

Roll. No.

Total No. of Question-06

Maximum Marks : 100

Test Paper with Solutions

JURISPRUDENCE INTERPRETATION & GENERAL LAWS (JIGL)

CS-Executive (June 2023) | Examination

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NOTE : Answer ALL Questions

1. (a) The students of Patra University appeared in an examination under a special scheme. and their results were declared but the degree of successful students was not issued as the University decided to further examine the students on the additional subject.
Can the University do so ? Discuss the relevant rule of evidence.

(5 Marks)

Ans. No, Patra University cannot take further examination and has to award the degree to the students who appeared in an examination under special scheme. In this case “Principle of Estoppel” as defined in section 115 will be applicable. The general rule of estoppel is when one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

Therefore, as the students has appeared in an examination and their results was declared, the university is estopped from taking decision withholding degree certificate and taking further examination.

1. (b) "Trade, commerce and intercourse throughout the territory of India shall be free." Critically examine this statement with reference to Indian Constitution.

(5 Marks)

Ans. 301. Freedom of trade, commerce and intercourse under Article 19 (1) (g):
The Constitution provides that subject to the other provisions of this part, every person has the right to carry on any trade, commerce or intercourse throughout the territory of India.
Article 302. Power of Parliament to impose restrictions on trade, commerce and intercourse:
The Parliament may by law impose such statutory restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in public interest, safety or integrity of the country.
Article 303. Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce:
The Union and the State can make any laws or restrict trade or business in any commodity in case there is a shortage or scarcity in any state or region, but other than this, there can be no discrimination between states.
Article 304. Restrictions on trade, commerce and intercourse among States:
The legislature of a state may impose any kind of tax on goods brought into that state from another state or union territory, in order to remove any extreme differences in the prices of commodities.
Freedom of trade and profession is provided under Article 19 (1) (g) of the Constitution of India. This gives the citizens the right to pursue any trade, profession, business or occupation in any place within India. This right is, however, not absolute and it can be restricted by the State in the following cases -

- When the State feels it is essential to do so in the public interest.
- When it is felt that there should be some basic qualifications for any occupation or profession, it can provide so.
- When the State feels that it needs to establish control in some area of trade, occupation or business, so that it can be better tended.

These restrictions shall be considered valid when the conditions of the trade or business restricted at that time justify them, for example, for keeping the price of essential services down. Hence, the State can take over these rights to any extent - from being one of the participants in that trade to being the only one, provided it is justified in doing so.

1. (c) Discuss the position of vicarious liability of an employer for an independent contractor. What are the conditions when an employer is liable and when he is not liable ?

(5 Marks)

Ans. A master/employer is liable for the tort committed by his servant while acting in the course of his employment. The servant, of course, is also liable; their liability is joint and several. This is known as vicarious liability. The relationship of an individual with that of his/her independent contractor is not that of master-servant.
The employer is not liable merely because an independent contractor commits a tort in the course of his employment. The employer is liable only if he himself is deemed to have committed a tort. This may happen in one of the following three ways:

- (i) When employer authorizes him to commit a tort.
- (ii) In torts of strict liability
- (iii) Negligence of independent contractor

1. (d) Throw light on the role of a Conciliator in a Conciliation Proceeding under the Arbitration and Conciliation Act, 1996. In what manner a Conciliation Proceeding may be terminated?
(5 Marks)

Ans. It is an informal process in which both the disputing parties appoint a neutral conciliator or a third person to bring them to an agreement and to help end the dispute. This is done by sorting out any misinterpretations between the parties and removing the technical difficulties and working out possible solutions. It is an alternative dispute resolution (ADR) process whereby the parties to a dispute using the help of a conciliator, resolve the issues bothering them.

Role of conciliator

The conciliator meets with the parties separately in an attempt to resolve their differences. They help by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated, mutually acceptable settlement. As per Sub-section (1) of section 67, the conciliator is to maintain independence and impartiality.

- Further Sub-section (2) of - section 67 says that provides that the conciliator is to be objective, fair and just. He should be considerate of the rights and obligations of both the parties equally, the trade usages any business practices used and the circumstances pertaining to the dispute.

As per sub-section (3) the conciliator should conduct the proceedings as per the circumstances of the case, the wishes of the parties, any special requests by either party for oral statements, or the expediency. As per Sub-section (4), the conciliator may, as he thinks fit, make proposals for a settlement of the dispute at any stage of the conciliation proceedings. It is not essential for such proposals to be in writing and accompanied by a statement of the reasons for the proposal.

Attempt all parts of either Q. No. 2 or Q. No. 2A

2. (a) Distinguish between Ratio decidendi and Obiter dicta. What are the rules governing binding force of judicial precedents ? Discuss.
(4 Marks)

Ans. Ratio Decidendi: These are the principles derived from a particular case, which underlie any judicial decision. These principles act as guidelines for future similar cases and are extremely helpful to judges. Moreover, the ratio decidendi carry authoritative weightage. The ratio is the extraction of law derived from the decision or judgment. Such extractions or principles can be applied to other similar cases, thus saving on judicial time and ensuring uniformity. The judge has the right to decide upon the ratio decidendi and to apply it on any given case.

Obiter Dicta :

Literally it means that which is "said by the way". It covers within its ambit all that the judges have said while delivering a particular judgment. These statements might not be critical to the judgment or decision of the particular issue raised, as they usually go above and beyond the requirement of a particular case. Thus, they just carry the force of persuasive precedents and do not bind the judges. They are however, free to take them as an aid to decision making. It sometimes becomes difficult for lawyers and the Court to determine whether something said by the judges is obiter dicta or ratio decidendi. Hence, judges have the authority to go against such obiter dicta. Their differences are as follows:

Basis	Ratio decidendi	Obiter dicta
1. Meaning	Extracts or principles derived from a particular case.	Everything said by the Judges during the course of the discussion of the case.
2. Weightage	Authoritative weightage	Persuasive but not Authoritative
3. Binding factor	Bind the judges	Do not bind the judges
4. Critical Element	Critical as central to the case.	Not critical as they are more in the nature of discussions.

2. (b) Where in an enactment. there are two provisions which cannot be reconciled, they should be so interpreted that, if possible. the effect may be given to both. Explain this statement.

(4 Marks)

Ans. Rule of Harmonious Construction - Where two provisions of the same enactment cannot be reconciled with each other they should be so interpreted that, if possible, effect may be given to both. This is the rule of Harmonious Construction. It helps in maintaining a link between the parts of a statute or between parts within a particular section when there is any discrepancy between them. By doing so, it ensures that no part is rendered redundant. The meaning is so construed that both the parts play a role in it.

This rule of interpretation means that any section or part of a statute should be read with reference to the entire act, i.e. the meaning should be construed in entirety, not singularly. If while constructing the meaning of a section, it conflicts with the meaning given in another, in all probability there is an error in interpretation. Hence if two sections in the same statute seem to give different meanings or lead to opposite directions, the interpretation should be such as can accommodate both meanings.

When two statutes are complementary to each other. One statute cannot be allowed to overrule the other. Instead one statute should be interpreted in such a way to compromise with the other statute. This is called Harmonious construction of Statutes.

2. (c) If the date of enactment is not specified under the legislation, when does it come into force ? Cite the relevant provision of the General Clauses Act, 1897.

(4 Marks)

Ans. Under the General Clauses Act, 1897, specifically Section 6, if the date of commencement of an enactment is not mentioned in the legislation itself, the enactment comes into force immediately upon its enactment or passing. Here is the relevant provision:

"Section 6: Act to come into operation on the expiration of a specified period, or on the happening of a specified event.— Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last

day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open."

This provision primarily addresses situations where an act or proceeding is directed to be done or taken within a prescribed period. However, regarding the date of commencement of an enactment, it states that if no specific date is mentioned, the enactment is considered to come into operation immediately upon its enactment.

2. (d) Is Section 3 of the Limitation Act, 1963 mandatory in nature? Discuss

(4 Marks)

Ans. Bar of Limitation — Decision of a court

Bar of limitation: Bar of limitation implies that a person is given the right to approach the courts in any matter within a set timeframe. Beyond that, it is not that his legal right regarding that matter extinguishes; it is just that the courts will not be able to help him in that matter anymore. If he is able to settle the matter out of court i.e. through arbitration, conciliation etc., he will definitely still be within his bounds. Hence, in civil matters, the law of Limitation provides a limit to the time within which courts can be approached. [Section 3 of the Limitation Act, 1963]

Moreover, it is based on the principle that the law cannot and will not protect people who are themselves not vigilant about their rights. (Vigilantibus non dormientibus jus subvenit). The Limitation Act, 1963 provides for fixed periods of time for different civil and criminal proceedings that take place in a court of law. It covers all suits, petitions and applications. The intention of this Act is to put a limit to the period when the remedy is available to the aggrieved. However, it does not bar the right, but merely the remedy.

The Limitation Act, 1963 has been made keeping public policy in mind, and the general principles of "repose, peace and justice" as per the Supreme Court case of Prashar vs. Vasantsen. This indicates that the statute of limitation is used to limit the number of cases with the courts, by limiting at least those that have become stale by crossing the limits of time within which they should have been initiated. Moreover as per the general principles of justice, law should support those who are alert as to their rights and exercise them within the required period. Hence, this statute is for establishing a limit to the time within which an aggrieved can apply for a remedy enforced by a court, thus freeing the courts of an endless duty to accept cases as and when they are filed. Hence, the decision of a court allowing a suit after the limitation period is not vitiated for want of jurisdiction.

OR (Alternate question to Q. No. 2)

- 2A. (i) A Judge is supposed to be indifferent to the parties to the controversy. He cannot act as a judge of a case in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. "Elucidate."

(4 Marks)

Ans. The statement provided emphasizes the fundamental principle of judicial impartiality and the requirement for judges to maintain neutrality in the cases they preside over. It highlights that a judge cannot act as a judge in a case in which they have a personal or pecuniary interest.

Impartiality and Neutrality: Impartiality is a cornerstone of the judicial system. It ensures that judges approach cases with an open mind, free from any bias or personal interest. Neutrality is crucial to maintain public trust and confidence in the judiciary, as it assures parties that their case will be decided based on the law and facts, rather than personal considerations.

Avoiding Conflicts of Interest: A judge must avoid any situation that may give rise to an actual or perceived conflict of interest. This includes having a personal or pecuniary interest in the outcome of a case. A conflict of interest undermines the judge's ability to impartially weigh the evidence, apply the law, and make a fair decision.

In summary, the statement underscores the importance of judicial impartiality and the necessity for judges to abstain from cases in which they have a personal or pecuniary interest. By doing so, judges uphold the integrity of the judicial system, maintain public confidence, and ensure that parties receive a fair and unbiased hearing before the court.

- 2.A (ii)** "Reference and Review are various remedies provided under the Civil Procedure Code, 1908 to cater to different situations." Explain

(4 Marks)

Ans. Reference to High Court [Section 113, O.46, R.1]

Subject to such conditions as may be prescribed, at any time before judgement a court in which a suit has been instituted may state a case and refer the same for opinion of the High Court and the High Court may make such order thereon as it thinks fit.

○ **Review [Sec.114,O.47,R.1]**

It provides that any person considering himself aggrieved by a decree or order may apply for a review of judgement to the court which passed the decree or made the order on any of the grounds.

- (i) discovery by the applicant of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or
- (ii) on account of some mistake or error apparent on the face of the record, or
- (iii) for any other sufficient reason, and the Court may make such order thereon as it thinks fit.

- 2.A. (iii)** What is Special Court under the Companies Act, 2013 ? Discuss any two offences which are triable by these courts ?

(4 Marks)

Ans. As per Section 435 of the Companies Act, the Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary. The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be, and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

- (a) all offences specified under sub-section (1) of section 435 shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;
- (b) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole

where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the

Special Court having jurisdiction;

- (c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that section; and
- (d) a Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.

2.A (iv) "A mere alteration of the document does not make it a forged document unless made for some gain." Explain this statement under Indian Penal Code, 1860.

(4 Marks)

Ans. The statement you provided refers to the concept of "forgery" under the Indian Penal Code, 1860 (IPC). It suggests that a mere alteration of a document does not automatically classify it as a forged document unless the alteration is made for some gain or advantage. Let's explain this statement in the context of the relevant provisions of the IPC:

Section 463 of the IPC defines "forgery" as making any false document or any material part of a document with the intention to cause damage or injury to any person or to deceive someone. It also includes the act of fraudulently altering or tampering with a genuine document with a similar intent.

The key points to understand in relation to the statement are as follows:

Mere Alteration: If a document undergoes a change or alteration, it does not necessarily qualify as a forged document by itself. Alteration alone may not meet the elements of forgery unless it is made with the intention to deceive or cause harm.

Intention to Cause Gain: To establish forgery, it is essential to prove that the alteration or fabrication of the document was done with the specific intention to gain some advantage or benefit. The gain could be in the form of financial benefit, obtaining a false claim, or causing harm to another person.

In summary, according to the Indian Penal Code, a mere alteration of a document does not automatically classify it as a forged document unless the alteration is made with the intent to cause gain, deceive, or harm someone. The intention and purpose behind the alteration play a crucial role in establishing the offense of forgery.

3. (a) What are the objects of summary trials under Criminal Procedure Code, 1973 ? State any four offences which may be summarily tried.

(4 Marks)

Ans. A 'summary trial' is a fast-track procedure that provides for speedy trial of cases. Under Section 260 of the Code of Criminal Procedure, 1973, any Magistrate of First Class or a Metropolitan Magistrate or a Chief Judicial Magistrate can hear cases of offences not punishable with death, life imprisonment or even imprisonment of more than two years in a summary trial. Included would be offences like petty theft (where the value of the stolen property does not exceed

rupees 2,000), assisting in such theft or in keeping its proceeds hidden, acquiring or keeping such stolen property, trespass, breaking into a house, insulting someone with the intention of Wm"rrlant. art and heloina anyone in the performance of these crimes.

Section 261 covers the conduct of a summary trial by a Magistrate of Second Class.

Section 262 provides the procedure involved in a summary trial. These cases are also known as summons cases, since they do not normally make use of warrants. Moreover, the maximum punishment that can be pronounced in such cases is of imprisonment upto three months.

3. (b) What are the benefits of E-stamping ? How do we verify e-stamping ?

(4 Marks)

Ans. E-stamping is a computer-based method; an electronic way of paying stamp duty. This facility is not available in all the states and Union territories. To avail the facility, one needs to fill up an application form available at Authorized Collection Centres (ACCs) for stamp duty payment. E-stamping is an alternate to the physical, paper-based stamps. It is deemed to be a secure way of paying non-judicial stamp duty, since there is no paperwork involved and hence none of the problems associated with paperwork. E-stamping is currently operational in the states of Gujarat, Karnataka, NCR Delhi, Maharashtra, Assam, Tamil Nadu, Rajasthan, Himachal Pradesh, Uttarakhand, and the union territories of Dadra & Nagar Havel', Daman & Diu, Puducherry and Uttar Pradesh. Ultimately, the vision is to have a paperless e-stamping system replacing the current stamping/franking system. This will, in turn, help reduce the danger of counterfeiting and make the work of stamping easier for all parties involved. It is extremely fast; the certificate is generated within minutes of the transaction. Moreover, it cannot be tampered with, and is hence, entirely safe. Since there is less processing and administrative work involved, it is also more cost effective.

E-stamping has several benefits —

Speed of generation and processing.

- It is tamper-proof; cannot be altered by an unauthorized entity.
- It is easily accessible.
- It is reasonable in cost.
- User-friendly.

3. (c) What is the effect of the non-registration of documents that need to be registered under the Registration Act, 1908 ?

(4 Marks)

Ans. The effects of non-registration of documents that require registration are detailed in Section 49 of The Registration Act, 1908. It provides for the following effects:

- (i) The document cannot cause any changes in the rights to or interest in any immovable property.
- (ii) It will not be admitted as evidence of any transaction mentioned in the document, as per the Indian Evidence Act, 1872.

Any document covered under Section 17, if not registered, will not have the same effect as it would have had if it had been registered. However, such a document can subsequently be registered on payment of penalty,

3. (d) State the penalty provisions for failure to furnish information, return and to maintain records under the Information Technology Act, 2000.

(4 Marks)

Ans. Under the Information Technology Act, 2000, failure to furnish information, return, or maintain records as required by the law can attract penalties. The specific penalty provisions are outlined in Section 69 of the Information Technology Act. However, it's important to note that the penalties may vary depending on the specific offense committed and the provisions of the Act applicable at the relevant time. Here are some general penalty provisions:

Failure to Furnish Information: Section 69 of the Information Technology Act empowers the government to issue directions to any person or organization to furnish information, assistance, or decryption keys for the purpose of cybersecurity, investigation, or prevention of offenses under the Act. Failure to comply with such directions without a reasonable cause may lead to penalties.

Failure to Submit Returns: Section 70 of the Information Technology Act requires certain entities, such as certifying authorities, to submit returns and reports as prescribed by the law. Failure to submit the required returns or reports within the specified time may result in penalties.

Failure to Maintain Records: Section 71 of the Information Technology Act imposes an obligation on certain entities to maintain records of various transactions, processes, and activities as specified by the law. Failure to maintain the prescribed records or destroying or tampering with the records with the intent to obstruct an investigation or legal proceeding can attract penalties.

4. (a) Who are the appellate authorities and time limit to file an appeal against the decision under the Right to Information Act, 2005 ?

(4 Marks)

Ans. Any person who does not receive a decision within the specified time or is aggrieved by a decision of the Public Information Officer (PIO) may file an appeal under Section 19 of the Right to Information Act, 2005. **First Appeal :** First appeal to the officer senior in rank to the PIO in the concerned Public Authority within 30 days from the expiry of the prescribed time limit or from the receipt of the decision (delay may be condoned by the Appellate Authority if sufficient cause is shown).

Second Appeal: Second appeal to the Central Information Commission or the State Information Commission as the case may be, within 90 days of the date on which the decision was given or should have been made by the First Appellate Authority (delay may be condoned by the Commission if sufficient cause is shown).

4. (b) Explain in brief the relationship between the statute of Limitation and writs under the Constitution.

(4 Marks)

Ans. The statute of limitations sets a time limit within which legal proceedings must be initiated for a particular claim or offense. It establishes a cutoff period after which a claimant or prosecutor is barred from filing a lawsuit or initiating criminal proceedings. The purpose of the statute of limitations is to promote legal certainty, prevent stale claims, and ensure that cases are resolved promptly while evidence and witnesses are still available.

The subject of limitation is dealt with in entry 13, List III of the Constitution of India. The Legislature may, without violating the fundamental rights, enact statutes prescribing limitation within which actions may be brought or varying or changing the existing rules of limitation either by shortening or extending time provided a reasonable time is allowed for enforcement of the existing right of action which would become barred under the amended Statute. The Statute of Limitation is not unconstitutional since it applies to right of action in future. It is a shield and not a weapon of offence.

The State cannot place any hindrance on 'Writs' by prescribing a period of limitation in the way of an aggrieved person seeking to approach the Supreme Court of India under Article 32 of the Constitution. The Limitation Act does not in terms apply to a writs under Article 32 or Article 226 of the Constitution. But the Courts act on the analogy of the statute of limitation and refuse relief if the delay is more than the statutory period of limitation (*State of M.P. v. Bhai Lal Bhai*, AIR 1964 SC 1006). Where the remedy in a writ petition corresponds to a remedy in an ordinary suit and latter remedy is subject to bar of a statute of limitation, the Court in its writ jurisdiction adopts in the statute its own rule of procedure and in absence of special circumstances imposes the same limitation in the writ jurisdiction.

4. (c) Differentiate between rule of res judicata and res subjudice.

(4 Marks)

Ans. DIFFERENCE BETWEEN RES SUB JUDICE AND RESJUDICATA

1. The doctrine of Res-judicata is contained in section (11) of C.P.C, which provides when and how it can apply, while the doctrine of Res-subjudice is contained in section (10) of C.P.C, which provides when and how it can apply.
2. In Res-judicata the Court shall not try at all a case, which has previously tried, while in Res-subjudice the Court shall not proceed with a case, in-respect of which a suit is already pending.
3. Res-judicata deals with cases, which have already been decided by a Court of competent jurisdiction, but Res-subjudice deals with cases which are pending before the Court of competent jurisdiction.
4. Res-judicata prohibits second trial of the same dispute between same parties, while Res-subjudice prohibits proceedings of two parallel suits between same parties.

Conclusion : So it can be concluded that by applicability of Res- judicata the Court shall not try a suit, which has already been tried, on the other side by applicability of Res-subjudice the Court shall not proceed-with a suit which is already pending before the Court of competent jurisdiction. The main spirit behind these two principles is that no person should be call in question twice for the same cause of action.

4. (d) Discuss how an arrest should be made under Section 46 of the Criminal Procedure Code 1973. (4 Marks)

Ans. Arrest how made (Section 46) : The Section authorises a police officer or other person making an arrest to actually touch or confine the body of the person to be arrested and such police officer or other person may use all necessary means to effect the arrest if there is forcible resistance. The Section does not give a right to cause the death of a person who is not accused of an offence punishable with death sentence or life imprisonment.

5. (a) X, a surgeon. Knowing that a particular operation is likely to cause the death of Y and intending in good faith Y's benefit, operates on Y with Y's consent to relieve him of his pain. Y dies during the operation. What offence X has committed ? Discuss any six general exceptions with an example provided under the Indian Penal Code 1860 for a person accused of committing any offence.

Ans. In the given scenario, X, a surgeon, operates on Y with Y's consent to relieve him of his pain, but Y dies during the operation. Based on the information provided, it appears that X has not committed any offence under the Indian Penal Code, 1860. The situation falls under the general exception of "Act done in good faith for the benefit of a person without consent" mentioned in Section 92 of the IPC.

5. (b) What instruments may be stamped with adhesive ? Why and how affixed stamps are cancelled as the Indian Stamp Act, 1899 ?

(8 Marks)

Ans. Section 12 of the Indian Stamp Act, 1899, provides for the method of canceling stamps, so that they cannot be reused. This has to be done either at the time of execution or before it. The commonly acceptable method of stamping is by writing across the face of the stamp. Unless the stamp has already been cancelled, one who executes an instrument on stamp paper has the duty of cancelling it. If the stamp on an instrument is not so cancelled, as in a manner rendering the stamp unusable again, the instrument will be deemed to be unstamped.

Acceptable ways of cancelling a stamp are as follows –

- Writing of the executant's initials or his name or the name of the firm on or across the face of the stamp, along with the date of doing so, at the time of executing such an instrument. [Nuddea Tea Co. Ltd. Vs Asok Kumar Saha and Ors.]
- When an adhesive stamp affixed to an instrument was cancelled by a third person on a date subsequent to the date on which the instrument was drawn, by putting the date across the stamps, there was no proper cancellation of the stamp. [Dayaram Vs. Chandulal]
- Drawing lines across the adhesive stamp, extending onto the instrument.
- Drawing of two parallel lines across adhesive stamps.
- Drawing of two lines crossing each other across the face of the stamp. While there is no fixed format of a valid cancellation of a stamp, the true test for determining the same is whether after the cancellation, the stamp is capable of being used again. The true test, therefore for determining whether an adhesive stamp has been effectually cancelled is whether an ordinary man would, on seeing the stamp, believe that it had already been used so as to preclude him from using it again. [A. Narayana Reddy Vs Dr. J. Sarojini Devi And Anr. 1962]

Attempt all of either Q. No. 6 or Q. No. 6.A

6. (a) What are the public nuisances against which conditional order for removal can be made under 133 of the Criminal Procedure Code, 1973 ?

(4 Marks)

Ans. Public nuisances Conditional order for removal of nuisance (Section 133) : Section 133 lays down the following public nuisances which can be proceeded against:

- (1) the unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or
- (2) carrying on any trade or occupation, or keeping of any goods or merchandise, injurious to the health of the community; or
- (3) the construction of any building or the disposal of any substance, as is likely to cause conflagration or explosion; etc.
- (4) the building, tent or structure near a public place.
- (5) the dangerous animal requiring destroying, confining or disposal. For initiating prevention under this Section the Magistrate should keep in mind that he is acting purely in the public interest

6. (b) List any eight (8) acts done without permission of the owner under the information Technology Act, 2000 that makes a person liable to pay damages by way of compensation.

(4 Marks)

Ans. Under the Information Technology Act, 2000, there are various acts that may make a person liable to pay damages by way of compensation if they are done without the permission of the owner. Here are eight such acts:

- Unauthorized access to a computer system or network.
- Copying, downloading, or extracting data from a computer system without permission.
- Introducing viruses, malware, or any harmful code into a computer system or network. Altering, damaging, or deleting data without authorization.
- Interfering with or disrupting the functioning of a computer system or network. Transmitting, publishing, or disseminating obscene or offensive material.
- Publishing or transmitting false information to cause harm or injury to another person.
- Unauthorized interception or monitoring of electronic communications.
- It's important to note that these acts may vary in their specific requirements and legal implications under different sections of the Information Technology Act, 2000. Each act has its own set of provisions and conditions for liability and compensation. Legal advice or consulting the specific provisions of the Act is recommended for a comprehensive understanding of the liabilities and consequences associated with each act.

6. (c) "Every confession must be an admission but every admission may not amount to statement a confession." Examine the statement.

(4 Marks)

Ans. Additional points on admission

- An admission is the best evidence against the party making the same unless it is untrue and made under the circumstances which does not make it binding on him.

- Admission means conceding something against the person making the admission. That is why it is stated as a general rule (the exceptions are in Section 21), that admissions must be self-harming; and because a person is unlikely to make a statement which is self-harming unless it is true evidence of such admissions as received in Court.

- **Confessions (section 24 to 30)**

Confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence. In other words we can say that direct admission of guilt is confession.

The act does not define a confession but includes in it admissions. Thus confessions are special form of admissions. Whereas every confession must be an admission but every admission may not amount to a confession. Sections 27 to 30 deal with confessions which the Court will take into account.

A statement made by an accused person if it is an admission, is admissible in evidence. The confession is an evidence only against its maker and against another person who is being jointly tried with him for an offence.

- **Confessions vs. Admissions**

- A statement oral or documentary admitting a fact arising from, and relevant to the civil suit is called admission whereas an admission made before the Judicial magistrate by an accused stating or suggesting that he has committed the crime for which he has been made accused is called confession.

6. (d) Briefly state the essential features of an Arbitral Award under the Arbitration and Conciliation Act, 1996.

(4 marks)

Ans. Under the Arbitration and Conciliation Act, 1996, an arbitral award is the final decision rendered by an arbitral tribunal in a dispute. The essential features of an arbitral award can be summarized as follows:

Final and binding: An arbitral award is a final and binding decision that settles the dispute between the parties. It is intended to provide a resolution to the issues raised in the arbitration proceedings.

Written form: The arbitral award must be in writing and signed by the members of the arbitral tribunal. It should clearly state the reasons upon which it is based unless the parties have agreed otherwise.

Determination of the dispute: The arbitral award must address the specific issues and claims raised in the arbitration. It should provide a clear determination of the rights, obligations, and liabilities of the parties involved.

Timeframe for issuance : The arbitral award should be issued within the stipulated timeframe agreed upon by the parties or as prescribed by the relevant arbitration rules or legislation. It is typically required to be rendered within a reasonable time to ensure the timely resolution of the dispute.

Formalities and requirements : The arbitral award should comply with any procedural formalities and requirements set forth in the arbitration agreement or applicable laws. This may include considerations such as the language of the award, service of the award on the parties, and any specific requirements related to the signature or authentication of the award.

Enforceability : An arbitral award is enforceable and has the same status as a court judgment. It can be enforced through the judicial system, both domestically and internationally, in accordance with the provisions of the Arbitration and Conciliation Act and any applicable international conventions.

These essential features ensure that an arbitral award provides a conclusive resolution to the dispute and enables the parties to enforce their rights and obligations. The Act provides a legal framework for the recognition and enforcement of arbitral awards, promoting the efficacy of arbitration as an alternative method of dispute resolution.

OR (Alternate question to Q. No. 6)

6. (i) Discuss the provisions related to the place of registration of documents affecting immovable property as per the Registration Act, 1908.

(4 Marks)

Ans. EXEMPTION OF CERTAIN DOCUMENTS EXECUTED BY OR IN FAVOUR OF GOVERNMENT

- (1) Nothing contained in this Act in the Indian Registration Act, 1877 or in the Indian Registration Act, 1871 or in any Act thereby repealed, shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps, namely:
- (a) documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of land revenue and which form part of the records of such settlement; or
 - (b) documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land which form part of the record of such survey; or
 - (c) documents which, under any law for the time being in force are filed periodically in any revenue office by patwaris or other officers charged with the preparation of village records; or
 - (d) sands, inam, title deeds and other documents purporting to be an evidence, grants or assignments by Government of land or of any interest in land; or
 - (e) notices given under section 74 or section 76 of the Bombay Land Revenue Code, 1879 of relinquishment of occupancy by occupants or of land by holders of such land.
- (2) All such documents and maps shall for the purposes of Sections 48 and 49, be deemed to have been, and to be, registered in accordance with the provisions of this Act. (Section 90)

6. (ii) Explain the object of interpretation. What is the function of the court in interpretation ?
(4 Marks)

Ans. The object of interpretation, in a legal context, is to ascertain and understand the meaning, intent, and scope of a particular law, statute, contract, or legal document. Interpretation is necessary because legal texts are often drafted in general terms and may require clarification or application to specific factual situations. The purpose of interpretation is to give effect to the intention of the legislature or the parties involved, ensuring the law is applied fairly and justly.

The function of the court in interpretation is to determine and apply the true meaning of the law. When a dispute arises over the interpretation of a legal provision or document, the court plays a crucial role in resolving the issue. The court's primary objective is to ascertain the legislative or contractual intent behind the law or document in question.

In performing its function of interpretation, the court employs various principles and techniques. These include:

Literal interpretation: The court gives weight to the plain and ordinary meaning of the words used in the law or document. The literal interpretation is favored unless it leads to absurd or contradictory results.

Golden rule: If the plain meaning of the words leads to an absurd or unjust outcome, the court may depart from the literal interpretation and apply an alternative interpretation that is more consistent with the overall purpose and intention of the law or document.

Mischief rule: In statutory interpretation, the court may consider the historical background and the problem or mischief the legislature intended to address. The court interprets the law in a way that suppresses the mischief and advances the remedy.

Purposive interpretation: The court focuses on the underlying purpose or objective of the law or document. It looks beyond the literal meaning of the words to give effect to the intended purpose or policy behind the provision.

Precedents and legal principles : The court may rely on established precedents, legal principles, and doctrines to guide the interpretation process. Precedents set by higher courts are binding, while lower courts may use them as persuasive authority.

6. (iii) Discuss the principle of protection against compulsion of self-incrimination embodied in Article 20(3) of the Constitution of India with the help of judicial decisions.
(4 Marks)

Ans. Protection against self-incrimination According to Article 20(3),
no person accused of any offence shall be compelled to be a witness against himself. In other words, an accused cannot be compelled to state anything which goes against him. But it is to be noted that a person is entitled to this protection, only when all the three conditions are fulfilled: 1. that he must be accused of an offence; 2. that there must be a compulsion to be a witness; and 3. such compulsion should result in his giving evidence against himself. So, if the person was not an accused when he made a statement or the statement was not made as a

witness or it was made by him without compulsion and does not result as a statement against himself, then the protection available under this provision does not extend to such person or to such statement. The 'right against self-incrimination' protects persons who have been formally accused as well as those who are examined as suspects in criminal cases. It also extends to cover witnesses who apprehend that their answers could expose them to criminal charges in the ongoing investigation or even in cases other than the one being investigated. [Selvi v. State of Karnataka, AIR 2010 SC 1974].

6. (iv) According to Kelsen, law is a "normative science". Explain.

(4 Marks)

Ans. *Kelsen* gave a 'pure theory of law'. According to him, law is a 'normative science'. The legal norms are 'Ought' norms as distinct from 'Is' norms of physical and natural sciences. Law does not attempt to describe what actually occurs but only prescribes certain rules. The science of law to Kelsen is the knowledge of hierarchy of normative relations. All norms derive their power from the ultimate norm called Grund norm.

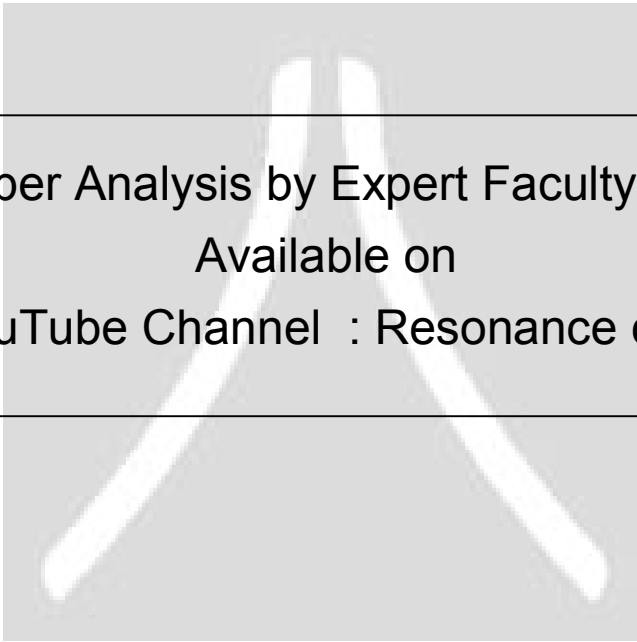
'Pure Theory of Law'.

Kelsen described law as a "normative science" as distinguished from natural sciences which are based on cause and effect, such as law of gravitation. According to *Kelsen*, 'law is a primary norm which stipulates sanction'.

According to *Kelsen*, 'norm (sanction) is rules forbidding or prescribing a certain behaviour'. He saw legal order as the hierarchy of norms having sanction, and jurisprudence was the study of these norms which comprised legal order. *Kelsen* distinguished moral norm with legal norm and said that though moral norms are 'ought' propositions, a violation of it does not have any penal fallout. The 'ought' in the legal norm refers to the sanction to be applied for violation of law.

Kelsen's pure theory of law is based on pyramidal structure of hierarchy of norms which derive their validity from the basic norm. Grundnorm or basic norm determines the content and gives validity to other norms derived from it. Under *Kelsen's* pure theory, the Grundnorm does not derive its validity from any other norm and its validity must be presupposed. In his view the basic norm is the result of social, economic, political and other conditions and it is supposed to be valid by itself.

The legal order as conceived by *Kelsen* receives its unity from the fact that the multiple norms which make the legal system can be traced back to a final source. This final source is the basic norm or the Grundnorm which he defined as "the postulated ultimate rule according to which the norms of this order are established and annulled, receive or lose their validity. For example, In India a statute or law is valid because it derives its legal authority from being duly passed by the Parliament and receiving the assent of the President, the Parliament and the President, derive their authority from a norm i.e., the Constitution. As to the question from where does the Constitution derive its validity there is no answer and, therefore, it is the Grundnorm, according to *Kelsen's* conception of pure theory of law.



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