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HCS (JUDICIAL BRANCH) MAIN WRITTEN EXAMINATION 2020-21

CIVIL LAW - I

Q.1. (a) On what grounds can pleadings be amended and can an amendment be allowed even if it is barred by limitation?

Source: Edzorb Law, CPC Mind Maps, Subject: Civil Procedure Code, 100% Strike Rate

(b) On what grounds can an appellate court set aside the judgment of the trial court?

Source: Edzorb Law, HJS Mains Blueprint, Subject: Civil Procedure Code, Page No. 5, 100% Strike Rate

(c) On what grounds can a Judgment Debtor object to execution of decree for recovery of immovable property?

Source: Edzorb Law, HJS Mains Blueprint, Subject: Civil Procedure Code, Page No. 2, 100% Strike Rate

Q.2. (a) Explain the meaning of 'ex-parte decree' and elaborate on the remedies available to a person against whom ex-parte decree is passed?

Source: Edzorb Law, CPC Mind Maps, Subject: Civil Procedure Code, 100% Strike Rate

(b) 'A' notified in the newspaper that he lost his watch worth INR 100000 while shifting his house and announced the award that anyone who found the watch and brought it to him will be rewarded with INR 10000 as the watch was gifted by his father and it is a precious watch for him. 'B' the person who transported his goods from his old house to the new one found his watch and brought it to 'A'. 'B' was not aware of the award announced in the newspaper. Coming to know subsequently about the reward that had been announced, 'B' decided to sue 'A' for recovery of the reward. Decide the dispute applying relevant provisions of law along with reasons.

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

(c) P applied for the post of headmaster in a school. The selection committee passed a resolution appointing him to the post, but the decision was not communicated to him. One of the members of the committee, however, in his individual capacity, informed P about the decision. Subsequently, the managing committee cancelled its resolution and appointed someone else instead of P. P filed a petition against the decision. Decide the case applying relevant provisions of law along with reasons.

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

(d) (i) 'A' a minor was facing criminal prosecution for dacoity. He borrowed Rs. 2000/- from 'B' to defend himself. The creditor did not know that 'A' was a minor at the time of the agreement. Will the creditor succeed in recovering the amount under the Contract Act? Furnish reasons.

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

(ii) 'A's' marriage is scheduled for the 24th of March 2020. In furtherance of the same, he enters into a contract with a catering company 'C'. 'C' is hired to serve a buffet at the wedding. However, on 22nd March 2020, the Government puts a ban on gatherings of more than 10 people. This results in the cancellation of the wedding. Discuss the legal position.

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

Q.3. (a) Under what circumstances is a plaintiff bound to seek declaration of title in addition to recovery of possession of immovable property?

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Specific Relief Act, **Page No. 1**, 100% Strike Rate

(b) Can a co-owner file a suit for injunction against another co-owner? If so, under what circumstances?

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Specific Relief Act, **Page No. 1**, 100% Strike Rate

(c) Can an ex-parte mandatory injunction be granted? If so, under what circumstances?

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

(d) Do courts have discretion to deny specific performance? If so, under what circumstances?

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Specific Relief Act, **Page No. 1**, 100% Strike Rate

Q.4. (a) What is the 'best evidence' rule? Elaborate.

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

(b) What is 'electronic evidence'? Explain under what circumstances, electronic records are admissible in any Court proceedings without further formal proof or production of the original.

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

(c) Is a document procured by improper or illegal means admissible in evidence? If so, under what circumstances?

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

(d) Four partners established a partnership for refining sugar. One of them was a wholesale grocer and had great skill in buying sugar at the right and proper time for the business. Accordingly, the business of selecting and purchasing sugar was entrusted to him. According to his skill and knowledge, he bought sugar for himself at a time when he thought the price was likely to rise. The sugar rose in value and the firm was in need of the same. He sold his own sugar to the firm without letting the partners know that it was his sugar that was sold. Is he accountable, if he makes any profit at the expense of the firm? Give reasons.

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Partnership Act, **Page No. 1**, 100% Strike Rate

Q.5. (a) Akanksha sold her scooter to Bhumika for a sum of Rs. 17000. Bhumika pays the whole price except Rs. 1000 which she promised to pay within a week. Akanksha

holds possession of the scooter until the rest of the money is paid. But before the expiry of time, Bhumika becomes insolvent. Akanksha resold the scooter to Chetna for Rs. 17500 without giving notice to Bhumika. Whether the re-sale is valid? Can Bhumika claim Rs. 500, i.e., the profit on re-sale? Give reasons.

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Sale of Goods Act, **Page No. 1**, 100% Strike Rate

(b) Yamini in Bombay places an online order to Vamika in Chennai to send a packet of patented medicine. Accordingly, Vamika dispatches the order and delivers the packet. Yamini finds some defects in the medicine on opening the bottle. Vamika refuses to refund as the bottle is now open. Can Yamini claim the refund? Give reasons.

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Sale of Goods Act, **Page No. 1**, 100% Strike Rate

(c) What are the different classes of civil courts prescribed in the Punjab Courts Act 1918?

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

(d) Under what circumstances can the Fair Rent fixed under the Haryana Urban (Control of Rent and Eviction) Act 1973, be revised?

Source: Edzorb Law, **Simplified Notes**, **Subject:** Haryana Urban (Control of Rent and Eviction) Act, 100% Strike Rate

(e) Enumerate and explain the circumstances under which a landlord may set the law in motion for eviction of his tenant under the Haryana Urban (Control of Rent and Eviction) Act 1973?

Source: Edzorb Law, **Simplified Notes**, **Subject:** Haryana Urban (Control of Rent and Eviction) Act, 100% Strike Rate

CIVIL LAW - II

Q.1. (a) What are the changes made in the Hindu Succession Act 1956 by Act 39 of 2005 as regards succession to ancestral property by a Hindu female? Cite latest case law on the point.

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

(b) 'A' a Hindu alienates coparcenary property in the lifetime of his son B without B's consent and without justifying necessity. B dies 2 years after the sale. 6 months after B's death, another son C is born to A's wife from A. Advise about C's right to challenge the alienation of property made by his father.

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

(c) Anjali, a Hindu girl wants to marry a Muslim boy, without relinquishing her faith. Discuss in detail with relevant provisions and procedure under which law she can marry?

Q.2. (a) Elaborate on concept of void and voidable marriages regarding Hindus? What is the status of children born to persons whose marriages are void and what are rights of such a child?

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Hindu Marriage Act, **Page No. 2, 100% Strike Rate**

(b) A boy and a girl want to marry each other. The boy is the girl's paternal aunt's son. Explain whether the marriage in this relationship would be valid as per the Hindu Marriage Act.

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Hindu Marriage Act, **Page No. 2, 100% Strike Rate**

(c) A widower or a bachelor adopts a child. He later marries. What would be the status of the wife viz-a-viz the child? Give reasons for your answer.

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Hindu Adoption and Maintenance Act, **Page No. 3, 100% Strike Rate**

(d) Sunaina and Kartik got married as per the norms of Hindu law. When they were not blessed with a child for more than 3 years they consulted a Doctor. After examining both of them, the doctor disclosed that medical issues are with Sunaina. She started taking the necessary treatment for infertility but could not conceive. She insisted that Kartik should divorce her and marry another woman and get a progeny for himself. Frustrated, Kartik adopted a baby boy without consulting his wife. Can the child be considered the adopted child of Sunaina

and Kartik under the Hindu Adoption and Maintenance Act, 1956. Explain the conditions for a valid adoption under the Hindu Adoption and Maintenance Act, 1956.

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Hindu Adoption and Maintenance Act, **Page No. 3**, 100% Strike Rate

Q.3. (a) What are the grounds on which an order granting maintenance by a court be varied by it later? Explain.

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Hindu Adoption and Maintenance Act, **Page No. 3**, 100% Strike Rate

(b) Can a child in the womb at the time of death of an intestate inherit the property of the intestate? If so, when does such inheritance vest in him?

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Hindu Succession Act, **Page No. 2**, 100% Strike Rate

(c) Explain the concept of adverse possession briefly with reference to case law.

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Limitation Act, **Page No. 2**, 100% Strike Rate

(d) Explain the difference between applicability of Section 5 and Section 14 of Limitation Act 1963 to suits.

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Limitation Act, **Page No. 1**, 100% Strike Rate

Q.4. (a) Can a property, in the absence of any evidence as to who created the wakf, be considered a wakf property? Explain. Also, discuss the circumstances wherein any sale, gift, lease, exchange, mortgage or transfer of waqf property shall be void-ab-initio under the Wakf Act 1995.

(b) Explain the legal position regarding talaq-e-biddat in Muslim Law.

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

(c) Elaborate on the concept of Judicial Separation and Divorce and also the difference between them.

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Hindu Marriage Act, **Page No. 1-2**, 100% Strike Rate

Q.5. (a) Write in detail the grounds for dissolution of a Muslim marriage and emphasize on the effect of conversion to another faith with regards to dissolution of Muslim marriage?

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

(b) Explain as to whether a document which narrates only the pre-existing title to a property, is compulsorily registrable under the Registration Act?

(c) What is the effect of non-registration of a document which is required to be registered?

(d) Write Short Notes on:

(i) Natural, De Facto and De Jure Guardian.

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Hindu Minority and Guardianship Act, **Page No. 2**, 100% Strike Rate

(ii) Easementary Right.

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Limitation Act, **Page No. 2**, 100% Strike Rate



CRIMINAL LAW

Q.1. (a) Elaborate the powers of a Magistrate under S. 145 CrPC and the procedure prescribed.

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

(b) A police report forwarded to the Magistrate under S. 173(2) of the CrPC stated that a person Om Prakash has committed an offence. A protest petition was also filed referring to some statements recorded under S. 161 CrPC whereby it was suggested that another person named Sanjiv is also involved in the crime. Magistrate took cognizance under S. 190(1)(b) CrPC and issued process against both the persons. Sanjiv has challenged the order on the grounds that Magistrate should have followed the procedure under S. 200 CrPC before issuing process against him as he acted on the protest petition. Decide and give reasons.

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Criminal Procedure Code, **Page No. 2-3**, 100% Strike Rate

(c) Write short notes on:

(i) Victim and Criminal Justice System

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Criminal Procedure Code, **Page No. 4**, 100% Strike Rate

(ii) Difference between statements recorded U/s 161 CrPC and recorded U/s 164 CrPC.

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

(iii) Parameters to be considered while granting anticipatory bail and regular bail.

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Criminal Procedure Code, **Page No. 4-5**, 100% Strike Rate

(iv) Cancellation of bail.

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Criminal Procedure Code, **Page No. 4-5**, 100% Strike Rate

Q.2. (a) What are the principles to be followed by a Court while exercising its powers under S. 427 CrPC as regards concurrent running of sentences

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

(b) Under what circumstances can charge once framed be altered and at what stage? Explain with relevant case law

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Criminal Procedure Code, **Page No. 3**, 100% Strike Rate

(c) What are circumstances under which prosecution can be withdrawn? Explain with relevant case law

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Criminal Procedure Code, **Page No. 4**, 100% Strike Rate

(d) What is the law governing summoning of a person to face trial as an additional accused?

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

Q.3. (a) Write short notes on:

(i) Difference between Dacoity and Robbery

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Indian Penal Code, **Page No. 4**, 100% Strike Rate

(ii) Limitations on exercise of right of Private Defence?

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Indian Penal Code, **Page No. 2**, 100% Strike Rate

(iii) Difference between 'Hurt' and 'Grievous hurt

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Indian Penal Code, **Page No. 1**, 100% Strike Rate

(iv) Difference between 'Common intention' and 'Common object'

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Indian Penal Code, **Page No. 3**, 100% Strike Rate

(v) What are the ingredients of an offence Under Section 295-A IPC?

Source: Edzorb Law, **Simplified Notes**, **Subject:** Indian Penal Code, 100% Strike Rate

(b) Discuss admissibility of multiple dying declarations under the Evidence Act with reference to case law

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

Q.4. (a) What is the protection given to a public servant who is accused of committing an offence?

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

(b) Critically analyse the difference between 'Murder' and 'Culpable homicide' with the help of case law

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

(c) X while studying in undergraduate class became intimate with Y, while the latter was not much interested in the relationship and always informed X about her position. After they passed out from college, X met with Y

who in the meantime had got engaged elsewhere and told her that she should not marry anyone else. This put Y very difficult position. She informed the same to her parents. Upon call by the parents of Y, X demanded a sum of Rs.2 lakh to be out of the scene for the marriage of Y. Even the family of X told him that if the said amount is not paid their son, he can do anything. Y's father did not accept this and filed FIR with the police. Identify what type of crime is committed by X? Can it be said that the family of X is also guilty?

Source: Edzorb Law, Simplified Notes, **Subject:** Indian Penal Code, 100% Strike Rate

Q5 (a) Distinguish between admissions and confessions and also explain when confessions made to a police officer become admissible in evidence

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Indian Evidence Act, **Page No. 1-2**, 100% Strike Rate

(b) Write short notes on:

(i) Facts which need not be proved.

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

(ii) 'May presume' and 'shall presume'.

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

(iii) Accomplice's evidence.

Source: Edzorb Law, HJS Mains Blueprint, **Subject:** Indian Evidence Act, **Page No. 4**, 100% Strike Rate

(iv) Burden of proof and onus of proof.

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

(c) What is-the role reserved for the doctrine of *res ipsa loquitur* in criminal law?

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



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- Interview Guidance
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Test Series, JW Samples & JW Creative**



CIVIL LAW - I

Time: Three Hours

Maximum Marks: 200

Notes:

1. Attempt all questions in the same order in which they appear in the question paper.
 2. Marks for individual questions are indicated against each question.
 3. Support your answers with relevant provisions and case law.
 4. No extra answer sheet will be provided.
-

Q1(a) On what grounds can pleadings be amended and can an amendment be allowed even if it is barred by limitation? (20 Marks)

(b) On what grounds can an appellate court set aside the judgment of the trial court? (10 Marks)

(c) On what grounds can a Judgment Debtor object to execution of decree for recovery of immovable property? (10 Marks)

Q2(a) Explain the meaning of 'ex parte decree' and elaborate on the remedies available to a person against whom ex parte decree is passed? (10 Marks)

(b) 'A' notified in the newspaper that he lost his watch worth INR 100000 while shifting his house and announced the award that anyone who found the watch and brought it to him will be rewarded with INR 10000 as the watch was gifted by his father and it is a precious watch for him. 'B' the person who transported his goods from his old house to the new one found his watch and brought it to 'A'. 'B' was not aware of the award announced in the newspaper. Coming to know subsequently about the reward that had been announced, 'B' decided to sue 'A' for recovery of the reward. Decide the dispute applying relevant provisions of law along with reasons. (10 Marks)

(c) P applied for the post of headmaster in a school. The selection committee passed a resolution appointing him to the post, but the decision was not communicated to him. One of the members of the committee, however, in his individual capacity, informed P about the decision. Subsequently, the managing committee canceled its resolution and appointed someone else instead of P. P filed a petition against the decision. Decide the case applying relevant provisions of law along with reasons. (10 Marks)

(d) (i) 'A' a minor was facing criminal prosecution for dacoity. He borrowed Rs. 2000/- from 'B' to defend himself. The creditor did not know that 'A' was a minor at the time of the agreement. Will the creditor succeed in recovering the amount under the Contract Act? Furnish reasons. (5 Marks)

(ii) 'A's' marriage is scheduled for the 24th of March 2020. In furtherance of the same, he enters into a contract with a catering company 'C'. 'C' is hired to serve a buffet at the wedding. However, on 22nd March 2020, the Government puts a ban on gatherings of more than 10 people. This results in the cancellation of the wedding. Discuss the legal position. (5 Marks)

Q3 (a) Under what circumstances is a plaintiff bound to seek declaration of title in addition to recovery of possession of immovable property? (10 Marks)

(b) Can a co owner file a suit for injunction against another co owner? If so, under what circumstances? (10 Marks)

(c) Can an ex parte mandatory injunction be granted? If so, under what circumstances? (10 Marks)

(d) Do courts have discretion to deny specific performance? If so, under what circumstances? (10 Marks)

Q4(a) What is the 'best evidence' rule? Elaborate. (10 Marks)

(b) What is 'electronic evidence'? Explain under what circumstances, electronic records are admissible in any Court proceedings without further formal proof or production of the original. (10 Marks)

(c) Is a document procured by improper or illegal means admissible in evidence? If so, under what circumstances? (10 Marks)

(d) Four partners established a partnership for refining sugar. One of them was a wholesale grocer and had great skill in buying sugar at the right and proper time for the business. Accordingly, the business of selecting and purchasing sugar was entrusted to him. According to his skill and knowledge, he bought sugar for himself at a time when he thought the price was likely to rise. The sugar rose in value and the firm was in need of the same. He sold his own sugar to the firm without letting the partners know that it was his sugar that was sold. Is he accountable, if he makes any profit at the expense of the firm? Give reasons. (10 Marks)

Q5(a) Akanksha sold her scooter to Bhumika for a sum of Rs. 17000. Bhumika pays the whole price except Rs. 1000 which she promised to pay within a week. Akanksha holds possession of the scooter until the rest of the money is paid. But before the expiry of time, Bhumika becomes insolvent. Akanksha resold the scooter to Chetna for Rs. 17500 without giving notice to Bhumika. Whether the re-sale is valid? Can Bhumika claim Rs. 500, i.e., the profit on re-sale? Give reasons. (10 Marks)

(b) Yamini in Bombay places an online order to Vamika in Chennai to send a packet of patented medicine. Accordingly, Vamika dispatches the order and delivers the packet. Yamini finds some defects in the medicine on opening the bottle. Vamika refuses to refund as the bottle is now open. Can Yamini claim the refund? Give reasons. (10 Marks)

(c) What are the different classes of civil courts prescribed in the Punjab Courts Act 1918? (5 Marks)

(d) Under what circumstances can the Fair Rent fixed under the Haryana Urban (Control of Rent and Eviction) Act 1973, be revised? (5 Marks)

(e) Enumerate and explain the circumstances under which a landlord may set the law in motion for eviction of his tenant under the Haryana Urban (Control of Rent and Eviction) Act 1973? (10 Marks)

CIVIL LAW - II

Time: Three Hours

Maximum Marks: 200

Notes:

1. Attempt all questions in the same order in which they appear in the question paper.
2. Marks for individual questions are indicated against each question.
3. Support your answers with relevant provisions and case law.
4. No extra answer sheet will be provided.

Q1 (a) What are the changes made in the Hindu Succession Act 1956 by Act 39 of 2005 as regards succession to ancestral property by a Hindu female? Cite latest case law on the point. (15 Marks)

(b) 'A' a Hindu alienates coparcenary property in the lifetime of his son B without B's consent and without justifying necessity. B dies 2 years after the sale. 6 months after B's death, another son C is born to A's wife from A. Advise about C's right to challenge the alienation of property made by his father. (10 Marks)

(c) Anjali, a Hindu girl wants to marry a Muslim boy, without relinquishing her faith. Discuss in detail with relevant provisions and procedure under which law she can marry? (15 Marks)

Q2 (a) Elaborate on concept of void and voidable marriages regarding Hindus? What is the status of children born to persons whose marriages are void and what are rights of such a child? (10 Marks)

(b) A boy and a girl want to marry each other. The boy is the girl's paternal aunt's son. Explain whether the marriage in this relationship would be valid as per the Hindu Marriage Act. (10 Marks)

(c) A widower or a bachelor adopts a child. He later marries. What would be the status of the wife viz a viz the child? Give reasons for your answer. (10 Marks)

(d) Sunaina and Kartik got married as per the norms of Hindu law. When they were not blessed with a child for more than 3 years they consulted a Doctor. After examining both of them, the doctor disclosed that medical issues are with Sunaina. She started taking the necessary treatment for infertility but could not conceive. She insisted that Kartik should divorce her and marry another woman and get a progeny for himself. Frustrated, Kartik adopted a baby boy without consulting his wife. Can the child be considered the adopted child of Sunaina and Kartik under the Hindu Adoption and Maintenance Act, 1956. Explain the conditions for a valid adoption under the Hindu Adoption and Maintenance Act, 1956. (10 Marks)

Q3 (a) What are the grounds on which an order granting maintenance by a court be varied by it later? Explain. (10 Marks)

- (b) Can a child in the womb at the time of death of an intestate inherit the property of the intestate? If so, when does such inheritance vest in him? (5 Marks)
- (c) Explain the concept of adverse possession briefly with reference to case law. (15 Marks)
- (d) Explain the difference between applicability of Section 5 and Section 14 of Limitation Act 1963 to suits. (10 Marks)
- Q4 (a) Can a property, in the absence of any evidence as to who created the wakf, be considered a wakf property? Explain. Also, discuss the circumstances wherein any sale, gift, lease, exchange, mortgage or transfer of wakf property shall be void ab initio under the Wakf Act 1995. (15 Marks)
- (b) Explain the legal position regarding talaq-e-biddat in Muslim Law. (10 Marks)
- (c) Elaborate on the concept of Judicial Separation and Divorce and also the difference between them. (15 Marks)
- Q5 (a) Write in detail the grounds for dissolution of a Muslim marriage and emphasize on the effect of conversion to another faith with regards to dissolution of Muslim marriage? (10 Marks)
- (b) Explain as to whether a document which narrates only the pre-existing title to a property, is compulsorily registrable under the Registration Act? (5 Marks)
- (c) What is the effect of non-registration of a document which is required to be registered? (5 Marks)
- (d) Write Short Notes on
- (i) Natural, De Facto and De Jure Guardian. (10 Marks)
 - (ii) Easementary Right. (10 Marks)

CRIMINAL LAW

Time: Three Hours

Maximum Marks: 200

Notes:

1. Attempt all questions in the same order in which they appear in the question paper.
 2. Marks for individual questions are indicated against each question.
 3. Support your answers with relevant provisions and case law.
 4. No extra answer sheet will be provided.
-

Q1(a) Elaborate the powers of a Magistrate under S. 145 CrPC and the procedure prescribed. (10 Marks)

(b) A police report forwarded to the Magistrate under S. 173(2) of the CrPC stated that a person Om Prakash has committed an offence. A protest petition was also filed referring to some statements recorded under S.161 CrPC whereby it was suggested that another person named Sanjiv is also involved in the crime. Magistrate took cognizance under S. 190 (1)(b) CrPC and issued process against both the persons. Sanjiv has challenged the order on the grounds that Magistrate should have followed the procedure under S. 200 CrPC before issuing process against him as he acted on the protest petition. Decide and give reasons. (10 Marks)

(c) Write short notes on

- i) Victim and Criminal Justice System (5Marks)
- ii) Difference between statements recorded U/s 161 CrPC and recorded U/s 164 CrPC. (5Marks)
- iii) Parameters to be considered while granting anticipatory bail and regular bail. (5Marks)
- iv) Cancellation of bail. (5Marks)

Q2(a) What are the principles to be followed by a Court while exercising its powers under Section 427 CrPC. as regards concurrent running of sentences? (10Marks)

- (b) Under what circumstances can charge once framed be altered and at what stage? Explain with relevant case law (15Marks)
- (c) What are circumstances under which prosecution can be withdrawn? Explain with relevant case law (10Marks)
- d) What is the law governing summoning of a person to face trial as an additional accused? (5Marks)

Q3(a) Write short notes on:

- i) Difference between Dacoity and Robbery (5Marks)
- ii) Limitations on exercise of right of Private Defence? (5Marks)
- iii) Difference between 'Hurt' and 'Grievous hurt' (5Marks)
- iv) Difference between 'Common intention' and 'Common object' (5Marks)
- v) What are the ingredients of an offence Under Section 295-A IPC? (5Marks)

(b) Discuss admissibility of multiple dying declarations under the Evidence Act with reference to case law (15Marks)

Q4 (a) What is the protection given to a public servant who is accused of committing an offence? (10Marks)

(b) Critically analyse the difference between 'Murder' and 'Culpable homicide' with the help of case law (20Marks)

(c) X while studying in undergraduate class became intimate with Y, while the latter was not much interested in the relationship and always informed X about her position. After they passed out from college, X met with Y who in the mean time had got engaged elsewhere and told her that she should not marry anyone else. This put Y in a very difficult position. She informed the same to her parents. Upon call by the parents of Y, X demanded a sum of Rs.2 lakh to be out of the scene for the marriage of Y. Even the family of X told him that if the said amount is not paid to their son, he can do anything. Y's father did not accept this and filed FIR with the police. Identify what type of crime is committed by X? Can it be said that the family of X is also guilty? (10Marks)

Q5 (b) Distinguish between admissions and confessions and also explain when confessions made to a police officer become admissible in evidence (10Marks)

(c) Write short notes on

i) Facts which need not be proved. (5Marks)

ii) 'May presume' and 'shall presume'. (5Marks)

iii) Accomplice's evidence. (5Marks)

iv) Burden of proof and onus of proof. (5Marks)

(d) What is the role reserved for the doctrine of *res ipsa loquitur* in criminal law? (10 Marks)



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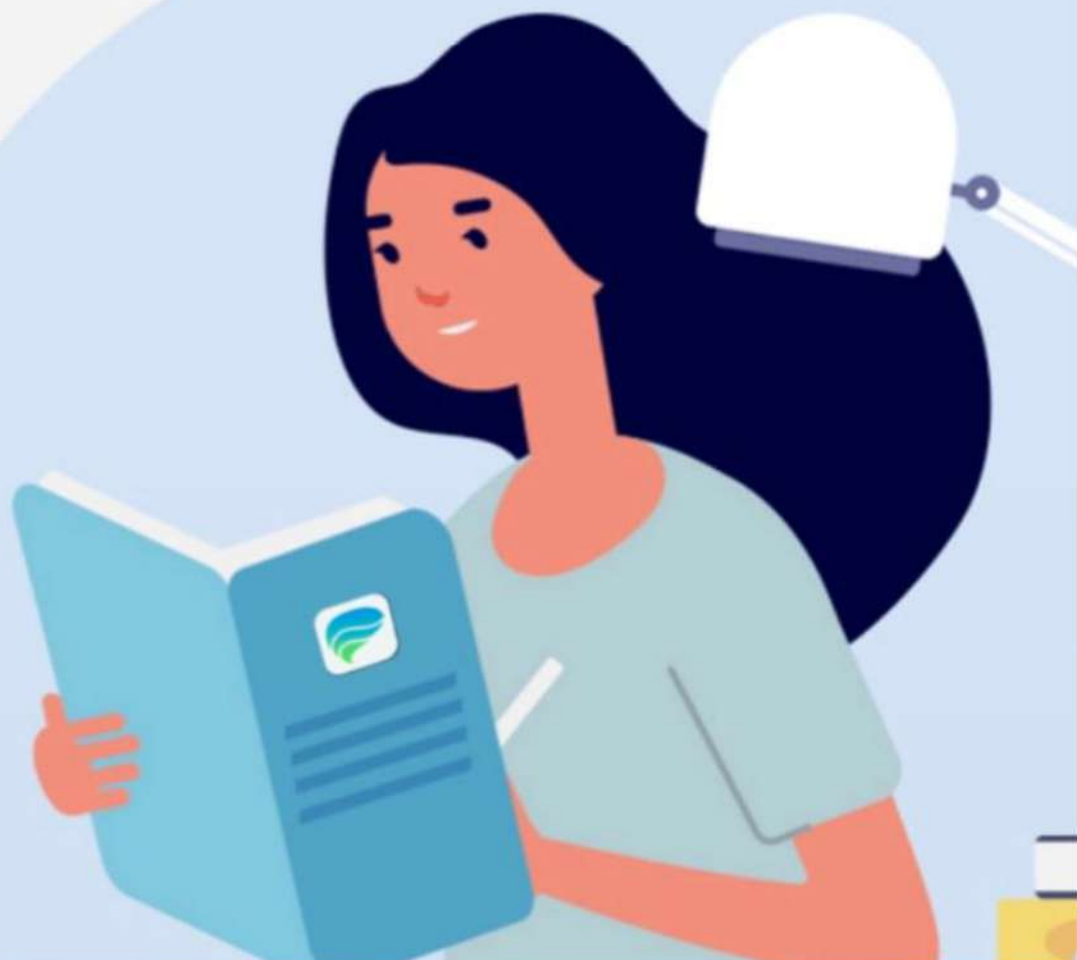
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to exercise the right of the
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but those restrictions must stand the test of
democratic organisation
In *Bennett Coleman & Co. v. Union of*
India (1972), the Hon'ble Supreme Court
the freedom of the 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



A enters contract



Refused to deliver

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

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

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

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

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

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

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

State the provision. Situation Against Case

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

11 of Civil Procedure Code lays down the following 3 principles upon which second suit is banned 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
Case

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
Strike

out of
pleading

but not
partial

rejection
of plaint

Illegality

not proper



Rules 6B to 6G
27th Law
Commission
Report

(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. **Amal not Act 1976**

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.

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 →

Set-off

- 1) It has been given under Order 8 Rule 6.
- 2) It is a defence against plaintiff's action.
- 3) It should arise out of same transaction.

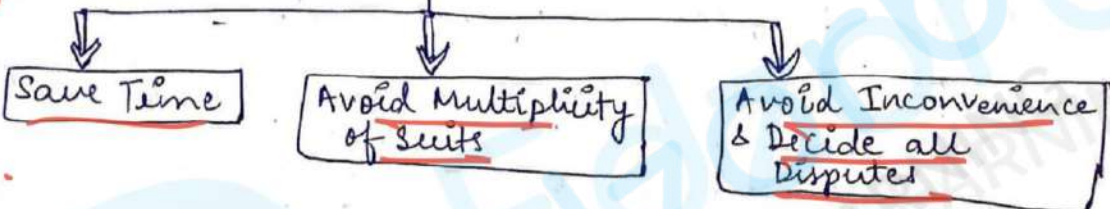
Counter-Claim

- 1) It has been provided under Order 8 Rule 6A to 6G.
- 2) It is a cross-action against plaintiff.
- 3) It need not arise out of same transaction.

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

As we could have been better.

Reasons for adding Counter-claim



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 in disposing of suit.



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

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

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

Conditions require for set-off →

1) It should be legally recoverable by the claimant.

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

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

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

Jitendra Kumar 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??



Types of Set-off

Legal Set-off

Equitable Set-off

Distinction between Legal and Equitable Set-off

Legal Set-off

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

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

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

4) Legal set off requires a court-fee.

Equitable Set-off

Equitable set off can be also for uncertain sum.

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

Equitable set-off cannot be claimed as a right.

Equitable set off does not require court-fee.

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

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

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



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

Order 9 Rule 6 - Procedure when only plaintiff appears -

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

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

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

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

Remedies available to defendant -

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

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

Consequence
of non
appearance of
parties



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

2) Setting aside ex-parte decree against defendant-

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

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

3) Appeal against decree passed ex-parte -

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

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

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

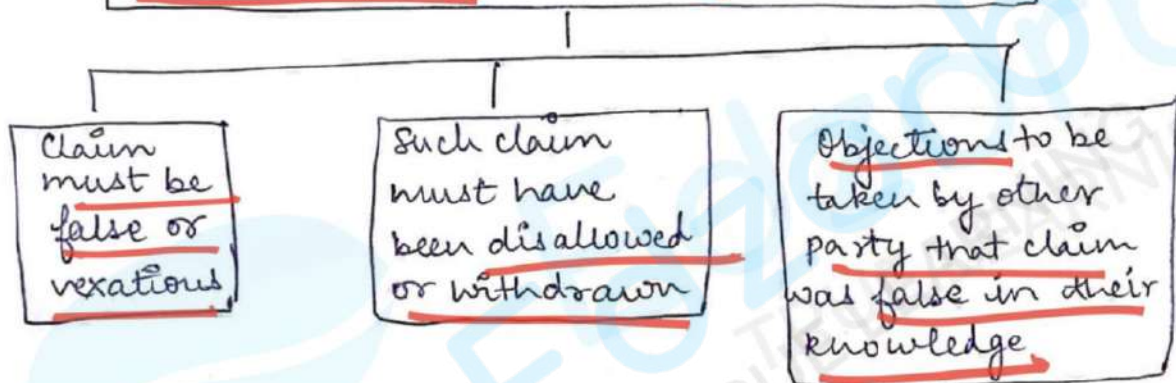


Q4 (a) When a civil court impose costs by way of compensation and cost for causing delay?
(b) When facts are essential in a notice u/s 580 CPC? what will be the effect upon the suit against the central government, state government or their officers, if the said notice is not given? (25 marks)

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

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

Conditions for application of Section 35 A



Rule for Payment under Section 35 A -

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



2) Cost for causing delay -

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

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

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

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

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

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

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

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

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

Not proper



Section 80

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

Section describes two types of cases

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

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

Chandrasekhar v/c

object of Notice



14 Marks
Comp. report
or
Sec. 80

Essential Requirement of Notice under Section 80

1) Name,
Description
& Residence
of Plaintiff

2) Cause
of Action
& Relief

3) Notice has
been served
to appropriate
authority

9 x 2
Comp. report

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.

For English Law
consideration need not be adequate

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

Difference in consideration under Indian & England Law -

Indian Law

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

England Law

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

illustration

Proctor v. Proctor
no consideration

Types of consideration

Past Consideration - Under England Law, Past Consideration is no consideration. In Indian Law, Past Consideration is valid.

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 provision.



(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 spec succession, 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.

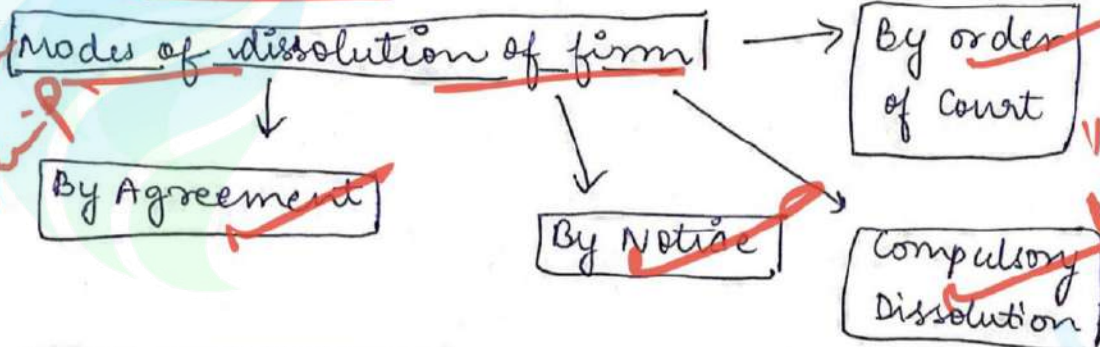
Section 13 of SRA is an extended principle of doctrine of feeding the grant by estoppel under Section 43 of Transfer of Property Act.

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



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

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

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

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

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

Intention of party can be examined from -

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

Time is the essence of contract. If time is not the essence of contract, then the contract is not enforceable. If time is the essence of contract, then the contract is enforceable. If time is the essence of contract, then the contract is enforceable. If time is the essence of contract, then the contract is enforceable.



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 left

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, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

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 - Summa Masjid v/s Kodimaniandra

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

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

General Rule
No property can be transferred by unauthorized person.

explain the rule of estoppel

Don't Blame the rule

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.

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.

Definition of contract by Salmond.

Effect of void.

Agreement must not have been expressly declared void.

Proposal + Acceptance = Promise [2(b)]



Promise + Consideration = Agreement [2(e)]



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

Too essential elements

Agreement is a bilateral transaction.

Enforceability of Agreements →

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

The conditions essential under Section 10 are as follows -



Can u Forgive Me For My Mistake

↳ Coercion ↳ Fraud ↳ Misrepresentation
↳ Undue Influence

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

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

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

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

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

Mohri Bhabhi case.

Void ab initio

16/25

Sec. 25 Agreement must be made

relating to person or property



Evaluation Remarks



Remarks :-

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





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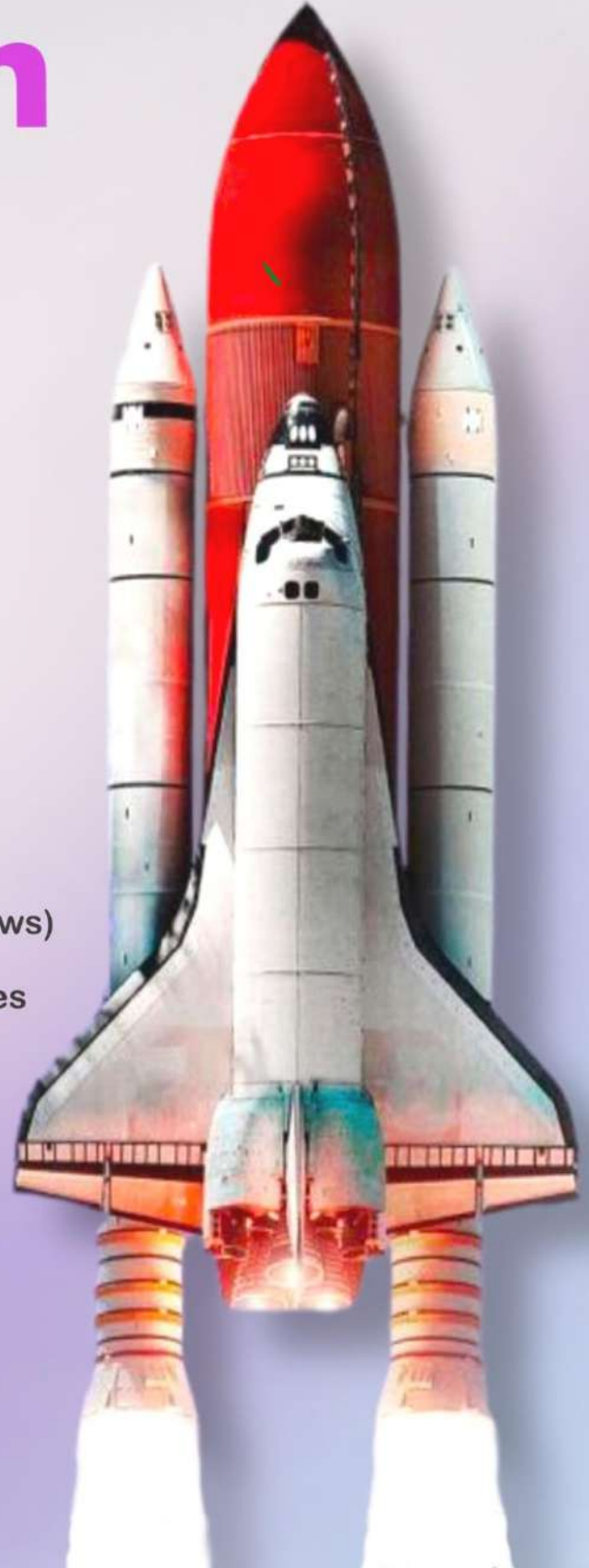
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