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DELHI JUDICIAL SERVICE EXAMINATION (WRITTEN) 2022

CIVIL LAW-1

PART-I

1. Whether a bequest of a property under a will would amount to transfer of property under Section 5 of the Transfer of Property Act, 1882? Explain.

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

2. "Property in the goods and risk in respect of them go together". Are there any exceptions to the principle? Explain with the help of case law.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Sale of Goods Act, 100% Strike Rate

3. What are the rights of an unpaid seller? Distinguish between the unpaid seller's right of lien and right of stoppage in transit. Support your answer with the help of examples.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Sale of Goods Act, 100% Strike Rate

4. What is heritable property under Muslim Law? Compare the same with Hindu Law in reference to ancestral property of Joint Hindu Family.

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

5. An Owner of a plot of land is building a four storied house within the jurisdiction of South Delhi Municipal Corporation (SDMC). During the course of construction, the building is sealed in pursuance of the Orders passed by the Commissioner, SDMC. The owner disputes it and states that the construction is in accordance with the Building Bye-Laws and the building plans sanctioned by SDMC. What are the remedies available to the Owner?

6. What are the different modes of Talaq under the Muslim Law? Which is considered to be the best or a good Talaq?

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

PART II

7. Proof of loss is a sine qua non for claiming "liquidated damages". On proof of damages, the person complaining

of breach is entitled, whether or not actual loss is proved only reasonable compensation not exceeding the amount so named in the contract as liquidated damages or penalty. Explain with the help of relevant case laws. Whether proof of actual loss is necessary in case of public utility projects like construction of a road or a project related to environmental protection? Discuss

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

8. What are the broad principles governing grant of "anti-suit injunction. Explain with the help of relevant case laws.

9. Whether a property can be equitably mortgaged by depositing of documents which may not be title deeds or registered documents of title but the documents of allotment of land by a cooperative society or a local government authority? Support your answer with the help of relevant provisions of law and case laws.

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

PART-III

10. There is a double-storey shop in an up-market in Delhi which is let out by the landlord 'L' to the tenant 'T' sometime in the year 1955 on a monthly rent of INR 500/- An eviction petition under Section 14(1)(b) of the Delhi Rent Control Act, 1958 is filed by the landlord against the tenant on the ground that the tenant has sub-let the property and/or parted with possession of part of the premises by sub-letting a part of the first floor by letting out three small cabins to three Medical Practitioners (MPs). The landlord alleged that the three MPs had a separate MTNL connection in their cabins. Each of the three cabins had a door which could be locked. A local commissioner was appointed at the request of the landlord who stated in his report that at the time of inspection the cabins were not having any doors but there was a possibility of the doors having been fixed on the cabins. Landlord has established the existence of separate MTNL connections in the name of three MPs in the cabin.

During evidence, it is established by the tenant that the keys of the main door/shutter always remained with him. It was he (the tenant) who used to open the main shutter of the shop in the morning and close the same in the evening. It was pleaded and established by the tenant

that he was running chemist shop in the tenancy premises. The tenant alleged that the MP's have been permitted to use the premises with his permission in order to promote the tenant's business of sale of medicines. The landlord has set up a case that parting with possession of part of the premises on proved facts is established. The tenant has submitted that since he has established his control over the premises and the MPs could use the premises only with his permission after he had opened the shop, there cannot be any question of parting with possession.

The Rent Controller dismissed the eviction petition holding that the MPs were not in exclusive possession and the payment of rent by the alleged sub-tenants was not established by the landlord.

The landlord has filed an appeal before the Rent Control Tribunal with the averments that once presence of third persons was established, it was for the tenant to prove that there was no monetary consideration. Decide the appeal with the help of relevant case laws.

11. H marries W in the year 1996. Out of the wedlock a daughter D is born in the year 1997. In the year 2014, W leaves matrimonial home along with D on the ground that

the husband has been treating her with cruelty. W is employed as a teacher in a public school getting a salary of INR 50,000 per month. Since the time W left the matrimonial home, she is staying with her parents in a DDA flat. In the year 2016, W files a petition under Section 18 read with Section 20(3) of the Hindu Adoption & Maintenance Act, 1956 to claim maintenance at the rate of INR 5,00,000/- per month for herself and daughter D of the parties. D has studied engineering and during the pendency of the maintenance petition, in the year 2020 she is engaged to a doctor working in a reputed government hospital. An application is moved by W to claim expenses for the marriage of the daughter amounting to INR 1.25 crores. W has established that H who is 80% shareholder of a private limited hospitality company (Bloom) is owning a resort with 5-star facilities and having 52 cottages at Manali. Rest 20% shares in the company are held by close family members of H. W has also established that H owns two high valued cars including a BMW. The company Bloom also owns four luxury cars. Bloom had a net profit of over INR 2 crores during the last 3 years and over INR 1.5 crores during two previous years before that.

On facts, it is established before the Court that W was justified in leaving the matrimonial home on account of physical abuse and cruelty meted out to her by H. What are the relevant factors for determining the admissibility and extent of maintenance to the wife and unmarried daughter? Whether the wife is also entitled to any amount towards the marriage expenses of daughter D If so, how much? Decide with the help of relevant case laws

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

12. An owner of a land executed an agreement to sell with X for a total sales consideration of INR 56,000/- in the year 1986. X paid INR 25,000/- as part of sales consideration at the time of execution of the agreement to sell. The Sale Deed was agreed to be executed within 2 years. Meanwhile, at the instance of the seller the period of two years was extended twice. Last such extension was granted in the year 1991. A further sum of INR 15,000/- was paid by X towards sales consideration at the time of second extension. At that time, balance sales consideration of INR 16,000/- was also agreed to be paid at the time of execution of the Sale Deed. However, in the year 1994, the owner sold the land to P and also executed the Sale Deed despite receiving INR 40,000/- from X towards sales

consideration. P is closely related to X and is aware of the agreement to sell between the owner and X. X files a suit for specific performance against the owner as well as P. Both the trial court as well as the first Appellate Court decreed the suit in favour of X. However, the Second Appellate Court reversed the concurrent finding of the Courts below on the ground that there was no specific averment in the plaint as required under Section level of the Specific Relief Act, 1963 and that the relief of specific performance is discretionary in nature. X approaches the Apex Court stating that his readiness and willingness to perform his part of the contract was writ large from the payment of the substantial part of the sale consideration and his conduct. Decide, taking into consideration the relevant provisions of the Specific Relief Act, 1963 and the case laws.

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

13. Sohanlal owns a parking space adjacent to a 5-star hotel where Rohan parks his car for a nominal fee. Rohan is issued a parking slip with an "owner's risk" clause. Rohan's car is stolen from the parking space. Since the car is insured, the insurance company settles Rohan's claim and in turn Rohan executes a Power of Attorney (POA)

and a letter of subrogation in favour of the Insurance Company. They both file a suit against Sohanlal seeking payment of the value of the car and compensation during the period Rohan remained without a car. Discuss the liability of Sohanlal.

Would it make any difference if Rohan had given his car for valet parking to the hotel staff who had ultimately parked it in the parking space owned by Sohanlal. While handing over the car for valet parking, Rohan was handed over a parking slip stating that the parking would be at the "guest's own risk. The suit for recovery of value of the car and compensation is jointly filed by the Insurance Company and Rohan against the Hotel. What would be the liability, if any, of the hotel? Refer to the relevant case laws.

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

14. L an owner of agricultural land passed away in the year 1951. As the only son of L, G inherited his entire property. G had three sons. In the year 1964, G effected a partition by way of court decree and divided his property equally amongst his three sons. G passed away on 15-07-1970. One of G's son, being D. had only one son viz. A.

who was born in the year 1985 through his first wife D purportedly sold his entire share of property to H vide registered Sale Deeds dated 01-09-1999 for an ostensible sale consideration of INR 4,87,500/- On 21-9-1999, the two Sale Deeds were sent by the Sub-Registrar to the Collector for action under Section 47A of the Stamp Act, 1999 as the Sale Deeds were undervalued Before the Collector, both D&H admitted that no sale consideration was exchanged for the Sale Deeds and the amount was mentioned only for the purpose of registration I got married to H in 1999 and subsequently in the year 2000, the Collector held that the two Sale Deeds were executed without any monetary transaction.

On becoming major, in the year 2004, A filed a suit against his father, D and H for declaration that the suit property was coparcenary property and hence the two Sale Deeds executed by his father D in favour of H were illegal, null and void. A also prayed for a permanent injunction restraining H from further alienating, transferring or creating a charge over the property. During the pendency of the suit, H sold the suit property to P vide a Sale Deed dated 30-10-2007. In the year 2011, the suit was decreed in the favour of A. it was held that the suit property was ancestral coparcenary property of D. H failed to prove

that D had sold the property for either legal necessity of the family or for the benefit of the estate. Consequently, the Sale Deeds executed by D in favour of H were declared illegal, null and void.

Now, H along with P has challenged this decision stating that A has no locus to institute the suit, since the coparcenary property ceased to exist after G partitioned the property between his three sons in 1964. A contention has also been raised that A had no right to challenge the Sale Deeds executed in 1999 on the ground that the sale consideration had not been paid, since only the executant i.e., D could have made such a challenge. Decide, whether the suit property was coparcenary property or self-acquired property of D? What is the validity of the Sale Deeds executed by D in favour of H in the year 1999 and the subsequent Sale Deed executed by H in the year 2007 in favour of P? Refer to the relevant provisions and the case laws.

15. W, a Muslim purchased 2 plots of land in the year 1960 and constructed a house on it. In the year 1967, the house (suit property) was mortgaged by W in favour of J for a sum of INR 11,000/-. After 3 years of execution of mortgage, not being able to pay to J, W executed a registered Sale Deed dated 21.12.1970 in favour of J for a

consideration of INR 30,000/-. In the year 1978, S, son of W, filed a suit against J for declaration that the mortgage deed dated 21.11.1967 and the Sale Deed dated 21.12.1970 in favour of J is void and consequently sought cancellation of Sale Deed. In the alternative, S also claimed for redemption of the mortgage, in case, the mortgage is held to be valid. It is the case of S that the suit property was gifted to him by W through an Oral Gift Deed dated 30.09.1970 and he was put in possession. On the very same day, a Will was also executed by W in favour of N (step-mother of S) in respect of certain other properties which clearly mentions about the oral gift. S also averred that the Sale Deed was executed by W under undue influence and the consideration was also inadequate.

During evidence, it is established by J that W had sold the suit property for consideration of INR 30,000/- and executed the Sale Deed, post which, she had continually exercised her ownership. In fact, based on the registered Sale Deed, J had been filing eviction petitions against various tenants. One such eviction suit was filed by J against S and N also, which was decreed in her favour and against S and N. The appeal filed by S and N against eviction order was also dismissed. J also averred that the

suit for declaration was barred by limitation. The suit property years of execution of Sale Deed. During evidence, S had admitted the fact regarding eviction order and mutation of J's name in the municipal records. The Trial Court, thus, dismissed the suit for declaration holding that the mortgage deed was legal and valid. It was also held that the Sale Deed was executed on payment of due consideration and cannot be assailed on the ground of undue influence or inadequate consideration. The suit for declaration was also found to be barred by limitation. In regard to Will, the Trial Court held that Will cannot be accepted since it does not bear the signature of the scribe and was not registered.

The decision of the Trial Court was appealed by S. The First Appellate Court rejected the findings and overturned the decision of the Trial Court. It was held that there was no necessity for W to mortgage or sell the suit property for such inadequate consideration and J had failed to discharge the burden cast on her of proving that the Sale Deed was validly executed. It was further held that the Oral Gift and the Will have been duly proved. The High Court affirmed the findings of the First Appellate Court. The High Court also held that S is entitled to redeem the mortgage and directed him to pay INR 11,000/- for

redemption of mortgage and also ordered delivery of possession. Decide:

(a) Whether the High Court and the First Appellate Court were right in accepting the case of S that W orally gifted the suit property to him and also executed the Will on 30.09.1970 in favour of N and rejected the Sale Deed dated 21.12.1970?

(b) Whether the High Court was right in granting the alternative relief of redemption of mortgage deed?



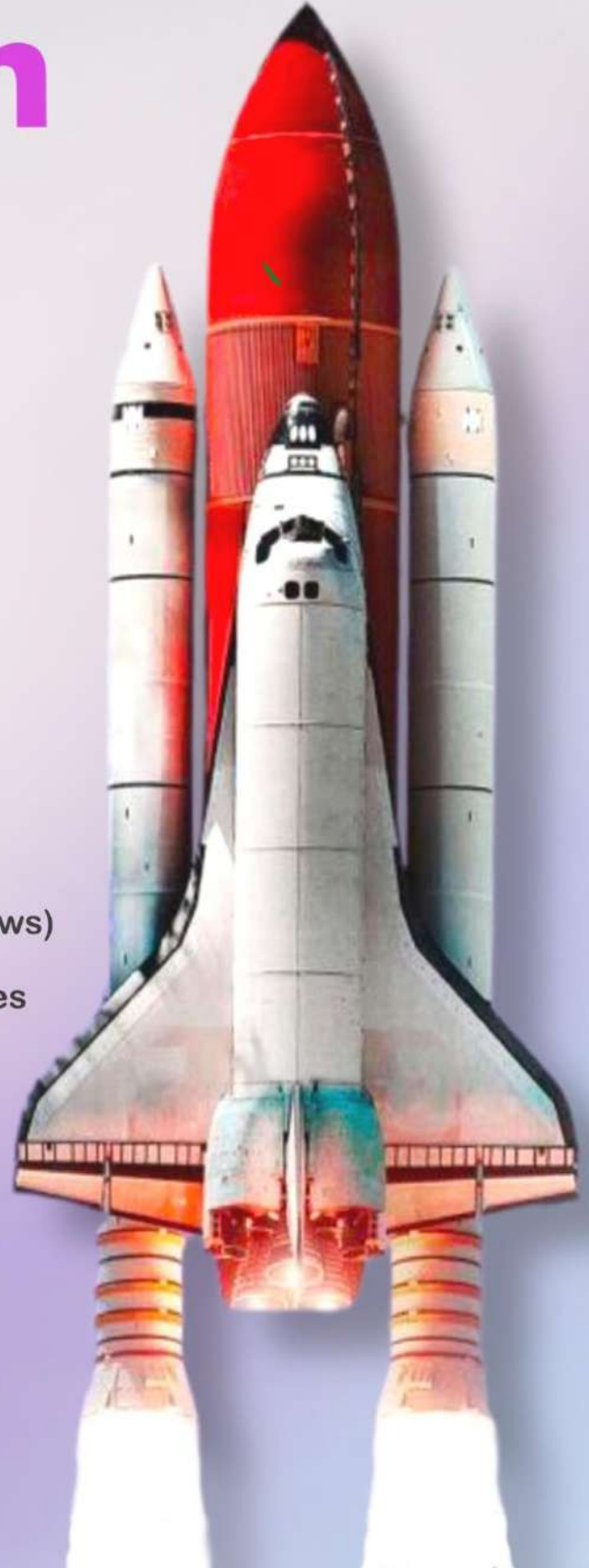
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*Shri Mahabhar Singh & Ors.
(2017) 11 SCC 195*

A child witness shall not be rejected if found to be evaluated more carefully and with respect because a child is susceptible to suggestion and thus a child is an easy prey to tutoring.

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DELHI JUDICIAL SERVICE EXAMINATION (WRITTEN) 2022

CIVIL LAW-II

PART-I

1. Distinction between the action of infringement of trademark and action for passing off.
2. The concept of Res judicata and estoppel.

Source: Edzorb Law, DJS Mains Blueprint, **Subject:** Civil Procedure Code, **Page No. 1**, 100% Strike Rate

3. What is the effect of non-registration of a document which requires compulsory registration under the Registration Act, 1908? Its effect and implication on the continuity of proceedings before courts and tribunals.
4. Section 52 of the Copyright Act, 1957 provides for certain exceptions to infringements of copyright and the said provision allow limited use of copyrighted works without the permission of the copyright holder. What are the acts which are not to be treated as infringement of copyright?
5. Discuss the principle and scope of Primary and Secondary evidence. Give two examples of each.

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

6. Registration of trademarks subject to disclaimer and its effect. Explain whether any remedy for injunction would still be available as per law.

PART-II

7. Explain when foreign judgments are not conclusive and under which circumstances there could be a presumption as to a foreign judgment. Quote relevant provision of law and give two examples.

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

8. Is the object of Section 9(1) (ii) (b) and Section 17(1) (ii) (b) Of Arbitration and Conciliation Act, 1996 similar to the object of Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908?

Please explain when and under what circumstances and situations, the court or Arbitral Tribunal can exercise its powers to pass orders in order to secure the amount in dispute? Give two examples.

9. Explain the following –

"Principles on which Section 91 and Section 92 of the Indian Evidence Act, 1872 are based and the difference between them. Please explain by giving four illustrations."

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

PART III

10. The plaintiff filed a suit for recovery of amount against defendant in the year 2016 in Delhi Court. In his written statement, the defendant has taken the objection about territorial jurisdiction. Despite the objection, the plaintiff continued the suit. Issues were duly framed, including the issue of territorial jurisdiction, evidence led and the suit was finally decreed in the year 2020. At the first date of hearing of appeal, the plaintiff withdraws the suit to file a fresh suit in the court having territorial jurisdiction in Mumbai. An objection was raised by the defendant that the suit was now time barred. The period spent by the plaintiff in the earlier suit cannot be excluded under Section 14 of the Limitation Act, 1963 as it was not prosecuted with due diligence and in good faith.

Please discuss the law and give reasons as to whether the period spent in the earlier suit can be excluded under Section 14(3) of the Limitation Act, 1963 or is it the discretion of the court to exclude or not to exclude the said period?

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

11. The plaintiff filed a suit for passing off of its trademark and for infringement of the copyright. The defendant filed the written statement claiming four years continuous use of the same mark and copyright within the knowledge of the plaintiff. The defendant pleaded long delay, acquiescence and estoppel in view of positive knowledge of such use by the plaintiff. Admittedly, the defendant was working with the plaintiff. The defendant was also unable to explain the why he had adopted a similar mark and copyright.

Please discuss the law and decide the application for injunction giving reasons as to whether the plaintiff is entitled for injunction or not?

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

12. 'A', who is the owner of property at Lajpat Nagar, New Delhi executed agreement to sell on 25th January 2017 with 'B' for a sale consideration for sum of Rupees five crores. 'B' paid ten percent as advance of sale consideration to 'A'. The agreement to sell was neither stamped nor was it registered under the Registration Act, 1908. The possession was never transferred by the 'A' to 'B' at the time of execution of documents. After expiry of two months, 'A' refused to sell the property to 'B' in view of better offer received from 'C'. 'B' had no option but to file the suit for Specific Performance against 'A' along with prayer for injunction and for damages. The suit was strongly contested before Court by 'A' who also filed an application under Order 7 Rule 11 (d) for rejection of plaint on the ground that the suit was barred by law.

Please discuss the law and decide the application filed by 'A' for rejection of suit as to whether suit is barred by law or not by giving reasons?

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

13. The plaintiff filed a suit for infringement of trademark and copyright against the defendant in the City Civil Court, Hyderabad being suit no 238/88. The Court dismissed the

suit mainly on the ground that there was no infringement. Thereafter, second suit no. 123 of 1992 including a fresh prayer for the relief of passing off action was filed. It was alleged in the second suit that the same was being filed on the basis of fresh and recurring cause of action. The defendant has denied any passing off and also alleged that second suit is not maintainable and is barred by Order 2 Rule 2(3) of Code of Civil Procedure, 1908. The plaintiff denied all averments of the defendant and stated that it is not barred under Order 2 Rule 2 of CPC.

Please discuss the law and decide whether the second suit is barred under Order 2 Rule 2(3) of Code of Civil Procedure, 1908 or not. Also discuss as to whether it was a fresh and recurring cause of action and whether the second suit is maintainable or not? Give reasons.

Source: Edzorb Law, DJS Mains Blueprint, **Subject:** Civil Procedure Code, **Page No. 1-2, 100% Strike Rate**

14. The claimant filed an application under Section 31(6) of Arbitration and Conciliation Act, 1996 for passing an interim award on the basis of admission about the completion of work at the site made by the respondent in the statement of defense. The prayer is opposed by the respondent stating that there is no specific admission in

the statement of defense. Now, the said application has to be decided. Admittedly, as per the scheme of Section 31(6) of Arbitration and Conciliation Act, 1996, the courts and Arbitral Tribunal are empowered to pass interim awards on the basis of the facts and admission made by the respondent. On the other hand, the provisions of Order XII Rule 6 of the Code of Civil Procedure, 1908 require an "unequivocal", "unconditional" and "unqualified admission by the concerned party.

In view of above facts, decide the application and explain the distinction between the scope of section 31 (6) of Arbitration and Conciliation Act, 1996 and Order XII Rule 6 of the Code of Civil Procedure,

15. 'A' is a well-known author who had written a Hindi novel. 'B' is a director of Hindi movies. 'A' assigned all rights pertaining to copyright in its novel in favour of 'B', who intends to make a Hindi movie of the theme of the novel. After completion of movie and before its release in theatres, 'A' filed a suit for injunction and compensation against 'B'. The complaint of 'A' was in respect of mutilation and distortion of 'the theme of novel. Such details were provided to the court. 'B' denied all allegations. His defense was that there merely cosmetic changes in the theme of the novel as per usual practice in

the film Industry. The controversy before the court was the question of demarcating the boundaries of the rights of the author 'A' despite assignment of copyright and that of a director of the film 'B' who had spent huge sum for making the movie.

In view of the above facts, decide the application for injunction as to whether 'B' has violated the moral right within the meaning of Section 57 of the Copyright Act, 1957 and whether 'A' is entitled for injunction or not?

DELHI JUDICIAL SERVICE EXAMINATION (WRITTEN) 2022

CRIMINAL LAW

PART-I

1. In a case involving two or more accused, is it permissible for the Court to record their joint statement under clause (b) of sub section (1) of Section 313 of the Code of Criminal Procedure, 1973 to save its time?

Source: Edzorb Law, DJS Mains Blueprint, **Subject:** Criminal Procedure Code, **Page No. 2, 100% Strike Rate**

2. When can the power under sub-section (1) of Section 319 of the Code of Criminal Procedure, 1973 to add and summon an accused can be exercised by the court?

Source: Edzorb Law, DJS Mains Blueprint, **Subject:** Criminal Procedure Code, **Page No. 2, 100% Strike Rate**

3. Will the medical evidence in sexual offences favouring the accused have any impact on the ocular testimony of the prosecutrix or other material witness or evidence of a person to whom the prosecutrix immediately after the incident narrated the facts?

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

4. Is there any presumption of correctness attached to the confessional statement recorded under section 164 of the Code of Criminal Procedure, 1973 by the Magistrate?

Source: Edzorb Law, DJS Mains Blueprint, **Subject:** Criminal Procedure Code, **Page No. 1**, 100% Strike Rate

5. Consideration for awarding sentence to a convict.

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

6. The legitimate expectations of a victim of crime from the State.

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

PART-II

7. Can an accused be convicted on the sole uncorroborated testimony of an accomplice? Explain.

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

8. Defence of alibi and the burden of proof. Explain.

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

9. Is there any requirement of issuing notice to an accused before arrest in commission of cognizable offences. Elaborate.

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

PART III

10. The marriage of 'A' & 'B' was solemnised on 02.11.2016. The accused was their immediate neighbour and wanted to kill her if she refuses. On 15.11.2016 at about 04.30 PM when 'A' was sleeping, the accused entered with petrol in a Can and threw petrol on her and set her on fire before running away.

'A' came out of her room crying engulfed in flames and upon hearing her cries, her husband 'B'(PW1), who was on the terrace, came down and extinguished the fire and took her to the LNJP Hospital. The Medical Officer (PW 15) opined that she had suffered 100% burn injuries. The I.O. recorded her-statement in the presence of PW 15. Later on, PW 15 declared the deceased fit to make statement

when SDM (PW 19) also recorded her statement. Next day she succumbed to her injuries.

The accused was arrested on the same day. On his disclosure to the I.O. the accused got recovered the plastic Can and a photo of the deceased from his home. On medical examination of the accused, he was also found to have suffered fresh burn injuries on his both hands.

The accused contended that if the deceased had suffered 100% burn injuries, she could not have put her left thumb impression on both the dying declarations and in case of a female, only the right-hand thumb impression is taken.

In his cross-examination, the I.O. explained that the right thumb and left hand of the deceased were burnt but the left thumb was safe.

Discuss the criminality of the accused.

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

11. 'A' filed a criminal complaint u/s 138 of the Negotiable Instrument Act, 1881 against 'B' and her proprietary firm for dishonour of a cheque dated 28.10.2016 of Rs. 1,92,000/- on "stop payment instructions". The

complainant alleged that he used to supply wooden material to 'B' and the said cheque was given to him by 'B' for wooden material purchased vide Invoice no. 344 dated 28.10.2016. 'A' filed a copy of invoice bearing some cutting thereon.

'B' placed on record a copy of a letter dated 01.10.2016 addressed to her banker to the effect that she lost her blank signed cheque in Kasturba Market where she had gone to buy some goods and for stop payment. She also filed a copy of the complaint lodged with the Police after 23 days of having lost her cheque in Kasturba Market and having given stop payment instructions to her banker.

At the time of framing notice u/s 251 CrPC, 'B' replied that the cheque was stolen by 'A' and she had no liability as she had already filed a complaint to the police.

The accused also filed an application before the under section 145(2) of the NI Act that in September 2016, the complainant in her absence used to come to her office for business purposes as they had good business relations, and 'A' came to her office and stole the cheque.

'B' appeared as a witness and testified that the cheque in question and other cheques meant for payment to the suppliers by her family members used to be kept at her

residence-cum-office as she used to be in the field most of the time. She admitted in her cross-examination that she was having a running account with the complainant and had put the date on the cheque in question.

Decide the criminal liability of the accused

Source: Edzorb Law, **Simplified Notes,** **Subject:** **Negotiable Instruments Act, 100% Strike Rate**

12. The marriage of 'A' and 'B' was performed on 05.10.2019. 'B' made a telephonic call on 26.09.2021 at about 01.00 AM to his father-in-law (PW 1) and informed him that his wife 'A' had fallen sick and had to be taken to hospital. PW 1 and his daughter-in-law (PW5) reached the home of 'B' where they found 'A' in unconscious condition. They took her to a nearby hospital where she was declared 'brought dead'. PW 1 refused to give any statement to the I.O. as his son had gone abroad.

M.O. (PW 15) who conducted the post mortem found that the deceased suffered fracture nasal bone and injuries on her right temporal region apart from nail marks and abrasions on her cheeks and lower part of the back. He observed that the injuries were ante mortem in nature.

PW 1 and PW5 gave their respective statements to the I.O. two days after the incident. An FIR u/s

498A/304B/302 IPC was registered against the accused. As per the FSL cause of death was 'due to coma caused by cranio cerebral injury (head injury) by means of hard blunt and forceful impact upon head'.

The defence of the accused is that (i) PW1 and PW2 gave their statement to the I.O. two days after the incident (ii) there was no evidence of demand of dowry and causing cruelty to the deceased by him (iii) no weapon of offence was recovered from his home (iv) no motive was imputed to him (v) casualty card of the Hospital did not mention any injury on the body of the deceased (vi) no guard was deputed in the mortuary to protect the body prior to the post mortem which was conducted after two days.

In his statement u/s 313 Cr PC, he stated that his wife was sick being anaemic and fell down from the bed and suffered injuries. He admitted that he and the deceased were alone in the home on the night intervening 26/27.09.2021.

Discuss the criminality of the accused.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Indian Penal Act, Criminal Procedure Code & Indian Evidence Act, 100% Strike Rate

13. An accident took place between a motorcycle and a Maruti car at about 10 AM on 18.03.2021. The motorcyclist (PW1) became unconscious and a guard posted at a nearby Farm House brought him on the side of the road and informed the police.

The motorcyclist was taken to a nearby Hospital in a PCR van. He was found to have suffered fracture in his right leg and both of his hands apart from other injuries all over the body. An FIR was registered under section 279/337/338 IPC against the Car driver.

The motorcyclist (PW 1) deposed that he was driving the motorcycle on left side of the road and when he reached near the VM Farm, he found that accused was driving his car at very high speed and loud music was being played inside the car which was audible outside and his car collided with his motorcycle. He lost his consciousness and when he regained his consciousness after five minutes, he noticed that he was lying down on one side of the road after being brought by the guard of a Farm House.

In his cross-examination, PW1 stated that the accused was driving the car on the wrong side of the road; however, he

admitted the site plan I.O. (PW3) on his instructions to be correct.

The IO testified that receiving information of the accident, he found the on one side of the road and car on the other side of the road and accordingly he prepared the Site Plan. The IO also got conducted the mechanical inspection of both the vehicles. The mechanical engineer found both the vehicles were damaged from front side.

Discuss the criminal liability of the accused.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Indian Penal Act, Criminal Procedure Code & Indian Evidence Act, 100% Strike Rate

14. On 10.06.2019 at about 2 AM, the complainant (PW2), aged about 14 years heard the loud screaming of her mother and came down to the room of her mother from the first floor. She found that the accused had caught hold of her mother and was pouring kerosene oil from a plastic bottle on her. Suddenly he set her on fire with a match stick. PW2 started crying loudly upon which her uncle PW3 came there from his nearby house. In the meantime, the deceased told PW2 that the accused wanted her to have physical relations with her which she refused. The accused fled away by jumping the wall.

The deceased was taken to the LNJP Hospital where the Medical Officer (PW5) found that the deceased suffered 100% burn injuries but was fit to make her statement. The deceased made similar statement to PW5 that the accused wanted her to sleep with him to establish physical relations and on her refusal, he poured kerosene oil on her and set her on fire with the match stick. The deceased succumbed to her injuries two days thereafter. PW2 and PW3 supported the case of the prosecution.

The defence argued (i) the FSL report ruled out smell of kerosene oil (ii) finger prints did not match with the accused (iii) PW2 did not state to the 1.0. that the fire was extinguished by PW3 by putting a blanket (iv) it was a case of suicide.

The accused did not explain in his statement u/s 313 CrPC as to how he suffered burn injuries on his person as his MLC recorded fresh burn injuries.

Discuss the criminality of the accused.

Source: Edzorb Law, **Simplified Notes**, **Subject:** Indian Penal Act, Criminal Procedure Code & Indian Evidence Act, 100% Strike Rate

15. The complainant 'A' and the accused 'B' entered into advanced a Loan Agreement on 01.05.2017 whereby the

complainant 'A' advanced a loan of Rs. 2 lacs to the accused 'B'. The loan was to be repaid by 'B' on or before 31.12.2018. The complainant 'A' demanded the return of the loan amount in the third week of December 2018 and to discharge his liability, the accused 'B' handed over a cheque of Rs. 2 Lacs dated 26.12.2018 to 'A'. The said cheque was dishonoured for insufficient funds.

After giving notice to 'B', the complainant 'A' filed the complaint under Section 138 of Negotiable Instruments Act, 1881.

The defence of the accused were: (i) 'A' had in fact advanced him loan of Rs.1,76,000/- only and at the same time, he gave a blank signed cheque to 'A' (ii) there was no subsisting liability against him (iii) he had given the cheque to 'A' as security.

The recital of the Loan Agreement mentioned that 'A' had agreed to give a loan of Rs. 2 lacs to 'B' on interest @ 2% per month. As per the terms of the Loan Agreement, Rs.2 lacs included interest @ 2% per month.

'A' admitted in his cross-examination that he had provided a loan to 'B' by a cheque of Rs. 1,76,000/- and 'A' further voluntarily stated that he had also paid cash amount of Rs. 24,000/- to the accused at that time.

Decide the complaint.

Source: Edzorb Law, **Simplified Notes,** **Subject:**
Negotiable Instruments Act, 100% Strike Rate





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DELHI JUDICIAL SERVICE EXAMINATION (WRITTEN) 2022

Duration : 3 hours

Maximum Marks : 200

CIVIL LAW-I

Important Instructions

- (i) Please read the questions carefully and answer them as directed.
- (ii) You are allowed 15 minutes time before the examination begins, during which you should read the question paper and, if you wish, highlight and/or make notes on the question paper. However, you are not allowed, under any circumstances, to open the answer sheet and start writing during this time.
- (iii) The answer to each question should begin on a fresh page.
- (iv) Support each of your answers with reasons, relevant legal provisions and principles and also relevant case laws.
- (v) Even if you do not know the answer, it is advisable to attempt as much, as the test is not only of the knowledge of law but also of analytical reasoning.

PART-I

Write short notes on **any four** out of the following six questions:

1. Whether a bequest of a property under a will would amount to transfer of property under Section 5 of the Transfer of Property Act, 1882? Explain.
2. "Property in the goods and risk in respect of them go together". Are there any exception to the principle? Explain with the help of case law.
3. What are the rights of an unpaid seller? Distinguish between the unpaid seller's right of lien and right of stoppage in transit. Support your answer with the help of examples.
4. What is heritable property under Muslim Law? Compare the same with Hindu Law in reference to ancestral property of Joint Hindu Family.
5. An Owner of a plot of land is building a four storeyed house within the jurisdiction of South Delhi Municipal Corporation (SDMC). During the course of construction, the building is sealed in pursuance of the Orders passed by the Commissioner, SDMC. The owner disputes it and states that the construction is in accordance with the Building Bye-Laws and the building plans sanctioned by SDMC. What are the remedies available to the Owner?
6. What are the different modes of Talaq under the Muslim Law? Which is considered to be the best or a good Talaq?

(4 x 10 marks = 40 marks)

PART II

Attempt **any two** out of the following three questions:

7. Proof of loss is a *sine qua non* for claiming "liquidated damages". On proof of damages, the person complaining of breach is entitled, whether or not actual loss is proved only reasonable compensation not exceeding the amount so named in the contract as liquidated damages or penalty. Explain with the help of relevant case laws. Whether proof of actual loss is necessary in case of public utility projects like construction of a road or a project related to environmental protection? Discuss.
8. What are the broad principles governing grant of "anti-suit injunction"? Explain with the help of relevant case laws.
9. Whether a property can be equitably mortgaged by depositing of documents which may not be title deeds or registered documents of title but the documents of allotment of land by a cooperative society or a local government authority? Support your answer with the help of relevant provisions of law and case laws.

(2 x 20 marks = 40 marks)

PART-III

Attempt **any four** out of the following six questions:

10. There is a double-storey shop in an up-market in Delhi which is let out by the landlord 'L' to the tenant 'T' sometime in the year 1955 on a monthly rent of INR 500/-. An eviction petition under Section 14(1)(b) of the Delhi Rent Control Act, 1958 is filed by the landlord against the tenant on the ground that the tenant has sub-let the property and/or parted with possession of part of the premises by sub-letting a part of the first floor by letting out three small cabins to three Medical Practitioners (MPs). The landlord alleged that the three MPs had a separate MTNL connection in their cabins. Each of the three cabins had a door which could be locked. A local commissioner was appointed at the request of the landlord who stated in his report that at the time of inspection the cabins were not having any doors but there was a possibility of the doors having been fixed on the cabins. Landlord has established the existence of separate MTNL connections in the name of three MPs in the cabin.

During evidence, it is established by the tenant that the keys of the main door/shutter always remained with him. It was he (the tenant) who used to open the main shutter of the shop in the morning and close the same in the evening. It was pleaded and established by the tenant that he was running a chemist shop in the tenancy premises. The tenant alleged that the MPs have been permitted to use the premises with his permission in order to promote

the tenant's business of sale of medicines. The landlord has set up a case that parting with possession of part of the premises on proved facts is established. The tenant has submitted that since he has established his control over the premises and the MPs could use the premises only with his permission after he had opened the shop, there cannot be any question of parting with possession.

The Rent Controller dismissed the eviction petition holding that the MPs were not in exclusive possession and the payment of rent by the alleged sub-tenants was not established by the landlord.

The landlord has filed an appeal before the Rent Control Tribunal with the averments that once presence of third persons was established, it was for the tenant to prove that there was no monetary consideration. Decide the appeal with the help of relevant case laws.

11. H marries W in the year 1996. Out of the wedlock a daughter D is born in the year 1997. In the year 2014, W leaves matrimonial home along with D on the ground that the husband has been treating her with cruelty. W is employed as a teacher in a public school getting a salary of INR 50,000/- per month. Since the time W left the matrimonial home, she is staying with her parents in a DDA flat. In the year 2016, W files a petition under Section 18 read with Section 20(3) of the Hindu Adoption & Maintenance Act, 1956 to claim maintenance at the rate of INR 5,00,000/- per month for herself and daughter D of the parties. D has studied engineering and during the pendency of the maintenance petition, in the year 2020 she is engaged to a doctor working in a reputed government hospital. An application is moved by W to claim expenses for the marriage of the daughter amounting to INR 1.25 crores. W has established that H who is 80% shareholder of a private limited hospitality company (Bloom) is owning a resort with 5-star facilities and having 52 cottages at Manali. Rest 20% shares in the company are held by close family members of H. W has also established that H owns two high valued cars including a BMW. The company Bloom also owns four luxury cars. Bloom had a net profit of over INR 2 crores during the last 3 years and over INR 1.5 crores during two previous years before that.

On facts, it is established before the Court that W was justified in leaving the matrimonial home on account of physical abuse and cruelty meted out to her by H. What are the relevant factors for determining the admissibility and extent of maintenance to the wife and unmarried daughter? Whether the wife is also entitled to any amount towards the marriage expenses of daughter D? If so, how much? Decide with the help of relevant case laws.

12. An owner of a land executed an agreement to sell with X for a total sales consideration of INR 56,000/- in the year 1986. X paid INR 25,000/- as part of sales consideration at the time of execution of the agreement to sell. The Sale Deed was agreed to be executed within 2 years. Meanwhile, at the instance of the owner, the period of two years was extended twice. Last such

extension was granted in the year 1991. A further sum of INR 15,000/- was paid by X towards sales consideration at the time of second extension. At that time, balance sale consideration of INR 16,000/- was also agreed to be paid at the time of execution of the Sale Deed. However, in the year 1994, the owner sold the land to P and also executed the Sale Deed despite receiving INR 40,000/- from X towards sales consideration. P is closely related to X and is aware of the agreement to sell between the owner and X. X files a suit for specific performance against the owner as well as P. Both the trial court as well as the first Appellate Court decreed the suit in favour of X, however, the Second Appellate Court reversed the concurrent finding of the Courts below on the ground that there was no specific averment in the plaint as required under Section 16(c) of the Specific Relief Act, 1963 and that the relief of specific performance is discretionary in nature. X approaches the Apex Court stating that his readiness and willingness to perform his part of the contract was writ large from the payment of the substantial part of the sale consideration and his conduct. Decide, taking into consideration the relevant provisions of the Specific Relief Act, 1963 and the case laws.

13. Sohanlal owns a parking space adjacent to a 5-star hotel where Rohan parks his car for a nominal fee. Rohan is issued a parking slip with an "owner's risk" clause. Rohan's car is stolen from the parking space. Since the car is insured, the insurance company settles Rohan's claim and in turn Rohan executes a Power of Attorney (POA) and a letter of subrogation in favour of the Insurance Company. They both file a suit against Sohanlal seeking payment of the value of the car and compensation during the period Rohan remained without a car. Discuss the liability of Sohanlal.

Would it make any difference if Rohan had given his car for valet parking to the hotel staff who had ultimately parked it in the parking space owned by Sohanlal. While handing over the car for valet parking, Rohan was handed over a parking slip stating that the parking would be at the 'guest's own risk'. The suit for recovery of value of the car and compensation is jointly filed by the Insurance Company and Rohan against the Hotel. What would be the liability, if any, of the hotel? Refer to the relevant case laws.

14. L an owner of agricultural land passed away in the year 1951. As the only son of L, G inherited his entire property. G had three sons. In the year 1964, G effected a partition by way of court decree and divided his property equally amongst his three sons. G passed away on 15-07-1970. One of G's son, being D, had only one son viz., A, who was born in the year 1985 through his first wife. D purportedly sold his entire share of property to H vide 2 registered Sale Deeds dated 01-09-1999 for an ostensible sale consideration of INR 4,87,500/-. On 21-9-1999, the two Sale Deeds were sent by the Sub-Registrar to the Collector for action under Section 47-A of the Stamp Act, 1999 as the Sale Deeds were undervalued. Before the Collector, both D & H admitted that no sale consideration was exchanged for the Sale Deeds and the amount was mentioned only for the purpose of registration. D got married to H in 1999

and subsequently in the year 2000, the Collector held that the two Sale Deeds were executed without any monetary transaction.

On becoming major, in the year 2004, A filed a suit against his father, D and H for declaration that the suit property was coparcenary property and hence the two Sale Deeds executed by his father D in favour of H were illegal, null and void. A also prayed for a permanent injunction restraining H from further alienating, transferring or creating a charge over the property. During the pendency of the suit, H sold the suit property to P vide a Sale Deed dated 30-10-2007. In the year 2011, the suit was decreed in the favour of A. It was held that the suit property was ancestral coparcenary property of D. H failed to prove that D had sold the property for either legal necessity of the family or for the benefit of the estate. Consequently, the Sale Deeds executed by D in favour of H were declared illegal, null and void.

Now, H along with P has challenged this decision stating that A has no locus to institute the suit, since the coparcenary property ceased to exist after G partitioned the property between his three sons in 1964. A contention has also been raised that A had no right to challenge the Sale Deeds executed in 1999 on the ground that the sale consideration had not been paid, since only the executant i.e., D could have made such a challenge. Decide, whether the suit property was coparcenary property or self-acquired property of D? What is the validity of the Sale Deeds executed by D in favour of H in the year 1999 and the subsequent Sale Deed executed by H in the year 2007 in favour of P? Refer to the relevant provisions and the case laws.

15. ✓ W, a Muslim purchased 2 plots of land in the year 1960 and constructed a house on it. In the year 1967, the house (suit property) was mortgaged by W in favour of J for a sum of INR 11,000/-. After 3 years of execution of mortgage, not being able to pay to J, W executed a registered Sale Deed dated 21.12.1970 in favour of J for a consideration of INR 30,000/-. In the year 1978, S, son of W, filed a suit against J for declaration that the mortgage deed dated 21.11.1967 and the Sale Deed dated 21.12.1970 in favour of J is void and consequently sought cancellation of Sale Deed. In the alternative, S also claimed for redemption of the mortgage, in case, the mortgage is held to be valid. It is the case of S that the suit property was gifted to him by W through an Oral Gift Deed dated 30.09.1970 and he was put in possession. On the very same day, a Will was also executed by W in favour of N (step-mother of S) in respect of certain other properties which clearly mentions about the oral gift. S also averred that the Sale Deed was executed by W under undue influence and the consideration was also inadequate.

During evidence, it is established by J that W had sold the suit property for consideration of INR 30,000 and executed the Sale Deed, post which, she had continually exercised her ownership. In fact, based on the registered Sale Deed, J had been filing eviction petitions against various tenants. One such eviction suit was filed by J against S and N also, which was decreed in her favour and against S and N. The appeal filed by S and N against eviction

order was also dismissed. J also averred that the suit for declaration was barred by limitation. The suit property was mutated in the name of J after 4 years of execution of Sale Deed. During evidence, S had admitted the fact regarding eviction order and mutation of J's name in the municipal records. The Trial Court, thus, dismissed the suit for declaration holding that the mortgage deed was legal and valid. It was also held that the Sale Deed was executed on payment of due consideration and cannot be assailed on the ground of undue influence or inadequate consideration. The suit for declaration was also found to be barred by limitation. In regard to Will, the Trial Court held that Will cannot be accepted since it does not bear the signature of the scribe and was not registered.

The decision of the Trial Court was appealed by S. The First Appellate Court rejected the findings and overturned the decision of the Trial Court. It was held that there was no necessity for W to mortgage or sell the suit property for such inadequate consideration and J had failed to discharge the burden cast on her of proving that the Sale Deed was validly executed. It was further held that the Oral Gift and the Will have been duly proved. The High Court affirmed the findings of the First Appellate Court. The High Court also held that S is entitled to redeem the mortgage and directed him to pay INR 11,000/- for redemption of mortgage and also ordered delivery of possession. Decide:

- a. Whether the High Court and the First Appellate Court were right in accepting the case of S that W orally gifted the suit property to him and also executed the Will on 30.09.1970 in favour of N and rejected the Sale Deed dated 21.12.1970?
- b. Whether the High Court was right in granting the alternative relief of redemption of mortgage deed?

(4 x 30 marks = 120 marks)

DELHI JUDICIAL SERVICE EXAMINATION (WRITTEN) 2022

Duration : 3 hours

Maximum Marks : 200

CIVIL LAW-II

Important Instructions

- (i) Please read the questions carefully and answer them as directed.
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- (v) Even if you do not know the answer, it is advisable to attempt as much, as the test is not only of the knowledge of law but also of analytical reasoning.

PART-I

Write short notes on **any four** out of the following six questions:

1. Distinction between the action of infringement of trademark and action for passing off.
2. The concept of Res judicata and estoppel.
3. What is the effect of non registration of a document which requires compulsory registration under the Registration Act, 1908? Its effect and implication on the continuity of proceedings before courts and tribunals.
4. Section 52 of the Copyright Act, 1957 provides for certain exceptions to infringements of copyright and the said provision allows limited use of copyrighted works without the permission of the copyright holder.

What are the acts which are not to be treated as infringement of copyright?

5. Discuss the principle and scope of Primary and Secondary evidence. Give two examples of each.
6. Registration of trademarks subject to disclaimer and its effect. Explain whether any remedy for injunction would still be available as per law.

(4 x 10 marks = 40 Marks)

PART-II

Attempt **any two** out of the following three questions:

7. Explain when foreign judgments are not conclusive and under which circumstances there could be a presumption as to a foreign judgment.

Quote relevant provision of law and give two examples.

8. Is the object of Section 9(1) (ii) (b) and Section 17(1) (ii) (b) of Arbitration and Conciliation Act, 1996 similar to the object of Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908?

Please explain when and under what circumstances and situations, the court or Arbitral Tribunal can exercise its powers to pass orders in order to secure the amount in dispute? Give two examples.

9. Explain the following -

“Principles on which Section 91 and Section 92 of the Indian Evidence Act, 1872 are based and the difference between them. Please explain by giving four illustrations.”

(2 x 20 marks = 40 marks)

PART III

Attempt **any four** out of the following six questions:

- ✓ 10. The plaintiff filed a suit for recovery of amount against defendant in the year 2016 in Delhi Court. In his written statement, the defendant has taken the objection about territorial jurisdiction. Despite the objection, the plaintiff continued the suit. Issues were duly framed, including the issue of territorial jurisdiction, evidence led and the suit was finally decreed in the year 2020. At the first date of hearing of appeal, the plaintiff withdraws the suit to file a fresh suit in the court having territorial jurisdiction in Mumbai. An objection was raised by the defendant that the suit was now time barred. The period spent by the plaintiff in the earlier suit cannot be excluded under Section 14 of the Limitation Act, 1963 as it was not prosecuted with due diligence and in good faith.

Please discuss the law and give reasons as to whether the period spent in the earlier suit can be excluded under Section 14(3) of the Limitation Act, 1963 or is it the discretion of the court to exclude or not to exclude the said period?

11. The plaintiff filed a suit for passing off of its trademark and for infringement of the copyright. The defendant filed the written statement claiming four years continuous use of the same mark and copyright within the knowledge of the plaintiff. The defendant pleaded long delay, acquiescence and estoppel in view of positive knowledge of such use by the plaintiff. Admittedly, the defendant was working with the plaintiff. The defendant was also unable to explain the reason why he had adopted a similar mark and copyright.

Please discuss the law and decide the application for injunction giving reasons as to whether the plaintiff is entitled for injunction or not?

12. 'A', who is the owner of property at Lajpat Nagar, New Delhi executed agreement to sell on 25th January, 2017 with 'B' for a sale consideration for sum of Rupees five crores. 'B' paid ten percent as advance of sale consideration to 'A'. The agreement to sell was neither stamped nor it was registered under the Registration Act, 1908. The possession was never transferred by the 'A' to 'B' at the time of execution of documents. After expiry of two months, 'A' refused to sell the property to 'B' in view of better offer received from 'C'. 'B' had no option but to file the suit for Specific Performance against 'A' along with prayer for injunction and for damages. The suit was strongly contested before Court by 'A' who also filed an application under Order 7 Rule 11 (d) for rejection of plaint on the ground that the suit was barred by law.

Please discuss the law and decide the application filed by 'A' for rejection of suit as to whether suit is barred by law or not by giving reasons?

13. The plaintiff filed a suit for infringement of trademark and copyright against the defendant in the City Civil Court, Hyderabad being suit no 238/88. The Court dismissed the suit mainly on the ground that there was no infringement. Thereafter, second suit no. 123 of 1992 including a fresh prayer for the relief of passing off action was filed. It was alleged in the second suit that the same was being filed on the basis of fresh and recurring cause of action. The defendant has denied any passing off and also alleged that second suit is not maintainable and is barred by Order 2 Rule 2(3) of Code of Civil Procedure, 1908. The plaintiff denied all averments of the defendant and stated that it is not barred under Order 2 Rule 2 of CPC.

Please discuss the law and decide whether the second suit is barred under Order 2 Rule 2(3) of Code of Civil Procedure, 1908 or not. Also discuss as to whether it was a fresh and recurring cause of action and whether the second suit is maintainable or not? Give reasons.

14. The claimant filed an application under Section 31(6) of Arbitration and Conciliation Act, 1996 for passing an interim award on the basis of admission about the completion of work at the site made by the respondent

in the statement of defense. The prayer is opposed by the respondent stating that there is no specific admission in the statement of defense. Now, the said application has to be decided. Admittedly, as per the scheme of Section 31(6) of Arbitration and Conciliation Act, 1996, the courts and Arbitral Tribunal are empowered to pass interim awards on the basis of the facts and admission made by the respondent. On the other hand, the provisions of Order XII Rule 6 of the Code of Civil Procedure, 1908 require an "unequivocal", "unconditional" and "unqualified" admission by the concerned party.

In view of above facts, decide the application and explain the distinction between the scope of section 31(6) of Arbitration and Conciliation Act, 1996 and Order XII Rule 6 of the Code of Civil Procedure, 1908.

15. 'A' is a well known author who had written a Hindi novel. 'B' is a director of Hindi movies. 'A' assigned all rights pertaining to copyright in its novel in favour of 'B', who intends to make a Hindi movie of the theme of the novel. After completion of movie and before its release in theaters, 'A' filed a suit for injunction and compensation against 'B'. The complaint of 'A' was in respect of mutilation and distortion of the theme of novel. Such details were provided to the court. 'B' denied all allegations. His defence was that there were merely cosmetic changes in the theme of the novel as per usual practice in the film industry. The controversy before the court was the question of demarcating the boundaries of the rights of the author 'A' despite assignment of copy right and that of a director of the film 'B' who had spent huge sum for making the movie.

In view of the above facts, decide the application for injunction as to whether 'B' has violated the moral right within the meaning of Section 57 of the Copyright Act, 1957 and whether 'A' is entitled for injunction or not?

(4 x 30 marks = 120 marks)

DELHI JUDICIAL SERVICE EXAMINATION (WRITTEN) 2022

Duration : 3 hours

Maximum Marks : 200

CRIMINAL LAW

Important Instructions

- (i) Please read the questions carefully and answer them as directed.
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- (iii) The answer to each question should begin on a fresh page.
- (iv) Support each of your answers with reasons, relevant legal provisions and principles and also relevant case laws.
- (v) Even if you do not know the answer, it is advisable to attempt as much, as the test is not only of the knowledge of law but also of analytical reasoning.

PART-I

Write short notes on **any four** out of the following six questions:

1. In a case involving two or more accused, is it permissible for the Court to record their joint statement under clause (b) of sub section (1) of Section 313 of the Code of Criminal Procedure, 1973 to save its time?
2. When can the power under sub-section (1) of Section 319 of the Code of Criminal Procedure, 1973 to add and summon an accused can be exercised by the court?
3. Will the medical evidence in sexual offences favouring the accused have any impact on the ocular testimony of the prosecutrix or other material witness or evidence of a person to whom the prosecutrix immediately after the incident narrated the facts?

4. Is there any presumption of correctness attached to the confessional statement recorded under section 164 of the Code of Criminal Procedure, 1973 by the Magistrate?
5. Consideration for awarding sentence to a convict.
6. The legitimate expectations of a victim of crime from the State.

(4 x 10 marks = 40 Marks)

PART-II

Attempt **any two** out of the following three questions:

7. Can an accused be convicted on the sole uncorroborated testimony of an accomplice. Explain.
8. Defence of *alibi* and the burden of proof. Explain.
9. Is there any requirement of issuing notice to an accused before arrest in commission of cognizable offences. Elaborate.

(2 x 20 marks = 40 marks)

PART III

Attempt **any four** out of the following six questions:

10. The marriage of 'A' & 'B' was solemnised on 02.11.2016. The accused was their immediate neighbour and wanted to marry 'A' and threatened to kill her if she refuses. On 15.11.2016 at about 04.30 PM when 'A' was sleeping, the accused entered her bed room with petrol in a Can and threw petrol on her and set her on fire before running away.

'A' came out of her room crying engulfed in flames and upon hearing her cries, her husband 'B'(PW1), who was on the terrace, came down and extinguished the fire and took her to the LNJP Hospital. The Medical Officer (PW15) opined that she had suffered 100% burn injuries. The I.O. recorded her statement in the presence of PW15. Later on, PW15 declared the deceased fit to make statement when SDM (PW19) also recorded her statement. Next day she succumbed to her injuries.

The accused was arrested on the same day. On his disclosure to the I.O, the accused got recovered the plastic Can and a photo of the deceased from his home. On medical examination of the accused, he was also found to have suffered fresh burn injuries on his both hands.

The accused contended that if the deceased had suffered 100% burn injuries, she could not have put her left thumb impression on both the dying declarations and in case of a female, only the right-hand thumb impression is taken.

In his cross-examination, the I.O. explained that the right thumb and left hand of the deceased were burnt but the left thumb was safe.

Discuss the criminality of the accused.

11. 'A' filed a criminal complaint u/s 138 of the Negotiable Instrument Act, 1881 against 'B' and her proprietary firm for dishonour of a cheque dated 28.10.2016 of Rs. 1,92,000/- on "stop payment instructions". The complainant alleged that he used to supply wooden material to 'B' and the said cheque was given to him by 'B' for wooden material purchased vide Invoice no. 344 dated 28.10.2016. 'A' filed a copy of invoice bearing some cutting thereon.

'B' placed on record a copy of a letter dated 01.10.2016 addressed to her banker to the effect that she lost her blank signed cheque in Kasturba Market where she had gone to buy some goods and for stop payment. She also filed a copy of the complaint lodged with the Police after 23 days of having lost her cheque in Kasturba Market and having given stop payment instructions to her banker.

At the time of framing notice u/s 251 CrPC, 'B' replied that the cheque was stolen by 'A' and she had no liability as she had already filed a complaint to the police.

The accused also filed an application before the MM under section 145(2) of the NI Act that in September 2016, the complainant in her absence used to come to her office for business purposes as they had good business relations, and 'A' came to her office and stole the cheque.

'B' appeared as a witness and testified that the cheque in question and other cheques meant for payment to the suppliers by her family members used to be kept at her residence-cum-office as she used to be in the field most of the time. She admitted in her cross-examination that she was having a running account with the complainant and had put the date on the cheque in question.

Decide the criminal liability of the accused.

12. The marriage of 'A' and 'B' was performed on 05.10.2019. 'B' made a telephonic call on 26.09.2021 at about 01.00 AM to his father-in-law (PW1) and informed him that his wife 'A' had fallen sick and had to be taken to hospital. PW1 and his daughter-in-law (PW5) reached the home of 'B' where they found 'A' in unconscious condition. They took her to a nearby hospital where she was declared 'brought dead'.

PW1 refused to give any statement to the I.O. as his son had gone abroad.

M.O. (PW15) who conducted the post mortem found that the deceased suffered fracture nasal bone and injuries on her right temporal region apart from nail marks and abrasions on her cheeks and lower part of the back. He observed that the injuries were ante mortem in nature.

PW1 and PW5 gave their respective statements to the I.O. two days after the incident. An FIR u/s 498A/304B/302IPC was registered against the accused. As per the FSL report, the cause of death was 'due to coma caused by cranio cerebral injury (head injury) by means of hard blunt and forceful impact upon head'.

The defence of the accused is that (i) PW1 and PW2 gave their statement to the I.O. two days after the incident (ii) there was no evidence of demand of dowry and causing cruelty to the deceased by him (iii) no weapon of offence was recovered from his home (iv) no motive was imputed to him (v) casualty card of the Hospital did not mention any injury on the body of the deceased (vi) no guard was deputed in the mortuary to protect the body prior to the post mortem which was conducted after two days.

In his statement u/s 313 Cr PC, he stated that his wife was sick being anaemic and fell down from the bed and suffered injuries. He admitted that he and the deceased were alone in the home on the night intervening 26/27.09.2021.

Discuss the criminality of the accused.

13. An accident took place between a motorcycle and a Maruti car at about 10 AM on 18.03.2021. The motorcyclist (PW1) became unconscious and a guard posted at a nearby Farm House brought him on the side of the road and informed the police.

The motorcyclist was taken to a nearby Hospital in a PCR van. He was found to have suffered fracture in his right leg and both the wrists of his hands apart from other injuries all over the body. An FIR was registered under section 279/337/338 IPC against the Car driver.

The motorcyclist (PW1) deposed that he was driving the motorcycle on left side of the road and when he reached near the VM Farm, he found that accused was driving his car at very high speed and loud music was being played inside the car which was audible outside and his car collided with his motorcycle. He lost his consciousness and when he regained his consciousness after five minutes, he noticed that he was lying down on one side of the road after being brought by the guard of a Farm House.

In his cross-examination, PW1 stated that the accused was driving the car on the wrong side of the road, however, he admitted the site plan prepared by the I.O. (PW3) on his instructions to be correct.

The IO testified that when he visited the site after receiving information of the accident, he found the motorcycle parked on one side of the road and car on the other side of the road and accordingly he prepared the Site Plan. The IO also got conducted the mechanical inspection of both the vehicles. The mechanical engineer found both the vehicles were damaged from front side.

Discuss the criminal liability of the accused.

14. On 10.06.2019 at about 2 AM, the complainant (PW2), aged about 14 years heard the loud screaming of her mother and came down to the room of her mother from the first floor. She found that the accused had caught hold of her mother and was pouring kerosene oil from a plastic bottle on her. Suddenly he set her on fire with a match stick. PW2 started crying loudly upon which her uncle PW3 came there from his nearby house. In the meantime, the deceased told PW2 that the accused wanted her to sleep with him to have physical relations with her which she refused. The accused fled away by jumping the wall.

The deceased was taken to the LNJP Hospital where the Medical Officer (PW5) found that the deceased suffered 100% burn injuries but was fit to make her statement. The deceased made similar statement to PW5 that the accused wanted her to sleep with him to establish physical relations and on her refusal, he poured kerosene oil on her and set her on fire with the match stick. The deceased succumbed to her injuries two days thereafter. PW2 and PW3 supported the case of the prosecution.

The defence argued (i) the FSL report ruled out smell of kerosene oil (ii) finger prints did not match with the accused (iii) PW2 did not state to the I.O. that the fire was extinguished by PW3 by putting a blanket (iv) it was a case of suicide.

The accused did not explain in his statement u/s 313 Cr P C as to how he suffered burn injuries on his person as his MLC recorded fresh burn injuries.

Discuss the criminality of the accused.

15. The complainant 'A' and the accused 'B' entered into a Loan Agreement on 01.05.2017 whereby the complainant 'A' advanced a loan of Rs. 2 lacs to the accused 'B'. The loan was to be repaid by 'B' on or before 31.12.2018. The complainant 'A' demanded the return of the loan amount in the third week of December 2018 and to discharge his liability, the accused 'B' handed over a cheque of Rs. 2 Lacs dated 26.12.2018 to 'A'. The said cheque was dishonoured for insufficient funds.

After giving notice to 'B', the complainant 'A' filed the complaint under Section 138 of Negotiable Instruments Act, 1881.

The defence of the accused were: (i) 'A' had in fact advanced him loan of Rs.1,76,000/- only and at the same time, he gave a blank signed cheque to 'A' (ii) there was no subsisting liability against him (iii) he had given the cheque to 'A' as security.

The recital of the Loan Agreement mentioned that 'A' had agreed to give a loan of Rs. 2 lacs to 'B' on interest @ 2% per month. As per the terms of the Loan Agreement, Rs.2 lacs included interest @ 2% per month.

'A' admitted in his cross-examination that he had provided a loan to 'B' by a cheque of Rs. 1,76,000/- and 'A' further voluntarily stated that he had also paid cash amount of Rs. 24,000/- to the accused at that time.

Decide the complaint.

(4 x 30 marks = 120 marks)



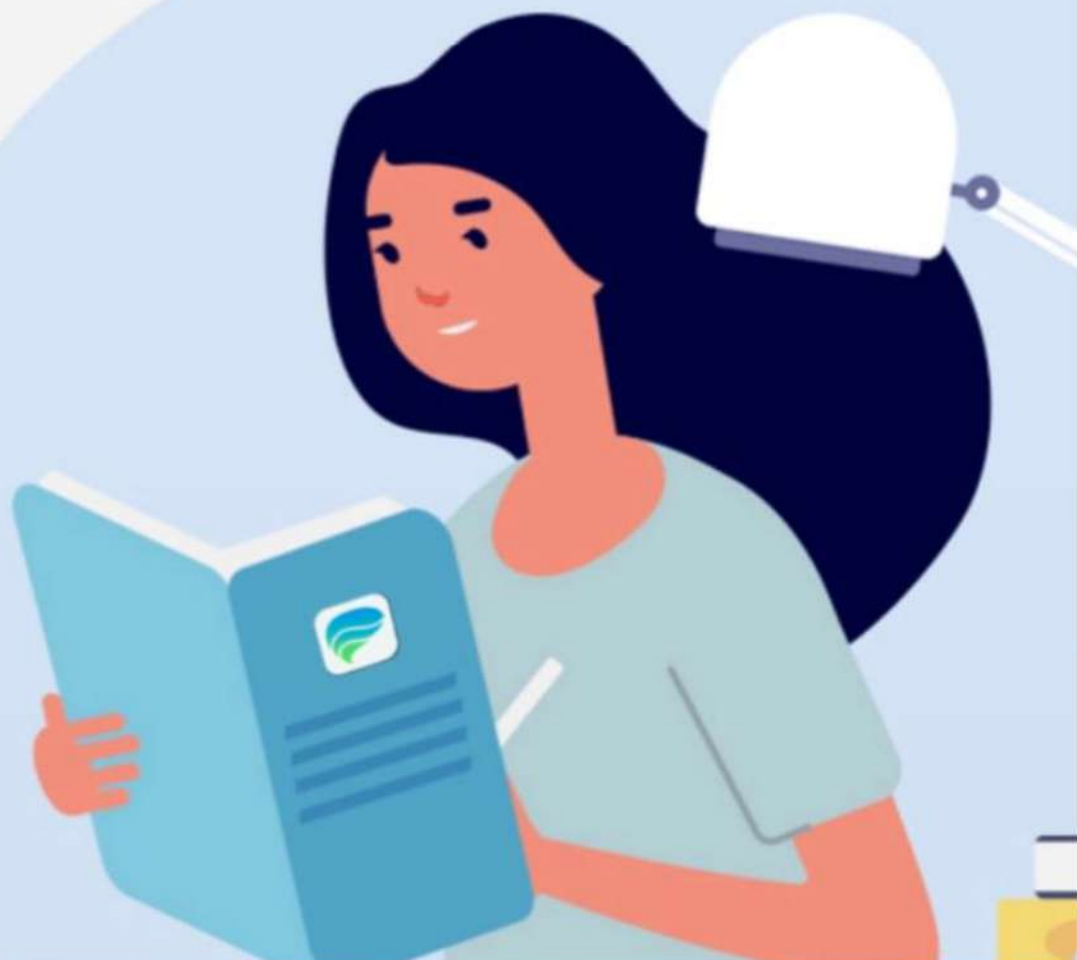
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must withstand the test
Article 19(1)(a). Freedom of press means
There can be no relationship in the press
public articles or matters of public interest
to exercise the right of the
however, restrictions can be imposed on the
but those restrictions must stand the test of
democratic organisation
In *Bennett Coleman & Co. v. Union of*
India (1972), the Hon'ble 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 -

- i) Parties to suit
- ii) Cause of Action
- iii) 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 Plaintiffs → Order 1 Rule 1 of Civil Procedure Code provides joinder of plaintiffs. → State the provision.

Krishnapa Vs. Shivappa
→ essential requirements of any civil suit.

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

Civil suit is classified into 2 parts i.e. Body & Rules of the court.

A
↓
Damage
↓
B & C
or
A

B & C
↓
Damage
↓
A



A enters contract



Salt

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.

Selling sheet case → Plaint is rejected even after numbered & instituted as a suit.

The defendant cannot be asked to file counter statement deciding on such application.



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 of

pleading

but not

partial

rejection

of plaint

is not proper



Rules 6B to 6G
27th Law
Commission
report
Amal not
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
6A

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.G.A → Not only limited to money suit.



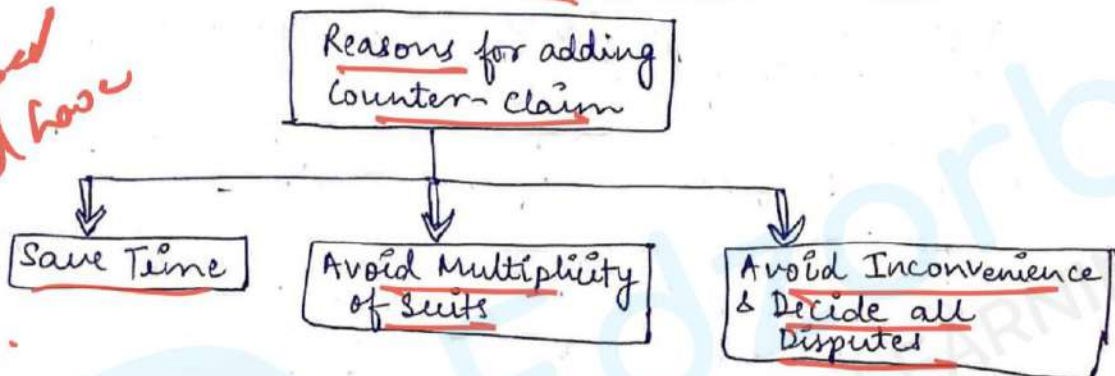
The defendant can set up a counter-claim in addition to his claim to set-off.

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 6A to 6G</u> .
2) It is a defence against <u>plaintiff's action</u> .	2) It is a <u>cross-action</u> against <u>plaintiff</u> .
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.

As we could have been better.



Effect of Counter-claim → According to Order 8 Rule 6D, 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 6F.

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 on 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 v/ Peerless General Finance

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

i) It must be for recovery of money.

ii) The amount for which set-off is claimed must be certain amount.

It must not exceed pecuniary limit of the court.

Objection??

Set-off by defendant against plaintiff or plaintiff's defence against defendant.

Recoverable in case of more sum. One defendant.

Effect of set-off.



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.

Provision of CPC.

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.

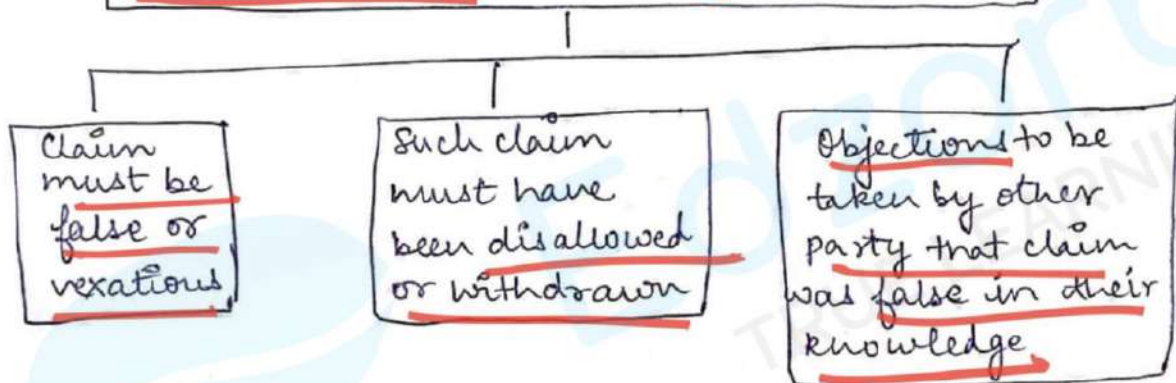


Q4 (a) when a civil court impose costs by way of compensation and cost for causing delay?
(b) when facts are essential in a notice u/s 580 CPC? what will be the effect upon the suit against the central government, state government or their officers, if the said notice is not given? (25 marks)

(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

Delivery of Notice

In suit against central government → Secretary of Government

In suit against state government → Secretary of Government or Collector of district

Suit against Central Government where it relates to Railway → General Manager of Railway

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

Chandrasekhar v/c

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
Comp. report or Sec. 80

Essential Requirement of Notice under Section 80

9 x 2
Comp. report

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.

15
25

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' as 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 1,000. 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.

In 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.

Exceptions 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 provisions.



(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.

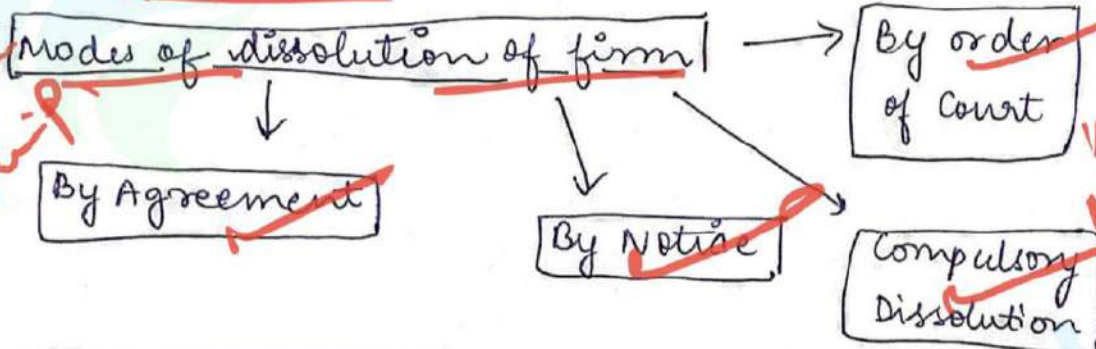
Section 13 of SRA is an extended principle of doctrine of feeding the grant by estoppel under Section 43 of Transfer of Property Act.

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 v 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 v 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



(b) "No person can pass a better title to another than what he possesses" - Explain! What are the exceptions of this rule? (2.5 marks)

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 party can be examined from -

- Contract which forms the subject-matter of the contract is accepted by the other party.

Time is not of essence

Case law - China Cotton Exporters v/s Behan 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.

46, 47, 48, 49

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.

Illustration

Delivery of goods - Stipulations as to time of delivery of goods is usually essence of contract.

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.

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.



(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 - Tumma 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.

Rule Applied to sale, mortgage, lease, exchange.



Exceptions -

1) When transferee is aware of true representation -

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.

3) When second transferee acquires right -

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.

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.

declared operate even both parties are aware of the transaction.

affected by

2
25

forbidden by law

to protect the rights 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? (25 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. *Chikam Ammal case*
 - 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. *see 23 of ICA*

- 3) Lawful Consideration & Lawful Object - Consideration or object of contract should not be forbidden by law, immoral or against public policy. *see 23 of ICA*

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 Bhai case.

Void ab initio

16/25

Sec. 23 of ICA

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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