendant appears on adjourned day and provide sufficient cause for non-appearance -

If the court has adjourned the hearing of suit as ex-parte and defendant appears on adjourned day and provide a sufficient cause, then court may direct him to pay costs and proceed the suit as if he had appeared on hearing day.

Consequence
of non
appearance of
parties



This rule has been given under Order 9 Rule 7 of Civil Procedure Code, 1909.

2) Setting aside ex-parte decree against defendant-

The defendant may apply to court to set-aside the ex-parte order by satisfying the court that summons were not duly served to him or that there was sufficient cause for his non-appearance.

In this case, the court shall set-aside the ex-parte decree by directing him to pay costs. This rule has been given under Order 9 Rule 13 of Civil Procedure Code, 1909.

3) Appeal against decree passed ex-parte -

The defendant can also file an appeal against decree passed ex-parte.

If an appeal against decree passed ex-parte is dismissed then it shall lead to rejection of Order 9 Rule 13 application for setting aside the ex-parte decree.

Conclusion - A decree can be passed ex-parte under Order 9 Rule 6 (1) of CPC and it can be set-aside under Order 9 Rule 13 of CPC.

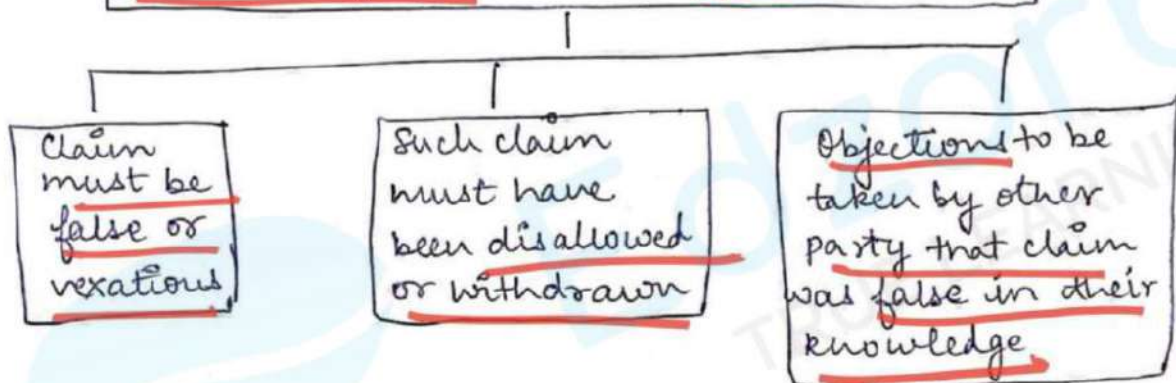


Q4 (a) When a civil court impose costs by way of compensation and cost for causing delay?
(b) When facts are essential in a notice u/s 580 CPC? what will be the effect upon the suit against the central government, state government or their officers, if the said notice is not given? (25 marks)

(a) Introduction - Civil Courts under Civil Procedure Code can impose costs by 2 ways -

1) Cost by way of Compensation - Court imposes compensatory costs in respect of false or vexatious claims. It has been given under Section 35 A of Civil Procedure Code, 1909.

Conditions for application of Section 35 A



Rule for Payment under Section 35 A -

- 1) It should not exceed Rs 3,000, OR
- 2) It should not exceed limits of pecuniary jurisdiction



2) Cost for causing delay -

The court has power to impose cost on party which is responsible for causing delay at any stage of proceeding.

It has been given under Section 35 B of Civil Procedure Code, 1909.

Only after the payment of cost, the court will proceed further with the suit.

Therefore, court shall not allow prosecution or defence if the party fails to pay the costs.

The court can extend time for payment of cost due to sufficient cause, party is unable to pay the cost.

Case law - Manohar Singh v/s D S Sharma:

In this case, it was said that a suit cannot be dismissed for non-payment of costs.

An alternative remedy was given that to pass and award such cost instead of closing of evidence of witness.

Conclusion - Imposing of costs for smooth regulation of proceedings is important.

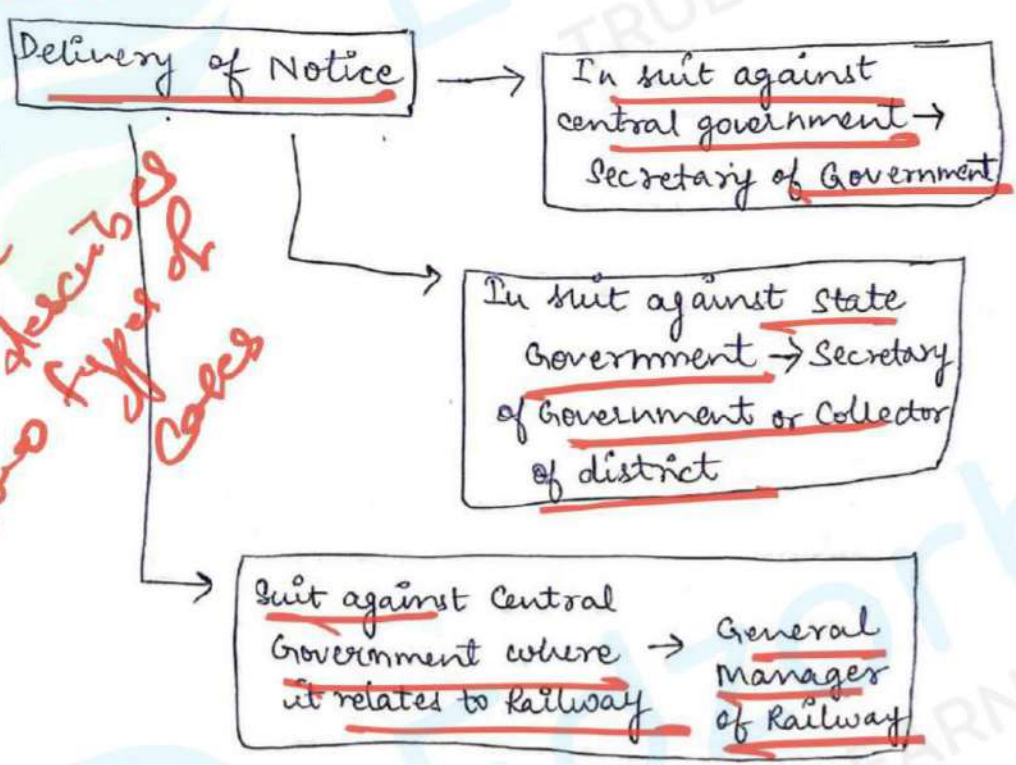
Not proper



Section 80

(b) Introduction - Section 80 of Civil Procedure Code states that no suit will be instituted against government until the expiration of 2 months of notice in writing has been delivered to them.

Section describes two types of cases



Chartered Bank Case

Base law -> B. R. Sinha v/c State of MP

In this case, it was held that suit against government will be dismissed if 2 months prior notice is not served on them.

object of Notice



14 Marks
Compulsory
9 x 2
Comm. marks
report

Essential Requirement of Notice under Section 80

1) Name,
Description
& Residence
of Plaintiff

2) Cause
of Action
& Relief

3) Notice has
been served
to appropriate
authority

4) Suit is instituted
after notice being
served to Government

These facts are essential in a notice under
section 80 of Civil Procedure Code, 1909.

If any of the fact is missing or notice is
not served to government under Section 80
CPC, then such suit shall be dismissed.

Conclusion — The purpose behind serving
notice to government prior filing of suit is
to end the litigation process and an opportunity
is given to solve the matter on the stage
of issuing the notice.



Q5 (a) Define 'Consideration' according to Indian Contract Act and bring out the difference if any, b/w the concept of 'consideration' w/ Indian Law and the concept of consideration in English Law. Examine also, the proposition: 'Past Consideration is no consideration at all' with particular reference to Indian Law.

(b) A and B are friends. B treats A during A's illness. B does not accept payment from A for treatment and A promises B's son X, to pay him Rs 2,000. A, being in poor circumstances, is unable to pay. X sues A for the money. Can X recover? (25 marks)

a) Introduction - The literal meaning of 'Consideration' is 'something in return'. It is an essential component of a contract.

It has been defined under Section 2(d) of Indian Contract as -

- 1) When at the desire of promisor,
- 2) Promisee has done or abstained from doing
- 3) Such act is called consideration

Essentials of Consideration

It can be
Past, Present
or Future

It must be
at desire of
Promisor and
not voluntary

There is no doctrine
of Privity of Consideration
as provided under
England Law

Passed at
the request
of others

Moved from
promisor or any
other person



Case law - Currie v/s Misa → In this case, it was stated that consideration should consist of some right, interest or benefit to one party or some loss suffered by the other party.

For English Law
Consideration need not be adequate

Illustration - A (promisor) agrees to sell his house to B (promisee) for Rs 1 crore (consideration).

Difference in consideration under Indian & England Law -

Indian Law

Stranger to a contract can sue if contract is made for his benefit.

England Law

Stranger to a contract cannot sue even if contract is made for his benefit.

Illustration

Types of consideration?

Past Consideration - Under England Law,

Past Consideration is no consideration. In Indian Law, Past Consideration is valid.

Backwards to consideration

Illustration - If X saves B and B promises to X to pay but refuses to pay later then under English law, X cannot enforce it as legal right but under Indian law, it can be enforced.

Conclusion - Consideration is essential element of contract & without consideration, contract is void. Exception of this principle is given under Section 25 of Indian Contract Act.

→ State the proviso.



(b) Introduction - When one person signifies other his willingness to do or abstain from doing anything in order to obtain assent for such act is known as Proposal.

It has been defined under Section 2(a) of Indian Contract Act, 1872.

If the person to whom such offer is made, gives his assent then he is said to have accepted the proposal.

Proposal + Acceptance = Promise [Sec 2(b)]

Promise + Consideration = Agreement [Sec 2(e)]

Agreement + Enforceable by Law = Contract [Sec 2(h)]

A proposal is the offer and its acceptance is valid condition for making of an agreement.

Case law - Harvey vs Facey →

1) Facts - Harvey was interested in buying a property from Facey.

He sent him a telegram and Facey replied "Lowest Price is £900".

Features of valid offer

The elements of valid offer

Illustration??

2) Issue - Whether telegram stating lowest price is an acceptance?

3) Held - Facey just asked for information and did not make an offer that could be accepted. So, since offer was not accepted, there was no contract between the party.

Illustration
In the case where B treats A during A's illness, B does not accept payment from A for treatment, there is no contract between A and B as there was no acceptance.

- Now, A promises to pay B's son X, Rs 1,000 and he was unable to pay due to his circumstances.
- The question arises whether there was a valid contract between A and X?
- Proposal was made by A to X for payment of Rs 1,000 but there was no acceptance or communication of acceptance by X for the said offer.
- Therefore, There was no contract between A and X because there was no communication of acceptance of said offer by X. So, X cannot recover money from A.

Conclusion -

A proposal when accepted becomes a promise. Acceptance is necessary for a valid contract. Without acceptance, there is no contract.



Q6 (a) What do you understand by doctrine of "feeding the grant by estoppel"? What is the impact of the doctrine on purchaser's right against vendor's imperfect title? Refer to statutory provisions.

(b) In a memorandum of partnership among A, B & C, it is provided that A will manage the business and will be paid Rs 2000 P.M. but shall have no share in profits of the firm. In a suit for dissolution, A declined any liability for losses and asserts that he was not partner in the firm. Determine the validity of plea raised by him. (25 marks)

a) Introduction - Doctrine of feeding the grant by estoppel has been given under section 43 of Transfer of Property Act.

It is based on the maxim 'nemo dat quod non-habet' which means 'no one can transfer better title than himself'.

where a person fraudulently represents that -
• He is authorized to transfer

- Transfers the property for consideration
- Transferee acted upon it in good faith
- The contract should subsist at option of transferee.

Case law - Jumma Masjid v/s Kodimaniandra

In this case, it was held that when a person transfers property and represents that he has present interest whereas he has only spes successionis, then transferee is benefited under section 43 TPA.

Right of Purchaser against vendor's no or imperfect title - This has been given under Section 13 of Specific Relief Act. In this case the purchaser has the following rights -

1) Acquisition of interest by Vendor or Lessor -

In this case, when the vendor acquires interest in the property, the purchaser can compel him to transfer the title.

2) Concurrence of other persons is required -

In this case, where concurrence is required for validating the title, the purchaser can compel him to procure such concurrence.

3) Profess to sell unencumbered property -

In this case, the purchaser can compel him to redeem the mortgage where mortgage money is less than purchase money.

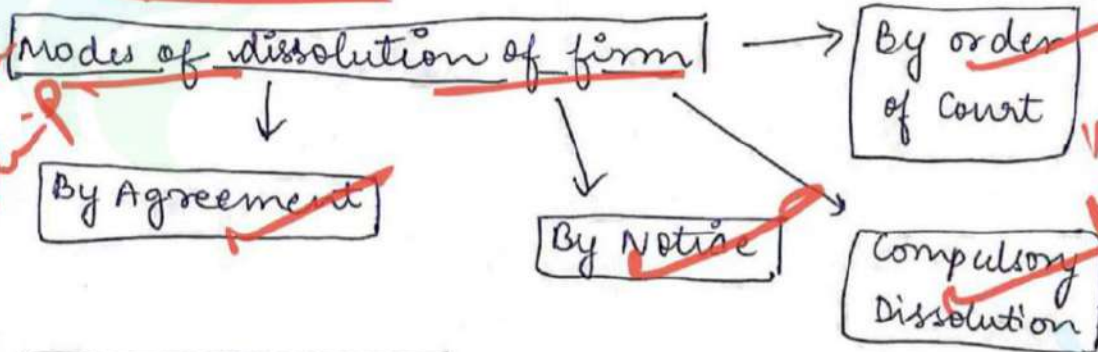
Section 13 of SRA is an extended principle of doctrine of feeding the grant by estoppel under Section 43 of Transfer of Property Act.

Conclusion - Though, no one could transfer better title than himself, still such transfer has taken place where person has no or imperfect title, then rights of transferee is protected if he has acted in good-faith.



(b) Introduction - Dissolution of firm means
ending partnership between all the partners.
It is the closing down of the firm.

Dissolution of Partnership means when any of the partners dies, retires or become insolvent and remaining partners continue the business.



Dissolution by Court - At the suit of a partner, court may dissolve a firm on following grounds:

- (a) Insanity of a Partner
- (b) Permanent Incapability of Partner
- (c) Misconduct of a Partner
- (d) If partner commits breach of agreements
- (e) If partner transfers the interest of
firm to third party
- (f) Any other ground on which firm shall
be dissolved

Case law - Cox vs Hickman -

Modes of
Dissolution.

In this case, it was held that no man is a partner unless he has the right to share in the profits of a business.

Also, every person who has received the profit is not necessarily a partner.

Case law - Badeley vs Consolidated Bank -

In this case, it was held that a man who has lent money to partner or firm and agreed to take a portion of profits of firm does not become a partner in the firm.

In the case where A was managing the business but he had no share in profits of the firm, he cannot be said to be partner of the firm.

He has no liability for losses because he is not the partner of the firm. He could only be partner of the firm when he had share in profits of the firm.

Conclusion - The plea raised by A is valid as he was not partner in the firm because he was not having any share in profits of the firm.

Liability
after
Dissolution

12
25



Q7 (a) Is time an essence of a contract for the sale of goods? Discuss the rule about stipulations as to time in such contracts.

(b) "No person can pass a better title to another than what he possesses" - Explain! What are the exceptions of this rule? (25 marks)

(a) Introduction - An agreement enforceable by law is known as contract. This provision has been given under Section 2(h) of Indian Contract Act.

Time is an essence means that contract has been made with a condition that such contract must be performed within specified time, otherwise contract becomes voidable. This provision has been provided under Section 55 of Indian Contract Act.

Intention of Parties - If in its term, contract provides that time is an essence of contract but other agreement shows that parties do not intend time to be of essence, then time shall not be the essence.

Intention of party can be examined from-

- 1) Nature of contract
- 2) The terms of the contract
- 3) The nature of property which forms the subject-matter of contract.

Time is the essence of contract
Time is not the essence of contract but performance is accepted in some other way compensation cannot be claimed unless notice.



attention
is not given
example

Case law - China Cotton Exporters v/s Behari Lal -

In this case, it was held that in commercial contracts, time is usually of essence of contract.

Except commercial contract, time is not of essence in contract. This presumption can be rebutted by showing intention of parties. See 46 & 47.

Contract of Sale - According to Section 4 of Sales of Goods Act, a contract of sale of goods is a contract where seller transfers the goods to buyer for a price. See 46, 47, 48, 49, 50, 51, 52, 53, 54, 55.

Stipulation as to time - According to Section 11 of Sales of Goods Act, stipulation as to time may be with regards to delivery of goods or payment of price. See 46, 47, 48, 49, 50, 51, 52, 53, 54, 55.

Delivery of goods - stipulations as to time of delivery of goods is usually essence of contract. See 46, 47, 48, 49, 50, 51, 52, 53, 54, 55.

Payment of price - stipulations as to time of payment of price are usually not considered to be essence of contract, but it depends upon the term of contract. See 46, 47, 48, 49, 50, 51, 52, 53, 54, 55.

Conclusion - Time will be essence of contract shall depend upon intention of parties under Indian Contract Act but under sales of Goods, stipulation as to delivery of goods is usually of essence. See 46, 47, 48, 49, 50, 51, 52, 53, 54, 55.



(7) (b) Introduction - Doctrine of feeding grant by estoppel is based on maxim 'nemo dat quod non-habet' which means no-one can pass a better title than himself.

It has been given under Section 43 of Transfer of Property Act.

Essentials of Section 43 -

- 1) Person fraudulently represents that
- 2) He is authorized to transfer.
- 3) Transfer the property for consideration
- 4) Transferee acted upon it in good faith.
- 5) The contract should subsist at option of transferee.

Case law - Summa Masjid v/s Kodimaniandra

In this case, it was held that if a person transfers property and represents that he has a present interest whereas he only has specie succession (which cannot be transferred according to Section 6(a) of Transfer of Property Act), then transferee is benefitted under Section 43 of TPA.

Section 43 of Transfer of Property Act is read with Section 13 of Specific Relief Act as Section 13 of SRA is an extended principle of feeding the grant of estoppel.

General Rule
No property can be transferred by unauthorized person.

explain the meaning of Rule of estoppel

Per Blaylock's case

Rule Applied to sale, mortgage, lease, exchange.



Exceptions -

do not operate when both parties are aware of the transaction.

1) When transferee is aware of true representation -

affected by 99.
In this case, if transferee has knowledge about the representation of transferor then transferee cannot be benefited under this doctrine.

2) When transfer is forbidden by law -

If the transfer made is forbidden by law or contrary to public policy then such contract is void as per Section 23 of Indian Contract Act and Section 43 does not apply on such transfers.

transfer by transferor is void.

3) When second transferee acquires right -

12, 25
Section 43 of TPA also protects the right of second transferee who has acted in good faith. Therefore, the only person who can defeat the right of an original transferee is subsequent transferee.

to protect the rights of transferee.

Conclusion - Even though, transferee gets benefited under section 43 of Transfer of Property Act, there are some exceptions which are against the benefit of transferee.



Q8 (a) whether specific moveable property can be recovered from the person in possession or control of the same? If so, in what circumstances?

(b) All contracts are agreements but all agreements are not contract. What conditions have been laid down in Indian Contract Act for an agreement to become a contract? (8 marks)

(a) Introduction - The specific moveable property can be recovered from the person in possession or control of the same under manner provided by Civil Procedure Code, 1909.

This provision has been given under Section 7 of Specific Relief Act.

Essentials of Section 7 of Specific Relief Act -

1) The plaintiff must be entitled to possession of property which is movable.

Person entitled to movable property

Ownership

Special or Temporary Rights

2) The property in question should be specific movable property i.e. it should be ascertainable

3) The property in question should be specific meaning the very property.

Therefore, for application of section 7 of SRA the property should be in original form and its form should not be changed.

4) The person should have the possessory rights of the property.

5) The suit under section 7 of SRA can be brought against true owner of moveable property.

Section 8 of SRA states the liability of a person in possession not as owner to deliver to a person entitled to its immediate possession.

Difference between Section 7 and Section 8 of SRA

Section 7

Suit can be filed against true owner

Gives protection to possessor against owner of moveable property.

Section 8

Suit cannot be filed against true owner

Gives protection to owner against possessor of moveable property

Conclusion - Section 7 of SRA states that possessory rights can be recovered irrespective of ownership.

(b) Introduction - "Promises and every set of promises forming consideration known as Agreement". It is given under Section 2(e) of Indian Contract Act.

"An agreement enforceable by law is a contract". It has been provided under Section 2(h) of Indian Contract Act.

Agreement must not have been expressly declared to be void.

Proposal + Acceptance = Promise [2(b)]



Promise + Consideration = Agreement [2(e)]



Agreement + Enforceable by law = Contract [2(h)]

Definition of contract by Salmond.
Effect of void.
Too many essential elements in contract.
Agreement is a bilateral transaction.

Enforceability of Agreements →

Section 10 of Indian Contract states that "All agreements are contracts if they are made by Free Consent of parties competent to contract for lawful consideration and with lawful object."

The conditions essential under Section 10 are as follows -



Can u Forgive Me For My Mistake

↳ Coercion ↳ Fraud ↳ Misrepresentation
↳ Undue Influence

- 1) Competent Parties - According to Section 11 & 12, minors, Persons of Unsound mind and Persons disqualified from law are not competent to contract.
- 2) Free Consent - 'Consensus Ad idem' means Party agreeing in same sense. The consent of parties must not have obtained by -
 - a) Coercion - An act forbidden by IPC given under section 15 of Indian Contract Act.
 - b) Undue Influence - An act to dominate the free will of person given under section 16 of ICA.
 - c) Fraud - It is defined under section 17 of ICA.
 - d) Mistake - Both parties are under mistake as to fact.
 - e) Misrepresentation - Fraudulent or negligent statement of a material fact, given under section 18 of ICA.

- 3) Lawful Consideration & Lawful Object - Consideration or object of contract should not be forbidden by law, immoral or against public policy.

So, All contracts are agreement as for the formation of contract, agreement is always necessary.

But all agreements are not contracts as only those agreements are contract which are legally enforceable.

Conclusion - Agreement is a wider term than contract and necessary for formation of a contract.

Mohri Bhabhi case.

Void ab initio

16/25

Sec. 25

Agreement must be made

relating to person or property



Evaluation Remarks



Remarks :-

- ① Include Imp & hard mark case laws which makes answer authentic
- ② Illustration could make it more presentable with an Arrow diagram.
- ③ Answer Format Introduction, Main body in diff. parts, Case laws, Correlation, Correct Answer, Conclusion.
- ④ Conclusion part Needs to be Cumulative of the whole Topic.
- ⑤ Imp points to be stated in Bullet points. and not to be missed out from Answer.





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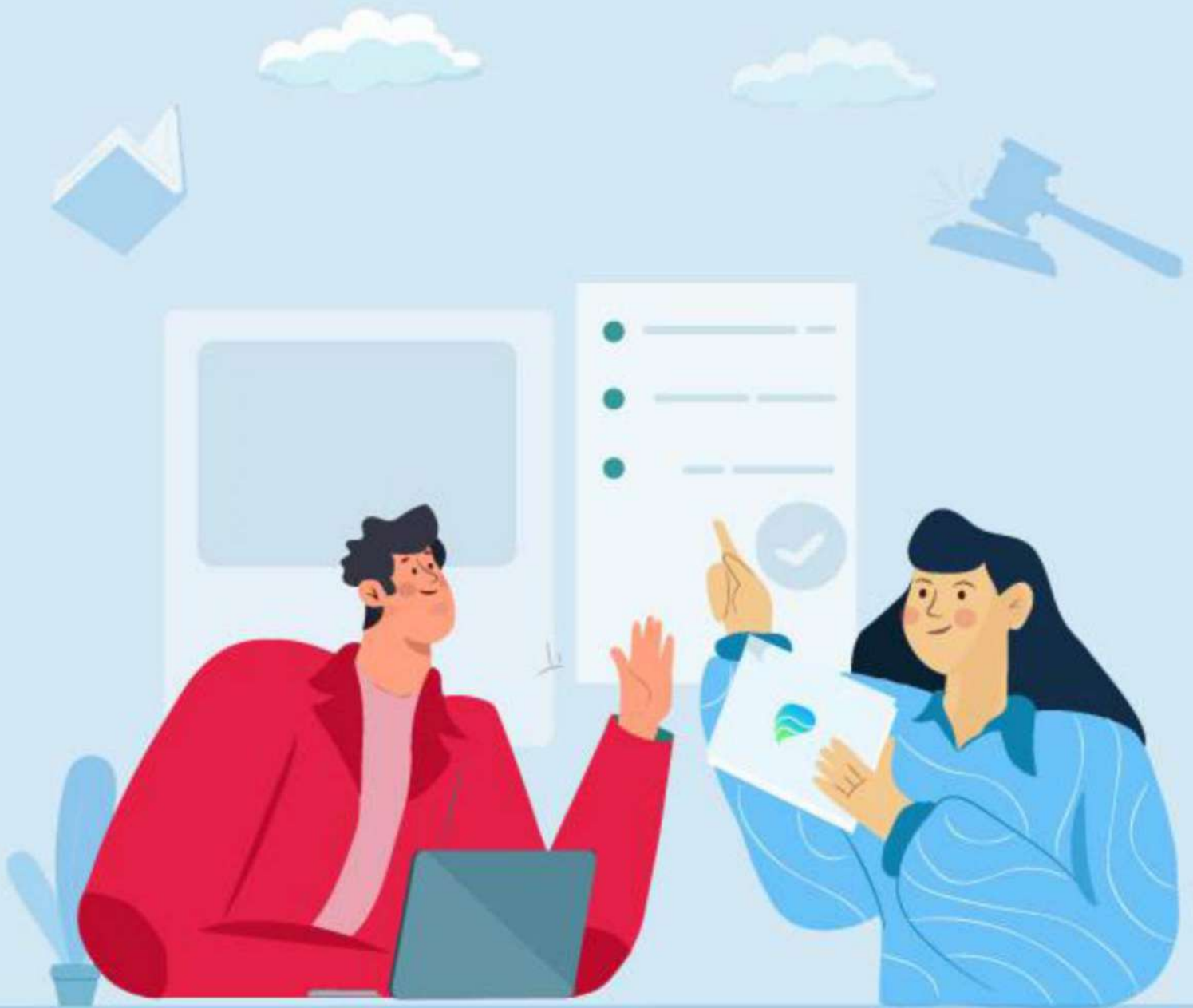


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