TAXMANN'S

CRACKER®

PREVIOUS EXAMS SOLVED PAPERS

JURISPRUDENCE INTERPRETATION & GENERAL LAWS

[CS] CS-Executive

TAXMANN'S

CRACKER®

PREVIOUS EXAMS SOLVED PAPERS

Jurisprudence Interpretation & General Laws

CS N.S. Zad
CS Kalyani Shirode

© All rights reserved

Price : ₹ 375

First Published : July 2023

Published by :
Taxmann Publications (P) Ltd.

Sales & Marketing :
59/32, New Rohtak Road, New Delhi-110 005 India
Phone : +91-11-45562222
Website : www.taxmann.com
E-mail : sales@taxmann.com

Regd. Office :
21/35, West Punjabi Bagh, New Delhi-110 026 India

Printed at :
Tan Prints (India) Pvt. Ltd.
44 Km. Mile Stone, National Highway, Rohtak Road
Village Rohad, Distt. Jhajjar (Haryana) India
E-mail : sales@tanprints.com

Disclaimer

Every effort has been made to avoid errors or omissions in this publication. In spite of this, errors may creep in. Any mistake, error or discrepancy noted may be brought to our notice which shall be taken care of in the next edition. It is notified that neither the publisher nor the author or seller will be responsible for any damage or loss of action to any one, of any kind, in any manner, therefrom. It is suggested that to avoid any doubt the reader should cross-check all the facts, law and contents of the publication with original Government publication or notifications.

No part of this book may be reproduced or copied in any form or by any means [graphic, electronic or mechanical, including photocopying, recording, taping, or information retrieval systems] or reproduced on any disc, tape, perforated media or other information storage device, etc., without the written permission of the publishers. Breach of this condition is liable for legal action.

For binding mistake, misprints or for missing pages, etc., the publisher's liability is limited to replacement within seven days of purchase by similar edition. All expenses in this connection are to be borne by the purchaser.

All disputes are subject to Delhi jurisdiction only.

CHAPTER-WISE MARKS DISTRIBUTION

S. No.	Chapter	2018		2019		2020		2021		2022		2023	Avg.
		J	D	J	D	J	D	J	D	J	D	J	
1.	Sources of Law	-	9	5	5	-	5	9	17	13	5	8	6.91
2.	Constitution of India	-	21	13	9	-	13	17	9	18	9	9	10.72
3.	Interpretation of Statutes	-	4	4	9	-	4	8	13	8	12	12	6.72
4.	Administrative Law	-	4	4	12	-	8	9	4	4	8	4	5.18
5.	Law of Torts	-	17	4	8	-	12	8	13	12	8	5	7.90
6.	Law relating to Civil Procedure	-	9	16	4	-	12	8	12	8	9	8	7.81
7.	Law relating to Crime and its Procedure	-	16	17	20	-	17	16	16	21	16	12	13.7
8.	Law relating to Evidence	-	12	13	4	-	8	8	8	8	8	17	7.81
9.	Law relating to Specific Relief		5	6	3	-	6	3	-	6	6	-	3.18
10.	Law relating to Limitation		4	8	4	-	8	8	4	4	8	4	4.72
11.	Law relating to Arbitration, Mediation & Conciliation	11	16	12	9	-	8	8	4	4	8	9	8.09
12.	Indian Stamp Law	5	8	8	8	-	8	4	4	4	8	12	6.27
13.	Law relating to Registration of Documents	-		8	4	-	4	4	4	4	4	8	3.63
14.	Right to Information Law	-	4	4	4	-	8	4	8	8	4	4	4.36
15.	Law relating to Information Technology	-	8	4	4	-	8	12	4	4	4	8	5.09
16.	Contract Law	15	13	8	7	-	4	3	7	10	12	8	7.90
17.	Law relating to Sale of Goods	-	3	3	7	-	6	3	3	10	-	4	3.54
18.	Law relating to Negotiable Instruments	-	6	11	7	-	3	-	7	3	4	4	4.09

TAXMANN®

CHAPTER-WISE COMPARISON WITH STUDY MATERIAL

Chapter No.	Name of the Chapter	Study Material Chapter
1	Sources of Law	Chapter - 1
2	Constitution of India	Chapter - 2
3	Interpretation of Statutes	Chapter - 3
4	Administrative Law	Chapter - 4
5	Law of Torts	Chapter - 5
6	Law relating to Civil Procedure	Chapter - 6
7	Law relating to Crime and its Procedure	Chapter - 7
8	Law relating to Evidence	Chapter- 8
9	Law relating to Specific Relief	Chapter - 9
10	Law relating to Limitation	Chapter - 10
11	Law relating to Arbitration, Mediation & Conciliation	Chapter - 11
12	Indian Stamp Law	Chapter - 12
13	Law relating to Registration of Documents	Chapter - 13
14	Right to Information Law	Chapter - 14
15	Law relating to Information Technology	Chapter - 15
16	Contract Law	Chapter - 16
17	Law relating to Sale of Goods	Chapter - 17
18	Law relating to Negotiable Instruments	Chapter - 18

TAXMANN®

CONTENTS

PAGE

Chapter-wise Marks Distribution *I-5*

Chapter-wise Comparison with Study Material *I-7*

Chapter 1

◆ Sources of Law *1.1*

Chapter 2

◆ Constitution of India *2.1*

Chapter 3

◆ Interpretation of Statutes *3.1*

Chapter 4

◆ Administrative Law *4.1*

Chapter 5

◆ Law of Torts *5.1*

Chapter 6

◆ Law Relating to Civil Procedure *6.1*

Chapter 7

◆ Law relating to Crime and its Procedure *7.1*

Chapter 8

◆ Law relating to Evidence *8.1*

Chapter 9

◆ Law Relating to Specific Relief *9.1*

TAXMANN®

PAGE

Chapter 10
- Law Relating to Limitation *10.1*

Chapter 11
- Law relating to Arbitration, Mediation & Conciliation *11.1*

Chapter 12
- Indian Stamp Law *12.1*

Chapter 13
- Law relating to Registration of Documents *13.1*

Chapter 14
- Right to Information Law *14.1*

Chapter 15
- Law Relating to Information Technology *15.1*

Chapter 16
- Contract Law *16.1*

Chapter 17
- Law relating to Sale of Goods *17.1*

Chapter 18
- Law relating to Negotiable Instruments *18.1*

Case Based Objective Questions *M.1*

TAXMANN®

1 CHAPTER SOURCES OF LAW

NATURE OF LAW

1. Write a short note on: Classification of definition of law

Ans.: For the purpose of clarity and better understanding of the nature and meaning of law, definitions of law can be classified into five broad classes:

- Natural
- Positivistic
- Historical
- Sociological
- Realistic.

2. Write a short note on: Positivistic definition of law

Ans.: Natural law theory exaggerates the relation of **law** and **morality**. Positive law is a reaction against particularly that aspect of natural law theory. It insists on a distinction between **human law**, which they call positive law and moral and scientific laws.

According to **John Austin**, "law is the aggregate of rules set by man as *politically superior*, or sovereign, to men as *political subject*."

In other words, law is the **"command of the sovereign"**. It obliges a certain course of conduct or imposes a duty and is backed by a sanction.

Thus, the three elements of law are:

(1) Command,

(2) Duty and

(3) Sanction.

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 Kelson is the knowledge of hierarchy of normative relations.

3. Distinguish between: Prohibitive Law & Permissive Law

Ans.: Prohibitive Law: A prohibitive law requires **negative conduct**.

Example: Law prohibiting the carrying of concealed weapon or running a lottery are prohibitive laws.

Permissive Law: A permissive law is one which neither requires nor forbids action, but **allows certain conduct** on the part of an individual if he desires to act.

4. Natural law says that certain rights are inherent by virtue of human nature and can be understood universally through human reason. Explain. [June 2021 (5 Marks)]

Ans.: Natural law says that certain rights are inherent by virtue of human nature and can be understood universally through human reason.

Under this school fall most of the ancient definitions given by Roman and other ancient Jurists.

Ulpine defined Law as "the art or science of what is equitable and good".

Cicero said that Law is "the highest reason implanted in nature".

Justinian's Digest defines Law as "the standard of what is just and unjust".

In all these definitions, propounded by Romans, "justice" is the main and guiding element of law.

Ancient Hindu view was that 'law' is the command of God and not of any political sovereign. Everybody including the ruler, is bound to obey it. Thus, 'law' is a part of "Dharma". The idea of "justice" is always present in Hindu concept of law.

Salmond, the prominent modern natural law thinker, defines law as "the body of principles recognized and applied by the State in the administration of justice".

In other words, the law consists of rules recognized and acted upon by the courts of Justice. It may be noted that there are two main factors of the definition. First, that to understand law, one should know its purpose: Second, in order to ascertain the true nature of law, one should go to the courts and not to the legislature.

SOURCE OF INDIAN LAW

5. Write a short note on: Sources of Law

Ans.: The modern Indian law as administered in courts is derived from various sources and these sources fall under the following two heads:

TAXMANN®

(A) Principle sources of Indian law:

- Customs or Customary Law
- Judicial Decision or Precedents
- Statutes or Legislation
- Personal Law

(B) Secondary source of Indian Law:

- Justice, Equity & Good Conscience
- English Law

6. What do you understand by the term custom? Describe the reasons for binding force of customs.

Ans.: A custom is rule which in a particular family or district or particular sect, class or tribe has from long usage obtained force of law.

Custom is the most ancient of all the sources of law and has held the most important place in the past, though its importance is now diminishing with the growth of legislation and precedent.

A study of the ancient law shows that in primitive society, the lives of the people were regulated by customs which developed spontaneously according to circumstances. It was felt that a particular way of doing things was more convenient than others. When the same thing was done again and again in a particular way, it assumed the form of custom.

Customs have played an important role in moulding the ancient Hindu Law. Most of the law given in Smritis and the Commentaries had its origin in customs. The *Smritis* have strongly recommended that the customs should be followed and recognized. Customs worked as a reorienting force in Indian Law.

7. What are the essential conditions of valid custom? Discuss, Explain any four. [June 2021 (5 Marks)]

Or

All customs cannot be accepted as sources of law, nor can all customs be recognized and enforced by the courts." Discuss the essential tests for customs to be recognized as valid sources of law. [Dec. 2021 (8 Marks)]

Ans.: A custom is rule which in a particular family or district or particular sect, class or tribe has from long usage obtained force of law.

Requisites of a valid custom: A custom will be valid at law and will have a binding force only if it fulfils the following essential conditions, namely:

(1) Immemorial (Antiquity): A custom to be valid must be proved to be immemorial; it must be ancient. A custom, in order that it may be legal and binding must have been used so long that the memory of man runs

not to the contrary, so that, if anyone can show the beginning of it, it is no good custom.

(2) **Certainty:** The custom must be certain and definite, and must not be vague and ambiguous.

(3) **Reasonableness:** A custom must be reasonable. It must be useful and convenient to the society. A custom is unreasonable if it is opposed to the principles of justice, equity and good conscience.

(4) **Compulsory observance:** A custom to be valid must have been continuously observed without any interruption from times immemorial and it must have been regarded by those affected by it as an obligatory or binding rule of conduct.

(5) **Conformity with law and public morality:** A custom must not be opposed to morality or public policy nor must it conflict with statute law. If a custom is expressly forbidden by legislation and abrogated by a statute, it is inapplicable.

(6) **Unanimity of opinion:** The custom must be general or universal. If practice is left to individual choice, it cannot be termed as custom.

(7) **Peaceable enjoyment:** The custom must have been enjoyed peaceably without any dispute in a law Court or otherwise.

(8) **Consistency:** There must be consistency among the customs. Custom must not come into conflict with the other established customs.

TAXMANN®

8. Explain: Precedent as source of law.

Ans.: Precedent literally means a rule followed or a principle applied previously by a competent authority under similar facts and circumstances. If a previous decision by a Court is taken as a basis or source for deciding the case under similar facts and circumstances, it is called judicial precedent.

In general use, the term "precedent" means some set pattern guiding the future conduct. In the judicial field, it means the guidance or authority of past decisions of the Courts for future cases. ***Only such decisions which lay down some new rule or principle are called judicial precedents.***

Judicial precedents are an important source of law. They have enjoyed high authority at all times and in all countries. This is particularly so in the case of England and other countries which have been influenced by English jurisprudence. The principles of law expressed for the first time in court decisions become precedents to be followed as law in deciding problems and cases identical with them in future. The rule that a court decision becomes a precedent to be followed in similar cases is known as doctrine of *Stare Decisis*. *[Stare Decisis, means "to stand by decided matters"]*

The practice of following precedents creates confidence in the minds of litigants. Law becomes certain and known and that in itself is a great advantage. Administration of justice becomes equitable and fair.

9. Discuss the various types of precedents.

Or

Define and distinguish between declaratory and persuasive precedents. [June 2022 (4 Marks)]

Ans.: Various types of precedents are as follows:

Original Precedents:

- An original precedent is one which ***creates and applies a new rule.***
- The number of original precedent is small.
- In the case of an original precedent, it is law for the future because it is now applied.
- The number of original precedents is small but their importance is very great.

Declaratory Precedents:

- A declaratory precedent is one which is ***merely the application of an already existing rule of law.***
- Declaratory precedents merely follow the original precedents.
- Declaratory precedents are numerous. A declaratory precedent is as good a source of law as an original precedent.

  The legal authority of both declaratory and original precedents is exactly the same.

Persuasive Precedents:

- A persuasive precedent is one which the judges are not obliged to follow but which they will take into consideration and to which they will attach great weight as it seems to them to deserve.
- In India, the decisions of one High Court are only persuasive precedents in the other High Courts.
- The rulings of the English and American Courts are persuasive precedents only.
- *Obiter dicta* also have only persuasive value.

Absolutely Authoritative Precedents:

- An authoritative precedent is one which judges must follow whether they approve of it or not. Thus, decisions of Supreme Court are binding force on High Courts and District Courts.
- Its binding force is absolute and the judge's discretion is altogether excluded as he must follow it. Such a decision has a legal claim to implicit obedience, even if the judge considers it wrong.
- Unlike a persuasive precedent which is merely historical, an authoritative precedent is a legal source of law.

TAXMANN®

Conditionally Authoritative Precedents:

- A conditionally authoritative precedent is one which, though ordinarily binding on the Court before which it is cited, is liable to be disregarded in certain circumstances.
- The Court is entitled to disregard a decision if it is a wrong one *i.e.* contrary to law and reason.

Example: The decision of a single Judge of the High Court is absolutely authoritative so far as subordinate judiciary is concerned, but it is only conditionally authoritative when cited before a Division Bench of the same High Court.

10. Write a short note on: Doctrine of *Stare Decisis*

Ans.: *Stare Decisis* means **'to stand by decided cases'**.

Doctrine of *Stare Decisis* means, **"adhere to the decision and do not unsettle things which are established"**. In simple words, the principle means that like cases should be decided alike.

Important points relating to doctrine of *Stare Decisis:*

- This doctrine brings **certainty** and **uniformity** in the law.
- As per the *stare decisis* doctrine, a principle of law which has become settled by a series of decisions generally is binding on the courts and should be followed in similar cases.
- Doctrine of *Stare Decisis* is based on **public policy** and **expediency**.
- Doctrine of *Stare Decisis* should be strictly adhered to by the Courts, but it is not universally applicable. Certain exceptions do exist for the doctrine. For example, Supreme Court may change its earlier decision.
- Doctrine should not be regarded as a rigid and inevitable doctrine which must be applied at the cost of justice.

11. Distinguish between: *'Ratio Decidendi' & 'Obiter Dictum'*. **[Dec. 2018 (4 Marks)]**

Or

How *ratio decidendi* differs from *obiter dicta*? **[June 2022 (4 Marks)]**

Or

Distinguish between *Ratio decidendi* and *Obiter dicta*. What are the rules governing binding force of judicial precedents. **[June 2023 (4 Marks)]**

Ans.: The decision or judgment of a judge may fall into two parts: the *ratio decidendi* **(reason for the decision)** and *obiter dictum* **(something said by the way)**.

RATIO DECIDENDI – The *ratio decidendi* of a case is the principle of law on which a decision is based. When a Judge delivers judgment in a case he outlines the facts which he finds have been proved on the evidence. Then he applies the

law to those facts and arrives at a decision, for which he gives the reason (*ratio decidendi*).

Thus, the underlying principle of a judicial decision, which is only authoritative, is termed as *ratio decidendi*. The abstract *ratio decidendi* alone has the force of law as regards the world at large. In other words, the authority of a decision as a precedent lies in its *ratio decidendi*.

OBITER DICTUM – The Judge may go on to speculate about what his decision would or might have been if the facts of the case had been different. This is an *obiter dictum*.

In simple words, *obiter dictum* is nothing but the supplementary opinion by a judge that is not essential to the actual decision.

The binding part of a judicial decision is the ratio decidendi. An *obiter dictum* is not binding in later cases because it was not strictly relevant to the matter in issue in the original case. However, an *obiter dictum* may be of persuasive value in later cases.

It is the *ratio decidendi* or the general principle which has the binding effect as a precedent, and not the *obiter dictum*.

12. 'Justice, Equity and Good Conscience' is the main Secondary Source of Indian Law. Explain it. [Dec. 2020 (5 Marks)]

Or

The Charters of the several High Courts established by the British Government has laid down the rule to decide a case where the law on a matter is silent. Explain with the help of Supreme Court of India's view in similar situation. [Dec. 2022 (5 Marks)]

Ans.:

- The concept of "Justice, Equity & Good Conscience" was introduced by *Impey's Regulations* of *1781*.
- The general idea behind "Justice, Equity & Good Conscience" doctrine was that if on a particular point of dispute before the Court there was no express/parliamentary law, no regulation and if it fell outside the heads for which Hindu and Mohammedan laws were prescribed, then the Court was to decide the matter according to "Justice, Equity & Good Conscience".
- It was applied by the Courts only for few topics, *viz.* inheritance, marriage, caste, and other religious usages and institutions. *It was introduced to cover gaps left in law.*
- The concept of "Justice, Equity & Good Conscience" also means application by Indian Courts rules of English Law insofar as they are applicable to Indian society and circumstances. In other words, "Justice, Equity & Good Conscience" is generally interpreted to mean rules of English law on an analogous matter as modified to suit the Indian conditions and circumstances.

TAXMANN®

- The Ancient Hindu Law had its own versions of the doctrine of justice, equity and good conscience. In its modern version, justice, equity and good conscience as a source of law, owes its origin to the beginning of the British administration of justice in India.
- The Charters of the several High Courts established by the British Government directed that when the law was silent on a matter, they should decide the cases in accordance with justice, equity and good conscience.
- The Supreme Court has stated that it is now well established that in the absence of any rule of Hindu Law, the courts have authority to decide cases on the principles of "Justice, Equity & Good Conscience" unless in doing so the decision would be repugnant to, or inconsistent with, any doctrine or theory of Hindu Law.

JURISPRUDENCE

13. Critically examine the statement by Austin that "Law is the command of sovereign". [Dec. 2018 (4 Marks)]

Ans.: According to Austin law is the **'command of sovereign'** that is backed by **'sanction'**.

Austin has propagated that law is a command which imposes a duty and the failure to fulfil the duty is met with sanctions (punishment).

Command: It is an expression of wish or desire of an intelligent person, directing another person to do or to forbear from doing some act, and the violation of this wish will be followed by evil consequences on the person so directed. Command requires the presence of two parties – the commander (political superior) and the commanded (political inferior).

Sovereign: In Austin's theory, sovereign is politically superior. He has defined sovereign as an authority that receives habitual obedience from the people but itself does not obey some other authority habitually. According to Austin, the sovereign is the source of all laws.

Sanction: Is the evil consequence that follows on the violation of a command. To identify a law, the magnitude of the sanction is not relevant but the absence of sanction disentitles an expression of the sovereign from being a law in Austinian sense. Sanction should not also be confused with a reward that might be on offer if a given conduct is followed or refrained from. Reward confers a positive right whereas a sanction is a negative consequence.

14. Critically examine Roscoe Pound's theory of interests. [June 2019 (5 Marks)]

Ans.: According to Roscoe Pound, for determining the scope and the subject matter of the legal system, following five things are required to be done:

1. Preparation of an inventory of interests and their classification.
2. Selection of the interests which should be legally recognized.

TAXMANN®

3. Demarcation of the limits of securing the interest so selected.
4. Consideration of the means whereby laws might secure the interests when these have been acknowledged and delimited, and
5. Evolution of the principles of valuation of interests.

Roscoe Pound's classification of interest is as follows:

(1) **Individual interest:** These are claims or demands determined from the standpoint of individual's life and concern. They are Interest of personality; Interest in domestic relations and Interest of substance.

(2) **Public interest:** These interests are asserted by individual from the standpoint of political life. They are Interests of the state as a juristic person and Interests of the state as guardian of social interest.

(3) **Social interests:** These are claims or demands thought of in terms of social life and generalized as claims of the social group. It is from the point of view of protecting the general interest of all members of the society.

15. The Sovereign power of making laws should be wielded, not to guarantee the selfish desires of individuals, but consciously to secure the common good. Critically examine this statement of Bentham.
[June 2022 (5 Marks)]

Ans.: According to Bentham 'law' may be defined as an assemblage of signs, declarative of volition, conceived or adopted by a sovereign in a state, concerning the conduct to be observed in a certain case by a certain person or a class of persons, who in the case in question are or are supposed to be subject to his power.

Bentham claimed that nature has placed man under the command of two sovereigns – pain and pleasure.

'Pleasure' in Bentham's theory has a somewhat large signification, including altruistic and obligatory conduct, the 'principle of benevolence'; while his idea of 'interest' was anything promoting pleasure.

The function of laws should be to bring about the maximum happiness of each individual for the happiness of each will result in the happiness of all. The justification for having laws is that they are an important means of ensuring happiness of the members of community generally.

Hence, the sovereign power of making laws should be wielded, not to guarantee the selfish desires of individuals, but consciously to secure the common good.

16. Define the concept of Kelson's 'Pure Theory of Law' under Analytical School.
[Dec. 2021 (5 Marks)]

Ans.:

- Hans Kelson is known for his 'Pure Theory of Law'. Kelson believed that the contemporary study and theories of law were impure as they were

drew upon from various other fields like religion and morality to explain legal concepts.

- Kelson, like Austin was a positivist, in that he focused his attention on what the law was and divested moral, ideal or ethical elements from law. He discarded the, notion of justice as an essential element of law because many laws, though not just, may still continue as law.
- Kelson described law as a "normative science" as distinguished from natural sciences which are based on cause and effect, such as law of gravitation. The laws of natural science are capable of being accurately described, determined and discovered whereas the science of law is knowledge of what law ought to be. Kelson considered sanction as an essential element of law but he preferred to call it 'norm'. According to Kelson, "law is a primary norm which stipulates sanction".
- According to Kelson, "norm (sanction) is rules forbidding or prescribing 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.
- Kelson distinguished moral norm with legal norm and said that though moral norms are 'ought prepositions, 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.
- According to Kelson, legal-normative meaning is assigned to certain actions and not to others depending on whether that event is accorded any legal-normative by any other legal norm. This second norm gains its validity from some other norm that is placed above it. The successive authorizations come to an end at the highest possible norm which was termed by Kelson as 'Grundnorm'.
- Thus, Kelson's pure theory of law is based on pyramidical 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. 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.

17. According to Kelsen, law is a "normative science". Explain. [June 2023 (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.

TAXMANN®

2 CHAPTER
CONSTITUTION OF INDIA

PREAMBLE

1. The Preamble to the Constitution of India sets out the aims and aspirations of the people of India. Comment. [Dec. 2007 (4 Marks)]

Or

The true place of a preamble in a statute was at one time the subject of conflicting decisions. Is such an opinion still prevailing? Discuss, citing case law. [Dec. 2012 (6 Marks)]

Ans.: Preamble says briefly the objects, purposes intended to be served by the statue. The preamble to the Constitution sets out the aims and aspiration of the people of India. It is a part of the Constitution. The preamble declares India to be a **Sovereign, Socialist, Secular, Democratic Republic** and secures to all its citizens **Justice, Liberty, Equality** and **Fraternity**. It is declared that the Constitution has been given by the people to themselves, thereby affirming the republican character of the polity and the sovereignty of the people. The polity assured to the people India by the Constitution is described in the preamble as a Sovereign, Socialist, Secular, and Democratic Republic.

Significance of the Preamble to the Constitution of India

- **We, the people:** The phrase *"we, the people"* has been taken from the Constitution of USA. This means, the Constitution of India has been framed and enacted by the people of India the power to make the Constitution had been achieved by the people of India with great efforts. It was not derived by any external force.
- The principle *"Government of the People, by the People and for the people"* can be seen in the Preamble.
- **Democratic:** Ours is the democratic country. Every citizen of India, who is aged 18 years and above is entitled to vote, irrespective of his caste, religion, race, sex, economic position. From the village level to parliament level, there will be elections meant for 5 years. While democracy failed in our surrounding countries, it is very much successful in our country.

TAXMANN®

- **Secular:** Secularism is the structure of our Constitution. Our Government respects all religions. It does not uplift or degrade any particular religion. The State has no religion itself. While our surrounding countries have adopted particular religions; India has not adopt any religion.

  Example: Pakistan (Islam), Bangladesh (Islam), Nepal (Hinduism), Sri Lanka (Buddhism), Burma (Buddhism), etc.

- **Justice:** The Preamble intends that the justice must be given to every citizen irrespective of poverty, richness, caste, religion, sex, power, political power. There are several examples that our country adhere this principle very strongly. The Supreme Court decision in *Indira Gandhi* v. *Raj Narain*, shows that the Prime Minister and ordinary citizens are equal. Similarly, *P. V. Narasimha Rao* is being prosecuted for the allegations of bribery, forgery, *etc.* It shows the independent judiciary in India.

STRUCTURE OF CONSTITUTION

2. "Constitution of India establishes a federation with strong centralizing tendency". Discuss. [June 2010 (8 Marks)]

Or

Examine how far the essentials of federal polity is incorporated in Indian Constitution. [June 2022 (5 Marks)]

Ans.: Constitution of India is basically *federal but with certain unitary features*. The majority of the Supreme Court judges in *Kesavananda Bharati* v. *State of Kerala,* were of the view that the federal features form the basic structure of the Indian Constitution. However, there is some controversy as to whether the Indian Constitution establishes a federal system or it stipulates a unitary form of Government with some basic federal features. To decide whether out Constitution is federal, unitary or quasi federal, one has to consider the contents of our Constitution. Thus, to decide whether our constitution is federal or unitary, it will be better to have look over these systems and constitution.

Federal system has the following essential characteristics:

(*a*) Dual government – one at center and one each for the States

(*b*) Distribution of powers between Central and State Government

(*c*) Supremacy of the constitution

(*d*) Written constitution

(*e*) Not easy to amend constitution

(*f*) Authority of Courts

The political system introduced by our Constitution possesses all the aforesaid essentials of a federal polity as both the Union and the State Governments and their respective organs derive their authority from the Constitution and it is not competent for the States to secede from the Union.

There is a division of legislative and executive powers between the Union and the State Governments. Lastly, the Supreme Court stands at the head of our judiciary to guard against the violation of the constitutional provisions. The Supreme Court decides disputes between the Union and the States, or the States *inter se* and interprets finally the provisions of the Constitution.

However, Indian constitution does not follow strictly the pure federal system. If we look from other side, our constitution is mainly central and the Central Government has a large sphere of action and thus plays a more dominant role than the states.

Unitary Character:

(*a*) President of India is the constitutional head. He is executive of Union. Appointments of Governors are made by him.

(*b*) Appointment and transfer of the Chief Justice and Judges of the High Court are made by the president.

(*c*) Parliament has supreme rights in legislative matters.

(*d*) Parliament has power to make a law of on State Lists under special circumstances.

(*e*) Central Government has power to issue directors to State Government.

(*f*) States are dependent on center for aid as their financial resources are inadequate.

Judicial view: The question as to whether the Indian Constitution has a federal form of Government or a unitary constitution with some federal features came up in various cases before the Supreme Court. But in most cases, the observations have been made in a particular context and have to be understood accordingly. The question rests mostly on value judgment *i.e.* on one's own philosophy.

Thus, Constitution of India is *federal but with striking unitary features.*

3. To what extent does the Indian Constitution differ from the federal system of other countries? [Dec. 2014 (8 Marks)]

Ans.: Constitution of India is basically *federal but with certain unitary features.* The majority of the Supreme Court judges in *Kesavananda Bharati* v. *State of Kerala,* were of the view that the federal features form the basic structure of the Indian Constitution.

Federal system has the following essential characteristics:

(*a*) Dual government – one at center and one each for the States

(*b*) Distribution of powers between Central and State Government

(*c*) Supremacy of the constitution

(*d*) Written constitution

(*e*) Not easy to amend constitution

(*f*) Authority of Courts

TAXMANN®

The political system introduced by our Constitution possesses all the aforesaid essentials of a federal polity as both the Union and the State Governments and their respective organs derive their authority from the Constitution and it is not competent for the States to secede from the Union.

There is a division of legislative and executive powers between the Union and the State Governments. Lastly, the Supreme Court stands at the head of our judiciary to guard against the violation of the constitutional provisions. The Supreme Court decides disputes between the Union and the States, or the States *inter se* and interprets finally the provisions of the Constitution.

However, Indian constitution does not follow strictly the pure federal system. If we look from other side, our constitution is mainly central and the Central Government has a large sphere of action and thus plays a more dominant role than the states.

DEFINITION OF STATE [ARTICLE 12]

4. What do you understand by the expression 'State' under Part-III of the Constitution of India? Explain with the help of decided case law on the point. [Dec. 2011 (6 Marks)]

Ans.: State [Article 12]: The term 'State' includes:

(*a*) Government and Parliament of India.

(*b*) Government and legislature of each State.

(*c*) All local and other authorities:

- Within the territory of India
- Under the control of the Government of India.

Important case laws:

- The expression *'local authorities'* refers to authorities like Municipalities, District Boards, Panchayat, Port Trust, Mining, Settlement Boards etc. [*Rashid Ahmed* v. *M. B. Kairana*]
- The expression *'other authorities'* includes all authorities created by Constitution or statute. It is not necessary that such authorities should be engaged in performing governmental or sovereign functions. [*Electricity Board, Rajasthan* v. *Mohan Lal*]
- The expression *'other authorities'* includes all those bodies which are acting as agencies or instrumentalities of the government. [*R. D. Shetty* v. *International Airport Authorities*]
- It has been held that university is an authority. [*University of Madras* v. *Shanta Bai*]
- President is 'State' when making an order under Article 359. [*Haroobhai* v. *State of Gujarat*]

TAXMANN®

5. Discuss the test laid down by the Supreme Court of India to determine the entity of "State", whether it is 'instrumentality or agency of State'.
[Dec. 2018 (4 Marks)]

Or

Explain the test laid down by the Supreme Court of India for determining whether an entity is an instrumentality or agency of the state.
[Dec. 2022 (5 Marks)]

Ans.: In *Ajay Hasia* v. *Khalid Mujib,* the Supreme Court has enunciated the following test for determining whether an entity is an instrumentality or agency of the State:

(1) **Share Capital:** If the entire share capital of the Corporation is held by the Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of the Government

(2) **Financial Assistance:** Where the financial assistance of the State is so much as to meet almost the entire expenditure of the corporation it would afford some indication of the corporation being impregnated with government character.

(3) **Monopoly Status:** Whether the corporation enjoys a monopoly status which is conferred or protected by the State.

(4) **State control:** Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or an instrumentality.

(5) **Functions:** If the functions of the corporation are of public importance and closely related to government functions, it would be a relevant factor in classifying a corporation as an instrumentally or agency of government.

(6) **Department of government:** If a department of government is transferred to a corporation, it would be a strong factor supporting an inference of the corporation being an instrumentality or agency of government.

DOCTRINE OF SEVERABILITY, ECLIPSE, WAIVER, SINGLE PERSON LAW [ARTICLE 13]

6. What do you mean by doctrine of waiver of rights under the Constitution of India? **[Dec. 2009 (4 Marks)]**

Ans.: The doctrine of waiver of rights is based on the premise that a person is his best judge and that he has the liberty to waive the enjoyment of such rights as are conferred on him by the State. However, the person must have the knowledge of his rights and that the waiver should be voluntary.

The doctrine was discussed in *Basheshar Nath* v. *Income Tax Commissioner,* where the majority expressed its view against the waiver of fundamental rights. It was held that is was not open to citizens to waive any of the fundamental rights.

TAXMANN®

7. Discuss the 'Doctrine of Eclipse' under the Constitution of India. [Dec. 2020 (5 Marks)]

Ans.:

- As per the Article 13(*1*) of the Constitution of India, *"existing laws that are inconsistent with fundamental rights are void, to the extent of inconsistency".*
- The doctrine of eclipse was originated in *Bhikaji Narain v. State of M. P.* An existing law inconsistent with a fundamental right, though becomes inoperative from the date of the commencement of the constitution, is not dead altogether. It is overshadowed by the fundamental right and remains dormant, but is not dead.
- According to this doctrine, pre-constitution laws remains eclipsed or dormant to the extent it comes under the shadow of the fundamental rights *i.e.* is inconsistent with it, but the eclipsed or dormant parts become operative and effective again if the prohibition brought about by the fundamental right is removed by an amendment of the constitution.
- In *Saghir Ahmed* v. *State of U.P.*, a Constitution Bench of the Apex Court unanimously stated that the Doctrine could not apply to the impugned post Constitutional law. A legislation that contravened Article 19(*1*)(*g*) and was not protected by Clause (*6*) of the Article 19, when it was enacted after the commencement of the Constitution, could not be validated even by subsequent Constitutional Amendment.

8. Discuss in brief the doctrine of severability. [June 2013 (8 Marks)]

Ans.: Laws inconsistent with or in derogation of the fundamental rights [Article 13]:

(*a*) All laws in force in the territory of India immediately before the commencement of Constitution, insofar as they are inconsistent with the provisions of Part-III (*Fundamental Rights*), shall, to the extent of such inconsistency, be void.

(*b*) The State shall not make any law which takes away or abridges the rights conferred by Part-II and any law made in contravention of this clause shall, to the extent of the contravention, be void.

One thing to be noted in Article 13 is that, it is not the entire law which is affected by the provisions in Part-III, but the law becomes invalid only to the extent to which it is inconsistent with the Fundamental Rights. So only that part of the law will be declared invalid which is inconsistent, and the rest of the law will stand. However, on this point a clarification has been made by the Courts that invalid part of the law shall be severed and declared invalid if really it is severable, *i.e.*, if after separating the invalid part the valid part is capable of giving effect to the legislature's intent, then only it will survive, otherwise the Court shall declare the entire law as invalid. This is known as the rule of severability.

TAXMANN®

The doctrine has been applied invariably to cases where it has been found possible to separate the invalid part from the valid part of an Act. Article 13 only says that any law which is inconsistent with the fundamental rights is void "to the extent of inconsistency" and this has been interpreted to imply that it is not necessary to strike down the whole Act as invalid, if only a part is invalid and that part can survive independently.

In *A.K. Gopalan* v. *State of Madras*, the Supreme Court ruled that where an Act was partly invalid, if the valid portion was severable from the rest, the valid portion would be maintained, provided that it was sufficient to carry out the purpose of the Act.

9. 'A' a State in the Union of India made provisions for district-wise distribution of seats in State medical colleges on the basis of population of a district to the population of the State. Decide the validity of this classification with the help of relevant case law. [June 2022 (5 Marks)]

Ans.: In the case of *P. Rajandran* v. *State of Mysore*, Supreme Court held that for a valid classification, there has to be a rational nexus between the classification made by the law and the object sought to be achieved.

A provision for district wise distribution of seats to the State Medical Colleges on the basis of population of a district to the population of the State was held to be void.

RIGHT OF EQUALITY [ARTICLE 14]

10. What is the scope of Article 14 of the Constitution of India? To what extent is it correct to say that Article 14 forbids class legislation, but does not forbid classification? [June 2012 (8 Marks)]

Or

"Article 14 of the Constitution of India does not rule out classification for purposes of legislation; what it requires is a valid classification for the same." Explain. [Dec. 2013 (8 Marks)]

Ans.: Equality before law [Article 14]: *The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*

The expression 'equality before the law' is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual.

Equality before the law means that amongst equals the law should be equal. That means like should be treated alike and among unequal same laws shall not be applicable.

TAXMANN®

Interpreting the scope of the Article, the Supreme Court of India held that:

(*a*) Equal protection means equal protection under equal circumstances.

(*b*) The State can make reasonable classification for purposes of legislation.

(*c*) Presumption of reasonableness is in favour of legislation.

(*d*) The burden of proof is on those who challenge the legislation.

Legislative Classification: A right conferred on persons that they shall not be denied equal protection of the laws does not mean the protection of the same laws for all. It is here that the doctrine of classification steps in and gives content and significance to the guarantee of the equal protection of the laws. To separate persons similarly situated from those who are not, legislative classification or distinction is made carefully between persons who are and who are not similarly situated. The Supreme Court in a number of cases has upheld the view that Article 14 does not rule out classification for purposes of legislation. Article 14 does not forbid classification or differentiation which rests upon reasonable grounds of distinction.

The Supreme Court in *State of Bihar* v. *Bihar State 'Plus-2' lectures Associations*, held that now it is well settled and cannot be disputed that Article 14 of the Constitution guarantees equality before the law and confers equal protection of laws. It prohibits the state from denying persons or class of persons equal treatment; provided they are equals and are similarly situated. It however, does not forbid classification. In other words, what Article 14 prohibits is discrimination and not classification if otherwise such classification is legal, valid and reasonable.

Test of valid classification: Since a distinction is to be made for the purpose of enacting legislation, it must pass the classical test enunciated by the Supreme Court in *State of West Bengal* v. *Anwar Ali Sarkar*. Permissible classification must satisfy two conditions, namely;

(1) It must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group.

(2) The differentia must have a rational nexus with the object sought to be achieved by the statute in question.

The classification may be founded on different basis, such as, geographical, or according to objects or occupation or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. A legal and valid classification may be based on educational qualifications.

A law based on a permissible classification fulfils the guarantee of the equal protection of the laws and is valid. On the other hand if it is based on an impermissible classification it violates that guarantee and is void.

Reiterating the test of reasonable classification, the Supreme Court in *Dharam Dutt* v. *Union of India*, held that laying down of intelligible differentia does not,

TAXMANN®

however mean that the legislative classification should be scientifically perfect or logically complete.

11. Article 14 of the Constitution of India says that state shall not deny to any person equality before the law or the equal protection of laws within the territory of India. Explain it. Refer the relevant judgments.
[June 2019 (4 Marks)]

Ans.: Equality before law [Article 14]: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

"Equality before the law" is an expression of English Common Law while *"equal protection of laws"* owes its origin to the American Constitution.

The expression 'equality before the law' is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual.

Equality before the law means that amongst equals the law should be equal. That means like should be treated alike and among unequal same laws shall not be applicable.

Both the phrases aim to establish what is called the "equality to status and of opportunity" as embodied in the Preamble of the Constitution. While equality before the law is a somewhat negative concept implying the absence of any special privilege in favour of any individual and the equal subjection of all classes to the ordinary law, equal protection of laws is a more positive concept employing equality of treatment under equal circumstances.

Thus, Article 14 stands for the establishment of a situation under which there is complete absence of any arbitrary discrimination by the laws themselves or in their administration.

Interpreting the scope of the Article, the Supreme Court of India held that:

(*a*) Equal protection means equal protection under equal circumstances.

(*b*) The State can make reasonable classification for purposes of legislation.

(*c*) Presumption of reasonableness is in favour of legislation.

(*d*) The burden of proof is on those who challenge the legislation.

Explaining the scope of reasonable classification, the Court held that "even one corporation or a group of persons can be taken to be a class by itself for the purpose of legislation provided there is sufficient basis or reason for it. The onus of proving that there were also other companies similarly situated and this company alone has been discriminated against, was on the petitioner".

Article 14 prevents discriminatory practices only by the State and not by individuals. For instance, if a private employer like the owner of a private business concern discriminates in choosing his employees or treats his employees unequally, the person discriminated against will have no judicial remedy.

TAXMANN®

A remarkable example of the application of the principle of equality under the Constitution is the decision of the Constitution Bench of the Supreme Court in *R. K. Garg* v. *Union of India*. The legislation under attack was the Special Bearer Bonds (Immunities and Exemptions) Act, 1981. It permitted investment of black money in the purchase of these Bonds without any questions being asked as to how this money came into the possession.

In public interest litigation it was contended that Article 14 had been violated, because honest taxpayers were adversely discriminated against by the Act, which legalized evasion. But the Supreme Court rejected the challenge, taking note of the magnitude of the problem of black money which had brought into being a parallel economy.

In *Air India* v. *Nergesh Meerza & Others*, Air India crew running the flights consisting of Pilots, FPs and In-flights Pursers on the one hand the Air Hostesses, Check Air Hostesses, Additional Air Hostesses and Chief Air Hostesses on the other hand. The modes of appointment, service conditions were different for Pilots and Air Hostesses. The posts of Air Hostesses were purely reserved for young, attractive and unmarried ladies from the ages 18 to 25 years. An Air Hostesses should retire from the service on her attaining the age of 30 years or when she would get marries whichever is earlier. However, for the male crew, the retirement age was prescribed as 58 years and there was no restriction on marriage. Air Hostesses filed their grievances. The Supreme Court gave the judgment in favour of the Air Hostesses opining that too much gender discrimination was shown by the Air India Corporation.

TAXMANN®

PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION *ETC.* [ARTICLE 15]

12. Preferential treatment to certain persons belonging to backward classes in the form of reservation in education and jobs as provided in Articles 15(*4*) & 16(*4*) of the Constitution of India is a mean of ensuring the canon of equality enshrined in the preamble of the Constitution of India. Evaluate the statement. [Dec. 2006 (8 Marks)]

Ans.: Prohibition of discrimination [Article 15]: This article prohibits the State from discriminating against **any citizen** on grounds only of religion, race, caste, sex, place of birth or any of them. Further, no citizen shall be subjected to any disability, restriction or condition with regard to:

(*a*) Access to shops, public restaurants, hotels and places of public entertainment; or

(*b*) The use of wells, tanks, bathing ghats, road and places of public resort, maintained wholly or partially out of State funds or dedicated to the use of the general public.

Exception: The State can make special provision for women and children. The State can make special provision for the advancement of:

- Socially and educationally backward classes of citizens
- Scheduled casts and
- Scheduled tribes

Protective discrimination: In the eye of the law, there is no discrimination between man or woman. So, for a post of a clerk or Prime Minister man or woman are competent person. There is no discrimination between them. But in fact, man is physically stronger than woman. Therefore, keeping the weak physical position of the woman and children, the State is authorized by the Article 15(3) to make any special provisions for their benefit. It is called 'protective discrimination'. Similarly for the advancement of the educationally and socially backward classes of people SC's and ST's the State is empowered to make special provisions protecting them under the Article 15(4).

EQUAL OPPORTUNITY IN PUBLIC EMPLOYMENT [ARTICLE 16]

13. "Article 16 of the Indian Constitution guarantees equal opportunity to all citizens of India in matters related to public employment. However, there are certain exceptions of the Article 16". Explain the reservation policy in India. [Dec. 2021 (4 Marks)]

Ans.: Equality of opportunity [Article 16]:

There shall be equality of opportunity for ***all citizens*** in matters relating to employment or appointment to any office under the State.

No discrimination in employment: No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

Exception – *i.e.* when discrimination is valid:

(1) Parliament can make a law with regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory and may state requirement as to residence within that State or Union territory prior to such employment or appointment.

(2) Parliament can pass a law from making provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

In *Narasimha Rao* v. *State of Andhra Pradesh*, an Act of Parliament prescribed residence as qualification for government service in Telangana area of the State of Andhra Pradesh. The Supreme Court held that Parliament can reserve certain posts in Andhra Pradesh for the residents of the State, but it cannot reserve post in Telangana for the residents of Telangana only which is part of State.

LAXMANN®

The word 'State' in Article 16 signifies the whole of the State and not parts of the State, and therefore, residential qualification can be prescribed for the whole of the State.

14. Akshay was denied public employment on the ground of place of birth. Discuss the remedy available to Akshay under the provisions of Constitution of India. [Dec. 2002 (5 Marks)]

Ans.: If someone is denied public employment of grounds of his cast, religion or place of birth, he can use Article 16 of the Constitution for opposing such action.

Article 16 guarantees to all citizen equality of opportunity in matters relating to employment of appointment of office under the State. It also prohibits discrimination against a citizen on the grounds of religion race caste, sex descent, place of birth or residence.

Hence, Akshay can use protection of this article and seek redressal.

ABOLITION OF UNTOUCHABILITY [ARTICLE 17]

15. Write a short note on: Abolition of untouchability

Ans.: Abolition of Untouchability [Article 17]: "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

In 1955 Parliament enacted the **Untouchability (Offences) Act, 1955**. In 1976, the Act was amended and renamed as the **"Protection of Civil Rights Act, 1955"** making changes in the existing law namely, all offences to be treated as non-compoundable and offences punishable up to 3 months to be tried summarily; punishment of offences enhanced; preaching of untouchability or its justification made an offence; a machinery envisaged for better administration and enforcement of its provisions.

ABOLITION OF TITLES [ARTICLE 18]

16. Write a short note on: Abolition of titles

Ans.: Abolition of titles [Article 18]:

(*a*) No title, not being a military or academic distinction, shall be conferred by the State.

(*b*) No citizen of India shall accept any title from any foreign State.

(*c*) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

TAXMANN®

(*d*) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

Article 18 is more a prohibition rather than a fundamental right. British Government used to confer titles upon persons who showed special allegiance to them. Many persons were made:

- Sir
- Raj Bahadur
- Rai Saheb
- Knight *etc.*

These titles had the effect of creating a class of certain persons which was regarded superior to others and thus had the effect of perpetuating inequality. To do away with that practice, Article 18 provides for the abolition of such titles.

RIGHTS RELATING TO FREEDOMS [ARTICLE 19]

17. "Right to fundamental freedoms is not absolute." Elaborate. [June 2014 (6 Marks)]

Ans.: Article 19(*1*) of the Constitution, guarantees to the citizens of India six freedoms. Accordingly, all citizens shall have the right –

(*a*) To freedom of **speech & expression**

(*b*) To **assemble peaceably & without arms**

(*c*) To **form association or unions**

(*d*) To **move freely** throughout the territory of India

(*e*) To **reside and settle** in any part of the territory of India

(*f*) ~~*To acquire, hold and dispose of property*~~ [*Deleted by 44th Amendment in 1978*]

(*g*) To **practice any profession**, or to carry on any **occupation, trade or business**

Reasonable restrictions: These freedoms are basic rights which are recognized as the natural rights inherent in the status of a citizen. At the same time, none of these freedoms is absolute but subject to reasonable restrictions. The Constitution under Article 19(*2*) to 19(*6*) permits the imposition of restrictions on these freedoms subject to the following conditions:

(1) The restriction can be imposed by law and not by a purely executive order.

(2) The restriction must be reasonable.

(3) The restriction must be imposed for achieving objects specified Article 19(*1*)(*a*) to (*g*).

TAXMANN®

The onus of proving to the satisfaction of the Court that the restriction is reasonable is upon the State.

18. "The right of freedom of speech and expression under Article 19(*1*)(*a*) of the Constitution of India is not an absolute right but subject to reasonable restrictions." Discuss. [Dec. 2009 (8 Marks)]

Or

What are the restrictions on right to freedom of speech and expression under Article 19 of the Constitution of India? [Dec. 2018 (4 Marks)]

Ans.:

- Article 19(*1*) of the Constitution, guarantees to the citizens of India freedom of speech & expression.
- Freedom of speech, considered the basic freedom by most philosophical thinkers, consists of several facets, including the right to express one's opinion unhindered, unfettered by the fear of retribution.
- It is one of the most basic elements for a healthy, open minded democracy. It allows people to freely participate in the social and political happenings of their country.
- Right of freedom to speech and expression is not completely unchecked. Article 19(*2*) allows for reasonable restrictions to be imposed on all fundamental rights, including that of freedom to speech and expression.
- The right to speech and expression includes right to make a ***good or bad speech*** and even the right of ***not to speak***. One may express oneself even by signs. The freedom of speech and expression means the right to express one's convictions and opinions freely by word of mouth, writing, printing, pictures or any other mode.

Restriction on freedom of making speech & expression [Article 19(*2*)]: The State may impose by law reasonable restrictions on the freedom of speech and expression. Such restrictions may relate to –

(*a*) Security of the State

(*b*) Friendly relations with foreign States

(*c*) Public order

(*d*) Decency or morality

(*e*) Contempt of Court

(*f*) Defamation

(*g*) Sovereignty and integrity of India

Reasonable restrictions under these head can be imposed only by a duly enacted law and not by executive action. [*Express News Papers Pvt. Ltd.* v. *Union of India*]

TAXMANN®

19. An organization of some persons belonging to a particular community sat on a dharna near Jantar Mantar in New Delhi and later on moved towards Parliament House raising slogans against the Government to press for their demands. This led to traffic jam. The government had imposed a ban on demonstrations near and at the Parliament House. The organization filed a petition in the High Court against the ban, pleading infringement of their fundamental right of freedom. Will the petition be admitted? Give reasons. [June 2008 (4 Marks)]

Ans.: Article 19(*1*)(*b*) gives the right to citizens to assemble ***peacefully and without arms***. However, apart from the fact that the assembly must be peaceful and without arms, the State is also authorized to impose reasonable restrictions on this right in the interests of:

- Sovereignty & integrity of India.
- Public order.

As facts given in case, an organization of a business community staged processions, demonstrations and agitations before the secretariat of the State Government on busy roads to press for their demands. These caused a traffic jam which is against the public order and State can definitely impose ban on such demonstrations.

As ban on demonstration is valid, petition will get rejected by the High Court.

20. Explain the freedom of association under the Constitution of India. What reasonable restrictions have been imposed on this freedom under Article 19 of the Constitution of India? [June 2019 (4 Marks)]

Ans.: Freedom of association [Article 19(*1*)(*c*)]: Freedom of association includes freedom to hold meeting and to takeout processions without arms. Right to form associations for unions is also guaranteed so that people are free to have the members entertaining similar views.

This right is subject to reasonable restriction which the State may impose in the interests of:

(*a*) Sovereignty and integrity of India.

(*b*) Public order.

(*c*) Morality.

21. Article 19(*1*)(g) of the Constitution of India provides that all citizens shall have the right to practice any profession, or to carry on any occupation, trade or Business. Explain. [Dec. 2020 (8 Marks)]

Ans.: Article 19(*1*)(g) of the constitution guarantees to **all citizens** freedom to practice any profession, or to carry any occupation, trade or business. However, such freedom is not absolute but subject to reasonable restrictions as may be imposed by the State.

TARANN®

The State's power to restrict the enjoyment of these freedoms is limited to the making of any law imposing reasonable restrictions in the interests of the general public insofar as it relates to:

(*a*) The prescribing of professional or technical qualifications necessary for practicing any profession or carrying of any occupation, trade or business or

(*b*) The carrying on by the State or by a corporation owned or controlled by the State, of any trade, business, industry or service to the exclusion of others.

In order to determine the reasonableness of the restriction, regard must be had to the nature of the business and conditions prevailing in that trade.

The word 'restriction' is wide enough to include cases of total prohibition also. Accordingly, even if the effect of a law is the elimination of the dealers from the trade, the law may be valid, provided it satisfies the test of reasonableness or otherwise.

The vital principle which has to keep in mind is that the restrictive law should strike a proper balance between the freedom guaranteed under Article 19(*1*)(*g*) and the social control permitted by Article 19(*6*). The restriction must not be of an excessive nature beyond what is required in the interests of the public.

TAXMANN®

22. Government of Madhya Pradesh passed a law prohibiting the manufacture of bidis in the villages during the agricultural season. No person residing in the village could employ any other person nor engage himself in the manufacture of bidis during the agricultural season. The objective of the provision was to ensure adequate supply of labour for agricultural purposes. A bidi manufacturer could not even engage labour from outside the State, and so, had to suspend manufacture of bidis during the agricultural season. Even villagers incapable of engaging in agriculture, like old persons, women and children, etc., who supplemented their income by engaging themselves in manufacturing bidis were prohibited without any reason. Decide whether law passed by Government of Madhya Pradesh is constitutionally valid. [Dec. 2009 (5 Marks)]

Ans.: Article 19(*1*)(*g*) of the constitution guarantees to all citizens freedom to practice any profession, or to carry any occupation, trade or business. Such freedom is not absolute but subject to reasonable restrictions as may be imposed by the State. However, such restriction must be reasonable and can be imposed only by a duly enacted law and not by executive action. [*Express News Papers Pvt. Ltd.* v. *Union of India*]

The facts of the case are similar to *Chintaman Rao* v. *the State of Madhya Pradesh*, wherein the Supreme Court held the Central Provinces & Berar Regulation of Manufacture of Bidis (Agricultural Purpose) Act, 1948 invalid and unconstitutional because it totally prohibited the manufacture of bidis during the agricultural season in certain parts of the State.

Thus, law passed by Government of Madhya Pradesh unconstitutionally and invalid.

PROTECTION FROM CONVECTION FOR OFFENCES [ARTICLE 20]

23. Vijay, an accused, committed an offence of dacoity in 2015. At that time dacoity was punishable with imprisonment of 10 years. In 2016 during his trial, a law was passed which made dacoity punishable with life imprisonment. Which penalty would be applicable on accused Vijay? Discuss the answer with reference to Article 20(*1*) of the Indian Constitution. [June 2021 (5 Marks)]

Ans.: Protection in respect of conviction for offences [Article 20(*1*)]: No person shall be convicted of any offence except for violation of a law in force at the time of offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

If a particular act was not offence according to the law of the land at the time when the person did that act then he cannot be convicted under a law which with retrospective effect declaring that act as an offence.

In the given case, Vijay has committed offence of dacoity in the year 2015. At that time, it was punishable with imprisonment of 10 years. By a law passed after his committing the dacoity the penalty, for his act cannot be increased from 10 to 11 years or to life imprisonment.

In short, so far as criminal law creates a new offence or increase the penalty, it shall be applicable only to those offences which are committed after it's coming into force and cannot cover those offences which have already been committed in the past.

24. What do you mean by double jeopardy? [Dec. 2009 (4 Marks)]

Ans.: Double jeopardy means no one should be imprisoned or penalized two times for the same offence.

Protection against double jeopardy [Article 20(*2*)]: *No person can be prosecuted* and *punished for the same offence more than once.*

It is, however, to be noted that the conjunction *'and'* is used between the words "prosecuted and punished" and therefore, if a person has been let off after prosecution without being punished, he can be prosecuted again.

25. "Article 20 of the Constitution of India guarantees protection against self-incrimination". Explain briefly. [Dec. 2018 (4 Marks)]

Ans.: Protection against self-incrimination [Article 20(*3*)]: A person accused of any offence cannot 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) He must be accused of an offence.

(2) There must be a compulsion to be a witness.

(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 him, then the protection available under this provision does not extend to such person or to such statement.

26. Discuss the principle of protection against compulsion of self-incrimination embodies Article 20(3) of the Constitution of India with the help of judicial decisions. [June 2023 (4 Marks)]

Ans.: Protection against self-incrimination [Article 20(3)]: A person accused of any offence cannot 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:

- He must be accused of an offence.
- There must be a compulsion to be a witness.
- 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 him, 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*]

PROTECTION OF LIFE & PERSONAL LIBERTY [ARTICLE 21]

27. "Article 21 of the Constitution of India has been so transformed by the judiciary that it now encompasses all conceivable rights within its ambit." Discuss. [Dec. 2011 (8 Marks)]

Or

Discuss 'the procedure established by law' under Article 21 of the Constitution of India with decided case laws. [Dec. 2018 (8 Marks)]

Ans.: Protection of life and personal liberty [Article 21]: *No person shall be deprived of his life or personal liberty except according to procedure established by law.*

TAXMANN®

- The majority in the case of *A.K. Gopalan* v. *State of Madras,* gave a narrow meaning to the expression 'personal liberty' within the subject matter of Articles 20 to 22 by confining it to the liberty of the person (*that is, of the body of a person*). The majority of the judges also took a narrow view of the expression *'procedure established by law'* in this case.
- The restricted interpretation of the expression 'personal liberty' preferred by the majority judgment in *A.K. Gopalan's case* namely, that the expression 'personal liberty' means only liberty relating to or concerning the person or body of the individual, has not been accepted by the Supreme Court in subsequent cases.
- That the expression 'personal liberty' is not limited to bodily restraint or to confinement to prison, only is well illustrated in *Kharak Singh* v. *State of U.P.* In that case the question raised was of the validity of the police regulations authorizing the police to conduct what are called as domiciliary visits against bad characters and to have surveillance over them. The court held that such visits were an invasion, on the part of the police, of the sanctity of a man's home and an intrusion into his personal security and his right to sleep, and therefore violative of the personal liberty of the individual, unless authorized by a valid law. As regards the regulations authorizing surveillance over the movements of an individual the court was of the view that they were not bad, as no right to privacy has been guaranteed in the Constitution.
- In *Satwant Singh Sawhney* v. *A.P.O., New Delhi,* it was held that right to travel is included within the expression 'personal liberty' and, therefore, no person can be deprived of his right to travel, except according to the procedure established by law. Since a passport is essential for the enjoyment of that right, the denial of a passport amounts to deprivation of personal liberty. In the absence of any procedure prescribed by the law of land sustaining the refusal of passport to a person, its refusal amounts to an unauthorized deprivation of personal liberty guaranteed by Article 21. This decision was accepted by the Parliament and the infirmity was set right by the enactment of the Passports Act, 1967.
- In the *Maneka Gandhi's Case* the Supreme Court overruled its judgment in the Gopalan Case. It stated that protection under Article 21 should be available not only against arbitrary executive action but also against arbitrary legislative action by introducing the American concept of 'due process of law'. It pronounced the expression 'Personal Liberty' is of the widest amplitude and it covers a wide range of rights that go to constitute the personal liberties of a man.
- In *Maneka Gandhi's Case*, it was held that before a person may be deprived of his liberty there must be:
  - A valid law
  - The law must provide a procedure.

TAXMANN®

- The procedure must be just, fair and reasonable.
- The law must be reasonable.

The Court's decision in *Maneka Gandhi Case* has been reaffirmed in the subsequent cases also.

Thus, it was held that the right to live is not merely confined to physical existence but it includes the right to live with human dignity. This was given rise to many fundamental rights. All these rights although not enshrined in the constitution but found their root in Article 21. Some of these rights are:

(*a*) Right to bail.

(*b*) Right against use of third degree methods by police.

(*c*) Right of detained person to have interview with his lawyer and family members.

(*d*) Right to travel abroad.

RIGHT TO EDUCATION [ARTICLE 21A]

28. Write a short note on: Right to education

Ans.: Right to education [Article 21A]: The State shall provide free and compulsory education to all children in the age of 6 to 14 years in such manner as the State may, by law, determine.

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21A in the Constitution of India to provide free and compulsory education of all children in the age group of 6 to 14 years as a Fundamental Right in such a manner as the State may, by law, determine.

The **Right of Children to Free & Compulsory Education Act, 2009 [*RTE Act, 2009*]**, which represents the consequential legislation envisaged under Article 21A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

PROTECTION AGAINST ARREST & DETENTION [ARTICLE 22]

29. What is meant by 'preventive detention'? What are the safeguards available against preventive detention? [June 2013 (6 Marks)]

Or

State the justifiable grounds for Parliament and State Legislature to pass law of preventive detention and briefly explain safeguards against such preventive detention laws. [Dec. 2022 (4 Marks)]

Ans.: Preventive detention means detention of a person without trial. The object of preventive detention is not to punish a person for having done something but to intercept him before he does it and to prevent him from doing it. No offence

TAXMANN®

is proved nor any charge formulated and yet a person is detained because he is likely to commit an act prohibited by law.

Protection against arrest and detention in certain cases [Article 22]:

(*a*) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(*b*) Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate.

(*c*) No such person shall be detained in custody beyond the period of 24 hours without the authority of a magistrate.

Safeguards against preventive detention:

(*i*) No law providing for preventive detention shall authorize the detention of a person for a longer period than **3 months** unless –

(*a*) An Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of 3 months that there is in its opinion sufficient cause for such detention.

(*b*) Such person is detained in accordance with the provisions of any law made by Parliament.

(*ii*) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

RIGHT AGAINST EXPLOITATION [ARTICLES 23 & 24]

30. Briefly describe the Fundamental Rights against exploitation under Constitution of India [Dec. 2021 (5 Marks)]

Ans.: Right against exploitation [Article 23]: Traffic in human beings and *beggar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

As per Article 23, traffic in human beings and beggar and other similar forms of forced labour are prohibited. Thus the traditional system of beggary particularly in villages, becomes unconstitutional and a person who is asked to do any labour without payment or even a labourer with payment against his desire can complain against the violation of this fundamental right.

'Traffic' in human beings means to deal in men and women like goods, such as to sell or let or otherwise dispose of them. 'Beggar' means involuntary work without payment.

TAXMANN®

The State can impose compulsory service for public purposes such as conscription for defence or social service etc. While imposing such compulsory service the State cannot make any discrimination on grounds only of religion, race, caste or class or any of them. [Article 23(2)]

Prohibition of employment of children factories *etc.* [Article 24]: No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Article 39(*e*) imposes an obligation upon the State to ensure that the health and strength of the workers, men and women and the tender age of children are not abused and the citizens are not forced by economic necessity to enter avocations unsummed to their age, strength etc. Accordingly, keeping in view provision of Article 24 read with Article 39(*e*) following laws have been enacted or amended suitability:

- Child Labour (Prohibition & Regulations) Act, 1986
- Children (Pledging of Labour) Act, 1933
- Factories Act, 1948
- Mines Act, 1952
- Apprentice Act, 1961.

TAXMANN®

RIGHT TO FREEDOM OF RELIGION [ARTICLES 25 TO 28]

31. "India is a secular State." Explain the provisions of the Constitution of India in this regard. Discuss the right to freedom to profess and propagate a religion and limitations thereto. [June 2002 (12 Marks)]

Ans.: Secularism is the structure of our Constitution. Our Government respects all religions. It does not uplift or degrade any particular religion. The State has no religion itself. While our surrounding countries have adopted particular religions; India has not adopt any religion.

Example: Pakistan (Islam), Bangladesh (Islam), Nepal (Hinduism), Sri Lanka (Buddhism), Burma (Buddhism), etc.

The Constitution of India stands for a secular State. The State has no official religion. Secularism pervades its provisions which give full opportunity to all persons to profess, practice and propagate the religion of their choice.

The Supreme Court in *State of Karnataka* v. *Dr. Praveen Bhai Thogadia*, held that secularism means that State should have no religion of its own and each person, whatever his religion, must get an assurance from the State that he has the protection of law to freely profess, practice and propagate his religion and freedom of conscience.

Provisions as to secularism are given in Articles 25 to 28 of the Constitution of India which provides as follows:

Article 25 provides that all persons are entitled to freedom of conscience and right freely to profess practice religion.

Article 26 provides that subject to public order, morality and health, every religious denomination or any section thereof shall have the right:

- To establish and maintain institutions of religious and charitable purposes
- To manage its own affairs in matters of religion
- To own and acquire movable and immovable property
- To administer such property in accordance with few.

Article 27 provides that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination..

Article 28 provides that no religious instruction shall be provided in any educational institutional wholly maintained out of State funds.

RIGHTS OF MINORITIES [ARTICLE 29]

32. Describe the right of minorities to establish and administer educational institutions as enshrined in the Constitution of India.
[June 2013 (6 Marks)]

Ans.: Right of minorities to establish and administer educational institution [Article 30]: All minorities, whether based on religion or on language, shall have the right to establish and administer educational institutions of their choice.

In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

In *T.M.A. Pai Foundation* v. *State of Karnataka*, is an eleven Bench decision dealing with right of minorities to establish and administer educational institutions, the Supreme Court held that minority includes both linguistic and religious minorities and for determination of minority status, the unit would be the State and not whole of India. Further, the right of minorities to establish and administer educational institutions (including professional education) was not absolute and regulatory measures could be imposed for ensuring educational standards and maintaining excellence thereof. Right of minorities included right to determine the procedure and method of admission and selection of students, which should be fair and transparent and based on merit.

AMENDABILITY OF FUNDAMENTAL RIGHTS

33. Examine the amendability of fundamental rights.

Ans.: The elementary question in controversy has been whether Fundamental Rights are amendable so as to take away the basic rights guaranteed by the Constitution. Another controversy deals with the extent, scope and authority of Parliament to amend Constitution. The answer has been given by the Supreme Court from time to time, sometimes under immense pressure and can be understood in the light of the following cases:

- ***Shankari Prasad* v. *Union of India*:** The validity of the First Amendment to the Constitution was challenged on the ground that it purported to abridge the fundamental rights. The Supreme Court held that the power to amend the Constitution, including Fundamental Rights is contained in Article 368. An amendment is not a law within the meaning of Article 13(2). An amendment is valid even if it abridges any fundamental Right. This decision was approved by the majority judgment in *Sajjan Singh* v. *State of Rajasthan.*
- ***Golaknath* v. *State of Punjab*:** The Supreme Court prospectively overruled its decision in Shankari Prasad and Sajjan Singh cases and held Fundamental Rights are outside the amendatory process if the amendment takes away or abridges any of the rights.

  It also added that Article 368 merely lays down the procedure for the purpose of amendment. Further, The Court said that an amendment is a law under Article 13(2) of the Constitution of India and if it violates any fundamental right, it may be declared void.
- To nullify the effect of *Golaknath case*, Parliament passed the Constitution (24th Amendment) Act in 1971 introducing certain changes in Article 13 and Article 368, so to assert the power of Parliament to amend the Fundamental Rights.
- ***Kesavanand Bharti* v. *State of Kerala*:** The Supreme Court upheld the validity of 24th Constitutional Amendment holding that Parliament can amend any Part of the Constitution including the Fundamental Rights. But the Court made it clear that Parliament cannot alter the basic structure of framework of the Constitution.
- To neutralize the effect of this limitation, the Constitution (42nd Amendment) Act, 1976 added two new clauses to Article 368. By new Clause (4), it has been provided that no amendment of the Constitution made before or after the 42nd Amendment Act shall be questioned in any Court on any ground. New Clause (5) declares that there shall be limitation whatever on the Constitutional power of parliament to amend by way of addition, variation or repeal he provisions of this Constitution made under Article 368.
- ***Minerva Mills* v. *Union of India*:** The Supreme Court unanimously held that Clauses (4) & (5) of Article 368 and Section 55 of the 42nd Amendment

TAXMANN®

Act as unconstitutional transgressing the limits of the amending power and damaging or destroying the basic structure of the Constitution.

- ***Waman Rao* v. *Union of India:*** The Supreme Court held that the amendments to the Constitution made on or after 24-4-1973 by which 9th Schedule was amended from time to time by inclusion of various Acts, regulations therein were open to challenge on the ground that they, or any one or more of them are beyond the constitutional power of Parliament since they damage the basic or essential features of the Constitution or its basic structure.

DIRECTIVE PRINCIPLE OF STATE POLICY

34. Is it correct to say that Directive Principles of State Policy have to conform to and run as subsidiary to Fundamental Rights? Discuss. [June 2011 (6 Marks)]

Ans.:

- Fundamental Rights are defined as the basic human rights of all citizens. These rights, defined in **Part III** of the Constitution, apply irrespective of race, place of birth, religion, caste, creed or sex. They are enforceable by the Courts.
- Directive Principles of State Policy are guidelines for the framing of laws by the government. These provisions, set out in **Part IV** of the Constitution, are not enforceable by the Courts, but the principles on which they are based are fundamental guidelines for governance that the State is expected to apply in framing and passing laws.
- Since Directive Principles are not enforceable by Court, their non-observance does not create any legal consequences. But any law implementing Directive Principles has to conform to Fundamental Rights.
- In the *State of Madras* v. *Champakam Dorajrajan,* Supreme Court held that Directive Principles have to conform and run as a subsidiary to Fundamental Rights because latter are enforceable in courts while former are not. However, this position was changed latter. Being the part of the same constitution, both Fundamental Rights and Directive Principles are equally important and neither of them is superior or inferior to the other. They are in fact complementary and supplementary to each other. Both should be given effect as far as possible.
- Though parliament is competent to amend constitution in order to enable the state to implement Directive Principles, but it should ensure that the basic structure of the Constitution is not affected.
- Constitution is based on the bedrock of balance between the Directive Principles and Fundamental Rights and to give absolute primary to one over the other would disturb this balance. Both can co-exist harmoniously.

TAXMANN®

FUNDAMENTAL DUTIES

35. Discuss the fundamental duties imposed on citizens of India.
[June 2012 (6 Marks)]

Or

Discuss the fundamental duties as enumerated in Article 51A of the Constitution of India. Can it be enforced through writs? Give reasons.
[June 2022 (8 Marks)]

Ans.: Fundamental Duties [Article 51A]: It shall be the duty of every citizen of India –

(1) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.

(2) To cherish and follow the noble ideals which inspired our national struggle for freedom.

(3) To uphold and protect the sovereignty, unity and integrity of India.

(4) To defend the country and render national service when called upon to do so.

(5) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities.

(6) To renounce practices derogatory to the dignity of women.

(7) To value and preserve the rich heritage of our composite culture.

(8) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

(9) To develop the scientific temper, humanism and the spirit of inquiry and reform.

(10) To safeguard public property and to abjure violence.

(11) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

(12) Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the ages of 6 and 14 years.

Since the duties are imposed upon the citizens and not upon the States, legislation is necessary for their implementation. Fundamental duties can't be enforced by writs. [*Surya Narain* v. *Union of India*]

The Supreme Court in *AIIMS Students Union* v. *AIIMS*, has reiterated that though the fundamental duties are not enforceable by the courts, they provide a valuable guide and aid to the interpretation of Constitutional and legal issues.

TAXMANN®

POWERS OF PRESIDENT & GOVERNORS

36. Discuss the ordinance making powers of the President of India and of the Governor of a State as provided in the Constitution of India.
[Dec. 2010 (6 Marks)]

Or

Describe the power of the President of India to promulgate ordinances.
[Dec. 2013 (6 Marks)]

Ans.: Power of President to promulgate Ordinances during recess of Parliament [Article 123]: The President shall have the power to legislate by ordinances at a time when it is not possible to have parliamentary enactment on the subject immediately. This power can be used by the President to meet a sudden situation arising in the country when parliament is not in session and which it cannot deal with under the ordinary law.

Ordinance making power of the President has following peculiarities:

(*i*) An Ordinance promulgated under Article 123 shall have the same force and effect as an Act of Parliament.

(*ii*) Such ordinance shall be laid before both Houses of Parliament.

(*iii*) Such ordinance shall cease to operate at the expiration of 6 weeks from the reassembly of Parliament or if resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions.

(*iv*) When two houses of parliament assemble on two different dates, the period of 6 weeks is to be reckoned from the latter of two dates.

(*v*) Such ordinance may be withdrawn by the President at any time.

(*vi*) Such ordinance making power has to be exercised by the President on the advice of Council of Ministers.

Power of Governor to promulgate ordinances during recess of Legislature [Article 213]:

The Governor's power to make Ordinances given in Article 213 is similar to the Ordinance making power of the President and has the force of an Act of the State Legislature.

Governor can make Ordinance only when the State Legislature or either of the two Houses (where it is bicameral) is not in session. He must be satisfied that circumstances exist which render it necessary to take immediate action.

Ordinance making power of the President has following peculiarities:

(*i*) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor.

(*ii*) The Ordinance must be laid before the state legislature (when it reassembles) and shall automatically cease to have effect at the expiration of

TARGET®

6 weeks from the date of the reassembly unless disapproved earlier by that legislature.

(*iii*) While exercising this power Governor must act with the aid and advice of the Council of Ministers.

LEGISLATIVE POWER OF UNION & STATES

37. "Under the Indian Constitution, Parliament is empowered to make Law even on the subjects enumerated in the State List". Discuss the power of Parliament to make Laws on State List. [June 2021 (8 Marks)]

Or

Describe in brief the powers of Parliament to make laws on the subjects enumerated in the State List. [Dec. 2012 (6 Marks)]

Ans.: State legislatures have been given exclusive powers to make laws with respect to subjects enumerated in the List-II *i.e.* State List. But the Constitution of India makes a few exceptional circumstances when parliament can makes laws on state list also. The exceptional circumstances are as follows.

(1) **National interest [Article 249]:** Parliament can make a law with respect to a matter enumerated in the State list if Rajya Sabha declares by a resolution supported by ***2/3rd of its members present and voting*** that is necessary or expedient in the national interest that parliament should make a law on that matter. Such resolution shall remain in force for a period not exceeding **1 year**.

However, a fresh resolution can be passed at the end of 1 year and that way the law of parliament can be continued to remain in force for any number of years. The law passed by Parliament under the provisions ceases to have effect automatically after **6 months** of the expiry of the resolution.

(2) **Proclamation of Emergency [Article 250]:** While proclamation of emergency is in operation, Parliament shall have the power to make laws for whole or any part of the territory of India on any matter in the State. Such a law will have effect only up to expiry of 6 months after the proclamation ceases to operate.

(3) **On request of two or more States [Article 252]:** If two or more States are desirous that on any particular item included in the State List there should be a common legislation then they can make a request to a Parliament to make a law on such subject. The law so made may be adopted by other States also by passing resolutions in their legislatures. To take an example, Parliament passed the **Prize Competitions Act, 1955** under these provisions.

(4) **To enforce international agreements [Article 253]:** Constitution authorizes Parliament to make law on any subject included in any list to implement:

TAXMANN®

(*a*) Any treaty, agreement or convention with any other country or countries.

(*b*) Any decision made at any international conference, association or other body.

(5) Breakdown of Constitutional Machinery in a State [Articles 356 & 357]: Parliament can make law with respect to all State matters as regards a State in which there is a breakdown of constitutional machinery and is under presidential rule.

INTERPRETATION OF LEGISLATIVE LISTS

38. Discuss in brief the rule of colourable legislation.
[Dec. 2009 (4 Marks)]

Ans.: The doctrine of colourable legislation is based upon the maximum that ***"you cannot do indirectly what you cannot do directly"***. If a legislature has no competence to pass a law on subject, it cannot pass a law on that subject by merely purporting to within the limits of its power. Such legislation is called colourable legislation. It applies to delegated legislation and subordinate legislation also.

Example: Railway is the subject mentioned in the union list. Only the parliament has the power to make a law on railways. If any State Legislature makes any law pertaining to railway, it becomes invalid. It is called colourable legislation.

39. Explain the 'pith & substance' rule with the help of decided cases.
[June 2014 (4 Marks)]

Or

Rajasthan Legislature passed a law restricting the use of sound amplifiers. The law was challenged on the ground that it deals with a matter which falls in entry 81 of List-I under the Constitution of India which reads: "Post and telegraphs, telephones, wireless broadcasting and other like forms of communication" and therefore, the State Legislature was not competent to pass it.

Examine the proposition in the light of "Pith and Substance Rule" referring the case law on this point. **[Dec. 2019 (5 Marks)]**

Ans.: The rule of pith & substance means that where a law in reality and substance falls within an item on which the legislature which enacted that law is competent to legislate, then such law shall not become invalid merely because it incidentally touches a matter outside the competence of legislature.

Entry 6 of List II deals with "Public Health and Sanitation". Rajasthan Legislator passed a law restricting the use of sound amplifiers. The law was challenged on the ground that it dealt with a matter which fell in Entry 81 of List-I which reads: *"Post and telegraphs, telephones, wireless broadcasting and other like forms*

TAXMANN®

of communication" and therefore, the State Legislature was not competent to pass it.

The Supreme Court rejected this argument on the ground that the object of the law was to prohibit unnecessary noise affecting the health of public and not to make a law on broadcasting, *etc.* Therefore, the pith and substance of the law was "public health" and not "broadcasting". [*G. Chawla* v. *State of Rajasthan*]

FREEDOM OF TRADE, COMMERCE & INTERCOURSE

40. Creation of monopoly rights in favour of a person or body of persons to carry on any business *prima facie* affects the freedom of trade. Can the State create a monopoly in favour of itself? Answer citing case law, if any.
[Dec. 2012 (8 Marks)]

Ans.: Freedom of trade, commerce & intercourse [Article 301]: *Trade, commerce and intercourse throughout the territory of India shall be free.*

Creation of monopoly rights in favour of a person or body of persons to carry on any business *prima facie* affects the freedom of trade. But in certain circumstances it can be justified.

Article 19(*6*)(*ii*) makes it clear that the freedom of profession, trade or business will not be understood to mean to prevent the state from undertaking either directly or through a corporation owned or controlled by it, any trade, business, industry or service, whether to the exclusion, complete or partial, citizens or otherwise.

If a law is passed creating a State monopoly the Court should enquire *"what are the provisions of the said law which are basically and essentially necessary for creating the state monopoly"*. Article 19(*6*)(*ii*) protects only the essential and basic provisions. If there are other provisions which are subsidiary or incidental to the operation of the monopoly they do not fall under Article 19(*6*)(*ii*).

It was held in *R.C. Cooper* v. *Union of India, [known as Bank Nationalization case]*, that the impugned law which prohibited the named banks from carrying the banking business was a necessary incident of the business assumed by the Union and hence was not liable to be challenged under Article 19(*6*)(*ii*) insofar as it affected the right of a citizen to carry on business.

41. "Trade, commerce and intercourse throughout the territory of India shall be free". Critically examine this statement with reference to Indian Constitution.
[June 2023 (5 Marks)]

Ans.: Freedom of trade, commerce and intercourse [Article 301]: Trade, commence and intercourse throughout the territory of India shall be free.

The word 'free' in Article 301 cannot mean an absolute freedom such measures as traffic regulations, licensing of vehicles etc. are not open to challenge. The Supreme Court held that gambling is not trade.

TAXMANN®

Similarly, price competition beings of gambling in nature, cannot be regarded as trade or commerce and as such, is not protected under this Article. [*State of Bombay* v. *RMDC*]

The Supreme Court in *Atiabari Tea Co.* v. *State of Assam*, declared that only those laws which "directly and immediately" restrict or impede the freedom of trade and commerce are covered by Article 301.

Power of Parliament to impose restrictions [Article 302]: Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one state and another or within any party of territory of India as may be required in the public interest.

Restrictions on the legislative powers [Article 303]: It prevents to Parliament/State Legislature to make any law giving, any preference to one State over another, or authorizing any discrimination between one State and another.

Restrictions on trade, commerce and intercourse among States [Article 304]: The legislature of State may impose a tax on goods imported from other States or union territory to which similar goods manufactured or produced in that State are subject. However the State should not discriminate between goods imported from one State with goods of that State. State can also impose reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest.

Saving laws providing for State monopoly [Article 305]: The law which creates State monopoly in any trade is saved from the attack under Article 301.

Appointment of authority [Article 307]: Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of Articles 301 to 304 and confer such powers and duties as it thinks necessary.

CONSTITUTIONAL REMEDIES

42. Explain the writ jurisdictions of the Supreme Court and High Courts as provided in the Constitution of India. [June 2010 (8 Marks)]

Ans.: Jurisdiction of the Supreme Court:

- Supreme Court is the highest Court in the country both for matters of ordinary law and for interpreting the Constitution.
- Supreme Court is an institution created by the Constitution.
- Supreme Court entertains appeals (*in civil, criminal & other cases*) from High Courts and certain Tribunals.
- Supreme Court has also writ jurisdiction for enforcing Fundamental Rights.
- Supreme Court can advise the President on a reference made by the President on questions of fact and law. It has a variety of other special jurisdictions.

Jurisdiction of High Courts:

- High Court that functions under the Constitution were not created for the first time by the Constitution. Some High Courts existed before the Constitution, although some new High Courts have been created after 1950.
- The High Courts in British ruling were established under the **Indian High Courts Act, 1861** (an Act of the UK Parliament). The remaining High Courts were established or continued under the Constitution or under special Acts.
- High Courts for each State have appellate, civil and criminal jurisdiction over lower Courts.
- High Courts have writ jurisdiction to enforce fundamental rights and for certain other purposes.
- Some High Courts Bombay, Calcutta and Delhi, have ordinary original civil jurisdiction (*i.e.* jurisdiction to try regular civil suits) for their respective cities.
- High Courts can also hear references made by the Income Tax Appellate Tribunal under the Income-tax Act, 1961 and other tribunals.

LAXMIANN®

43. In a case, Hamid was terminated from the police service. Hamid filed a writ petition against termination order on the ground that a reasonable opportunity of being heard was not given to him by the government. The writ petition was dismissed by the Court as the government proved that reasonable opportunity of being heard had been given to the petitioner. Afterwards, Hamid filed another writ petition on the ground that as he was appointed by the Director General of Police, termination by the order of Deputy Inspector General of Police was in violation of Article 311(*1*) of the Constitution of India. Decide the validity of the second writ petition. [June 2009 (5 Marks)]

Ans.: According to principle of *res-judicata*, once a matter is finally decided by a competent Court, no party can be permitted to reopen it in a subsequent litigation.

In this case, the Court has dismissed the petition as the government proved that reasonable opportunity of being heard had been given to the petitioner. Thus, matter is heard and finally decided by Court hence it will be covered by principle of *res-judicata* and subsequent writ will be dismissed.

Thus, doctrine of *res judicata* prevents to take matter again and again for same case on the basis of different reasons or grounds. Grounds mentioned in second petition that termination by the order of Deputy Inspector General of Police was in violation of Article 311(*1*) of the Constitution of India could have been stated in first petition also along with the ground that he had not been given

opportunity of being heard. But Hamid did not do so and hence his subsequent petition will be barred by principle of *res judicata*.

44. Article 32 of the Constitution of India empowers the Supreme Court to enforce the fundamental rights guaranteed under Part III of the Constitution of India. Explain how the provisions of Article 32 of the Constitution of India have helped in the enforcement of fundamental rights.
[Dec. 2010 (8 Marks)]

Or

"A declaration of fundamental rights is meaningless unless there is an effective judicial remedy for their enforcement." Comment on this statement explaining the judicial remedies provided in the Constitution of India.
[Dec. 2014 (6 Marks)]

Ans.: Under the Constitution by virtue of **Article 226**, every High Court has the power to issue directions or orders or writs including writs in the nature of *Habeas corpus*, *Mandamus*, *Prohibition*, *Certiorari* and *Quo-warranto* for the enforcement of fundamental rights or for any other purpose. The power is exercisable by each High Court throughout the territory in relation to which it exercises jurisdiction.

The Supreme Court could be moved by appropriate proceedings for the issue of directions or orders or writs for the enforcement of fundamental rights guaranteed. **Article 32** itself being a fundamental right, the Constitutional remedy of writ is available to anyone whose fundamental rights are infringed by State action.

45. Write in brief the importance of the writ of *habeas corpus*.
[June 2011 (6 Marks)]

Or

"Writ of habeas corpus is a bulwark of personal liberty." Justify this statement in the light of the provisions stated in the Constitution of India.
[June 2014 (8 Marks)]

Ans.: *Habeas corpus = to have a body*

A writ of Habeas Corpus is in the nature of an order by Court calling upon the person who has detained another to produce the latter before the Court in order to let the Court know on what ground he has been confined and set him free if there is not legal justification for the imprisonment.

Who can make an application: An application of habeas corpus can be made by any person on behalf of the detained person as well as the detained person himself. If any person is arrested or kept under unauthorized detention, the friends or relative of that person can approach the **Supreme Court** under **Article 32** or to **High Court** under **Article 226**.

The disobedience to this writ is met with by punishment for contempt of Court under the Contempt of Courts Act.

TAXMANN®

46. Write a short note on writ of '*Quo Warranto*'. [Dec. 2019 (4 Marks)]

Ans.: *Quo Warranto* = What is your authority?

The writ of *Quo Warranto* is issued to call upon the holder of a public office to show to the Court that under what authority is he holding the office in question. If it is found on investigation that he is not entitled to the office, the court may restrain him from acting in the office and also declare the office to be vacant. All High Courts & Supreme Courts can issue this writ.

Following are some important points relating to writ of *Quo Warranto*:

(1) Writ of *Quo Warranto* can be issued if the office held is public office.

(2) Public office must be an independent and substantive character.

(3) Public office must be statutory or constitutional body.

(4) Writ may be issued in respect of office of Prime Minister, Chief Minister, Judge of High Court, President of Zilla Parishad, Speaker of the Parliament or State Legislature, University officials, etc.

(5) Writ cannot be issued against a private person or where alternative remedy is available to person.

47. Write a short note on: Writ of *mandamus*

Ans.: *Mandamus* = the order or command.

The writ of *mandamus* is a command issued by Supreme Court or High Court, to any person, corporation, inferior court, requiring him or those to do some particular thing therein specified which pertains to his or their office and is in the nature of public duty. Its purpose is to remove defects in justice.

Following are some important points relating to writ of *mandamus*:

(1) Writ of *mandamus* can be issued against the **public authority only**. That public authority must be bound to do that **public duty**. There must be **statutory duty** on the public authority.

(2) Writ of Mandamus cannot be issued against

(*a*) Private person

(*b*) President and Governor of State - Article 361.

(3) The petitioner must have a **legal right** to compel the performance of that legal duty.

(4) Writ of *mandamus* cannot be issued against a private person.

(5) Writ of *mandamus* cannot be issued in the matter of discretionary powers of public authority.

Example: The writ of *mandamus* cannot be issued against State government to appoint a Commission of inquiry on any issue, because appointing Commission of inquiry is discretionary power of government.

TAXMANN®

48. Write a short note on: Writ of Prohibition

Ans.:

- Writ of Prohibition is based on the principle: ***"Prevention is better than cure"***
- Writ of Prohibition can be issued by the Superior Court to an inferior Court forbidding it from continuing with proceeding or a suit on the ground that the proceeding or case is without or excess of jurisdiction contrary to the laws in force.
- Writ of prohibition prevents a judicial body from exercising its power in a manner unauthorized by law.
- A writ of prohibition is issued to an Inferior Court preventing the latter from usurping jurisdiction which is not legally vested in it.
- When a tribunal acts without or in excess of jurisdiction, or in violation of rules or law, a writ of prohibition can be asked for.
- It is generally issued before the trial of the case.

49. Write a short note on: Writ of *Certiorari*

Ans.: *Certiorari* = to be certified.

A Writ of Certiorari can be issued by Supreme Court or High Court, to the inferior Court or any authority, whenever Court or authority does any acts, *viz.* excess or abuse of jurisdiction, violation of principal of natural justice, violation of fundamental rights conferred to the citizens under Part-III.

When can the Writ of certiorari be issued? Writ of Certiorari can be issued in following circumstances:

- Where the quasi judicial authority acted under an invalid law.
- Where the Court or Authority acted without jurisdiction.
- Where there is an error of law apparent on the face of the record.
- Where the inferior Court or quasi authority acted against the principal of natural justice.
- Supreme Court can issue a writ of Certiorari to any High Court correcting an erroneous decision.

DELEGATED LEGISLATION

50. Explain 'delegated legislation'. State the circumstances in which delegated legislation is possible. [Dec. 2011 (6 Marks)]

Ans.: Delegated or subordinate legislation means rules of law made under the authority of an Act of Parliament. Although law making is the function of legislature, it may, by a statute, delegate its power to other bodies or persons.

LAXMANN®

The statute which delegates such power is known as Enabling Act. By Enabling Act the legislature, lays down be broad guidelines and detailed rules are enacted by the delegated authority. Delegated legislation is permitted by the Indian Constitution. It exists in form of Rules, Regulations, Orders, Bye-laws *etc.*

Legislation is either supreme or subordinates. The supreme legislation is that which proceeds from supreme or sovereign power in the State and therefore capable of being repealed, annulled or controlled by legislative authority. Subordinate legislation is that which proceeds from any authority other than the sovereign power, and is, therefore, dependent for its continued existence and validity on some sovereign or supreme authority.

Classification of Subordinate Legislation:

(1) **Executive:** Though the main function of the executive is to enforce laws, but in certain cases, the power of making rules is delegated to the various departments of the government, which is called subordinate delegated legislation. Thus, the rules framed by the Government under the various Municipal Acts fall under this category.

(2) **Judicial:** It means rules of procedure made by superior courts for their own guidance under authority delegated to them for the purpose. In other words the superior courts have the power of making rules for the regulation of their own procedures. The High Courts are authorized to frame rules for regulating the procedure to be followed in Courts. Some such rules have been framed by the High Court under the Guardians of Wards Act, Insolvency Act and Succession Act *etc.*

(3) **Municipal:** Sometimes municipal authorities are provided with the power of establishing special laws for the districts under their control. They are allowed to make bye-laws for limited purposes within their areas. These are legislation of local bodies such as municipal or corporations.

(4) **Autonomous:** Under this head fall the regulations which autonomous bodies such as Universities make in respect of matters which concern themselves.

(5) **Colonial Legislation:** The law made by colonies under the control of some other nation, which are subject to supreme legislation of the country under whose control they are.

BILLS & ACTS OF PARLIAMENT

51. Write a short note on: Money Bills

Ans.: A money bill is a bill which contains provisions of imposition or abolition of taxes or charging expenditure out of Consolidated Fund of India. A Money Bill can only be introduced in Lok Sabha and that too with prior permission of President. A money bill after being passed in Lok Sabha is sent to Rajya Sabha. Rajya Sabha can't amend the money bill, it can only suggest changes. It is to the discretion of Lok Sabha whether to accept any or all the suggestion or reject

TAXMANN®

all. Rajya Sabha has to send Money Bill back to Lok Sabha within 14 days, otherwise it is deemed to be passed by both the houses and sent to President for assent. Speaker of Lok Sabha has special power that it is his decision when to consider a bill as Money Bill.

52. Write a short note on: *Ad hoc* and Standing Committees

Ans.: Parliamentary Committees are of two kinds:

(1) *Ad hoc* Committees

(2) Standing Committees.

***Ad hoc* Committees:** *Ad hoc* Committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report.

Examples of *ad hoc* committees:

(*a*) Committees on Bills (Select and Joint).

(*b*) Railway Convention Committee.

(*c*) Committees on the Draft Five Year Plans.

(*d*) Hindi Equivalents Committee.

Standing Committees: Standing Committees are permanent committees. Each House of Parliament has Standing Committees. Examples of standing committees:

(*a*) Business Advisory Committee.

(*b*) Committee on Petitions.

(*c*) Committee of Privileges.

(*d*) Rules Committee.

TAXMANN®

3 CHAPTER INTERPRETATION OF STATUTES

NEED & OBJECTS OF INTERPRETATION

1. In the interpretation of a Statute a Judge must not alter the material of which it is woven, but he can and should iron out the creases. Comment. [Dec. 2022 (4 Marks)]

Ans.: Following observation of Denning L. J. in *Seaford Court Estates Ltd.* v. *Asher,* on the need for statutory interpretation is instructive: "It is not within human powers to foresee the manifold sets of facts which may arise; and that; even if it were, it is not possible to provide for them in terms free from all ambiguity.

The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized.

A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity.

It would certainly save the Judge's trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsman.

Judge must set to work on the constructive task of finding the intention of Parliament, and he must do this, not only from the language of the Statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature.

To put into other words, a judge should ask himself the question:

If the makers of the Act had themselves come across this luck in the texture of it, how would they have straight ended it out?

He must then do as they would have done.

A judge must not alter the material of which it is woven, but he can and should iron out the creases.

TAXMANN®

2. Explain the object of interpretation. What is the function of the court in interpretation? [June 2023 (4 Marks)]

Ans.: Interpretation means the art of finding out the true sense of an enactment by giving the words of the enactment their natural and ordinary meaning. It is the process of ascertaining the true meaning of the words used in a statute.

The Court is not expected to interpret arbitrarily and therefore there have been certain principles which have evolved out of the continuous exercise by the Courts. These principles are called 'rules of interpretations'.

Objectives of Interpretation:

- When the language of the statute is clear, there is no need for the rules of interpretation. But, in certain cases, more than one meaning may be derived from the same word or sentence. It is, therefore, necessary to interpret the statute to find out the real intention of the statute.
- Interpretation means to determine the intention of the legislature conveyed expressly or impliedly in the language used.
- If a statutory provision is open to more than one interpretation the Court has to choose that interpretation that represents the true intention of the legislature *i.e.* 'true meaning' or a 'legal meaning'.
- As per *Halsbury's Laws of England*, the object of all interpretation of a 'Written Document' is to discover the intention of the author, the written declaration of whose mind the document is always considered to be. Consequently, the construction must be as near to the minds and apparent intention of the parties as possible, and as the law will permit.

The object of interpretation, thus, in all cases is to see what is the intention expressed by the words used. The words of the statute are to be interpreted so as to ascertain the mind of the legislature from the natural and grammatical meaning of the words which it has used.

PRIMARY RULE – LITERAL CONSTRUCTION

3. Discuss in brief the primary rule of literal construction in the interpretation of a statute. [Dec. 2013 (6 Marks)]

Ans.:

- In construing statutes the cardinal rule is to construe its provisions *literally* and *grammatically* giving the words their ordinary and natural meaning. This rule is also known as the **plain meaning rule**.
- According to the primary rule, the words, phrases and sentences of a statute are to be understood in their ***natural, ordinary*** **or** ***popular and grammatical*** meaning, unless such a construction leads to an absurdity or the statute suggests a different meaning.

TAXMANN®

- The words 'natural', 'ordinary' and 'popular' are used interchangeably. They mean the grammatical or literal meaning, *except when there are technical words*.

Some of the other basic principles of literal construction are:

- Every word in the law should be given meaning as no word is unnecessarily used.
- One should not presume any omissions and if a word is not there in the Statute, it shall not be given any meaning.

The first and most elementary rule of constructions is that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning, and the second is that the phrases and sentences are to be construed according to the grammar rule.

If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. Nothing is to be *added to or taken from* a statute unless there are adequate grounds to justify the interference.

MISCHIEF RULE

4. "Heydon's rule is not always operative in interpretation of statutes." Comment. **[Dec. 2011 (4 Marks)]**

Or

Explain Heydon's rule of Interpretation of Statute. **[Dec. 2018 (4 Marks)], [June 2022 (4 Marks)]**

Ans.: The mischief rule of statutory interpretation is the oldest of the rules. The mischief rule is a rule of statutory interpretation that attempts to determine the legislator's intention. Its main aim is to determine the **"mischief and defect"** of the statute.

The mischief rule was established in ***Heydon's Case*** in **1584**. It was held that the mischief rule should only be applied where there is ambiguity in the statute. Under the mischief rule the Court's role is to suppress the mischief and advance the remedy. The Courts while applying the principle tries to find out the real intention behind the enactment. This rule thus assists the court in identifying the proper construction of statutory wording according to the original intention of the legislators.

As per this rule, for true interpretation of a statute, four things have to be considered:

(1) What was the common law before the making of the Act?

(2) What was the mischief and defect for which the common law did not provide?

TAXMANN®

(3) What remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth?

(4) The true reason of the remedy.

The mischief rule directs that the Courts must adopt that construction which "shall suppress the mischief and advance the remedy". But this does not mean that a construction should be adopted which ignores the plain natural meaning of the words or disregard the context and the collection in which they occur. [*Umed Singh* v. *Raj Singh*]

In *Sodra Devi's case,* the Supreme Court has expressed the view that the rule in Heydon's case is applicable only when the words in question are ambiguous and are reasonably capable of more than one meaning.

RULE OF HARMONIOUS CONSTRUCTION

5. Discuss the Rule of Harmonious Construction for the interpretation of statutes. [June 2011 (8 Marks)], [Dec. 2021 (4 Marks)]

Or

Explain the importance of rule of harmonious construction in the interpretation of a statute with the help of a decided case law. [Dec. 2014 (4 Marks)]

Or

Where in an enactment, there are two provisions which cannot be reconciled, they should be so interpreted that, is possible, the effect may be given to both. Explain this statement. [June 2023 (4 Marks)]

Ans.:

- When there is a conflict between two or more provisions of the law they should be followed in such way that maximum benefit can be obtained and no rule need to be violated in the process of following other one.
- It is a sound rule of interpretation that Courts must try to avoid a conflict between the provisions of Statute.
- A statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.
- It is the duty of the Courts to avoid conflict between two provisions, and whenever it is possible to do so to construe provisions which appear to conflict so that they harmonize.
- Where in an enactment, there are two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect may be given to both. This is what is known as the "rule of harmonious construction". Such a construction has the merit of avoiding any

TAXMANN©

inconsistency or repugnancy either within a section or between a section and other parts of the Statute.

This principle is illustrated in the case of *Raj Krishna* v. *Binod*. In this case, following two provisions of Representation of People Act, 1951, which were in apparent conflict, were brought forth.

(1) Section 33(*2*) says that a Government Servant can nominate or second a person in election.

(2) Section 123(*8*) says that a Government Servant cannot assist any candidate in election except by casting his vote.

The Supreme Court held that both these provision should be harmoniously interpreted. Harmony was possible only if Section 123(*8*) of the Act is interpreted as conferring power on a government servant of voting as well as of proposing and seconding a candidature and forbidding him from assisting a candidate in any other manner.

RULE OF REASONABLE CONSTRUCTION (*UT RES MAGIS VALEAT QUAM PEREAT*)

6. Explain the doctrine of "*ut res magis valeat quam pereat*".
[Dec. 2006 (10 Marks)]

Or

Describe the "Rule of Reasonable Construction" under the Interpretation of Statutes. **[Dec. 2019 (5 Marks)]**

Ans.:

- *Ut res magis valeat quam pereat* means that the thing may rather have effect than be destroyed.
- The *"ut res magis valeat quam pereat"* (Rule of Reasonable Construction) implies that a statute must be construed reasonably. A statute or any enacting provision therein must be so construed as to make if effective and operative. The Court must try as far as possible, to keep the statute within the competence of legislature concerned.
- As per this rule, the Court will reject the construction which will defeat the plain intention of the legislature even though there may be inexactitude in the language used.
- Preference should be given to such construction which affords consistency and certainty, facilitating smooth working of the legal system.
- As far as possible all the words used in statute must be given meaning as the legislature is not expected to use unnecessary words. Superfluous or insignificant words are not used by the makers of statute.

TAXMANN®

RULE OF *EJUSDEM GENERIS*

7. Explain the rule of *ejusdem generis* with the help of any case decided by the Supreme Court of India. [June 2013 (6 Marks)]

Or

Explain the rule of '*Ejusdem Generis*' under the Interpretation of statute. [Dec. 2010 (6 Marks)], [June 2019 (4 Marks)]

Or

The rule of *Ejusdem Generis* must be applied with great caution. Critically examine the merits and demerits of this rule. [June 2022 (4 Marks)]

Ans.: *Ejusdem generis*, means "of the same kind or species". The rule of *'ejusdem generis'* one of the primary rules for the interpretation of statutes. It is of great help to the Courts, to find out the true intention of the legislature. *The rule can be explained as:*

When general words follows specific words of a distinct category, the general word may be given a restricted meaning of the same category. The general word takes its meaning from preceding expressions.

Examples:

(1) If a law uses the words such as *'oxen, bulls, goat, cows, buffaloes, horses, etc.'*, the word *'etc.'* cannot include wild animal like lion and tiger. Also, all the domestic animal will not be covered. The illustration given relate to all four legged animals and hence other domestic animals like dogs, cats can be included but not cock or hen since cock or hen has no similarity with the illustrations of other domestic animals given.

(2) If a law refers to automobiles, trucks, tractors, motorcycles and other motor-powered vehicles, "vehicles" would not include airplanes, since the list was of land-based transportation.

Rule is applicable subject to the following conditions:

(*a*) Statute contains the enumeration by specific words.

(*b*) Members of the enumeration constitute a class.

(*c*) Class is not exhausted by enumeration.

(*d*) General term follows enumeration.

(*e*) There is a distinct genus which comprises more than one species, and

(*f*) There is no clearly manifested intention that the general term be given a broader meaning than the doctrine requires.

The rule is required to be applied with great caution because it implies a departure from a natural meaning of words, in order to give effect to supposed intention of legislature.

TAXMANN®

EXPRESSIO UNIS EST EXCLUSION ALTERIUS

8. Explain the rule of *'Expressio Unis Est Exclusio Alterius'* under Interpretation of statutes. [Dec. 2020 (4 Marks)]

Ans.: The rule *'expressio unis est exclusion alterius'* means that, the **express mention of one thing is the exclusion of other.**

Where things are specifically included in list and others have been excluded it means that all others have been excluded. However, sometimes a list in a statute is illustrative, not exclusionary. This is usually indicated by a word such as *"includes"* or *"such as"*. Thus a statute granting certain rights to "police, fire, and sanitation employees" would be interpreted to exclude other public employees not enumerated from the legislation. This is based on presumed legislative intent and where for some reason this intent cannot be reasonably inferred the Court is free to draw a different conclusion.

The general meaning of "expression of one thing is the exclusion of another" is also known as the ***negative implication rule***. This rule assumes that the legislature intentionally specified one set of criteria as opposed to the other. Therefore, if the issue to be decided addresses an item not specifically named in the statute, it must be assumed the statute does not apply.

CONTEMPORANEA EXPOSITIO EST OPTIMA ET FORTISSIMA IN LEGE

9. Write a short note on: Rule of *contemporanea expositio est optima et fortissima in lege*.

Ans.: The maxim means that a *contemporaneous exposition* is the best and strongest in law.

The maxim *contemporanea expositio* as laid down by Lord Coke was applied to construing ***ancient statutes***, but usually not applied to interpreting statutes which are comparatively modern. **Thus, old statutes should be interpreted as they would have been at the date when they were passed.**

Usages and practice developed under a statute is indicative of the meaning ascribed to its words by contemporary opinion and in case of an ancient statute, such reference to usage and practice is admissible.

NOSCITUR A SOCIIS

10. Write a short note on: *Noscitur a Sociis* [Dec. 2007 (4 Marks)]

Ans.: The 'Noscitur a Sociis' *i.e.* **"it is known by its associates"**. In other words, meaning of a word should be known from its *accompanying* or *associating* words.

A word in a statutory provision is to be read in collocation with its companion words.

TAXMANN®

The rule states that where two or more words which are susceptible of analogous meaning are coupled together, they are understood in their cognate sense. They take colour from each other, the meaning of *more general* being restricted to *less general*. A word may be known by the company it keeps. Associated words explain and limit each other.

RULE OF STRICT & LIBERAL CONSTRUCTION

11. What is strict & liberal construction of statutes? [June 2003 (8 Marks)]

Ans.: Rule of strict & liberal construction of statutes applied for interpretation of **penal and taxing statutes.** As per the rule of strict & liberal construction, a statute enacting an offence or imposing a penalty should be strictly construed.

Construction of penal statute:

- While constructing a provision in penal statute if there appears to be a reasonable doubt or ambiguity, it shall be resolved in favour of person who would be liable to penalty.
- If a penal provision can reasonably be so interpreted as to avoid the punishment, it must be so construed.
- If there can be two reasonable construction of a penal provision, the more lenient should be given effect to.
- Unless the words of a statute clearly make an act criminal, it shall not be construed as criminal.
- Where certain procedural requirements have been laid down by a statue to be completed, the Court is duty bound to see that all these requirements have been complied with sentencing the accused. In case of any doubt, the benefit has to go to the accused.

Construction of taxing statute:

- Statutes imposing taxes or monetary burdens are to be strictly construed. The logic behind this principal is that imposition of taxes is also a kind of imposition of penalty which can be imposed if the language of the statute so says.
- A person cannot be taxed unless the language of the statute unambiguously imposes the obligation to pay tax.
- If words in taxing enactment are capable of two interpretations, the interpretation which favour the person who sought to be taxed has to be accepted.
- A taxing statute has no retrospective operation unless the language unequivocally makes it so.

TAXMANN®

INTERNAL & EXTERNAL AIDS IN INTERPRETATION

12. What are the internal aids in the interpretation of statutes? [Dec. 2001 (8 Marks)]

Or

Describe the role of 'interpretation or definition clause' in statutes. [Dec. 2021 (5 Marks)]

Ans.: Internal aids mean those materials which are available in the statute itself, though they may not be part of enactment. These internal aids include, long title, preamble, headings, marginal notes, illustrations, punctuation, proviso, schedule, transitory provisions, etc. Following are internal aids in the interpretation of statutes:

(1) **Short title:** The short title is a nickname of statute, such as the Indian Evidence Act, 1872, the Indian Penal Code, 1860. It identifies an Act but does not describe it. It only provides facility of reference. The short title is merely for convenience.

(2) **Long title:** The long title of the Act may be referred for ascertaining its general scope and throwing light on its construction. It is a legitimate aid. The long title of the Act is a part of it and is *admissible to construction*.

(3) **Preamble:** The main objective and purpose of the Act are found in the Preamble of the statute. It contains the recitals showing the reason for enactment of the Act. If the language of the Act is clear the preamble must be ignored.

Example: The preamble of Indian Penal Code, 1860 reads: Whereas it is expedient to provide a general Penal Code for India.

(4) **Marginal Notes:** Marginal notes are those notes which are inserted at the side of the sections in an Act and express the effect of the sections.

Example: Section 11 of the Indian Contract Act, 1872 reads as: Who are competent to contract?

Marginal notes appended to the articles of the Constitution have been held to constitute part of the constitute part of the constitution as passed by the Constituent Assembly. Therefore, they have been used for construing articles.

(5) **Heading & title of a chapter:** Headings may be given to group of sections in an Act. These are generally treated as preamble to the group of sections. Headings prefixed to sections cannot control the plain words of the provisions. Only in the case of ambiguity or doubt, heading or sub-heading may be referred to as an aid in construing provision.

Example: The heading before Sections 172 to 190 of the Indian Penal Code, 1860 reads: "Of the contempts of lawful authority of public servants"

TAXMANN®

Chapter titles or headings may be referred to as construction of doubtful expressions, but cannot be used to restrict the plain terms of an enactment.

(6) **Definitions/Interpretation clauses:** Statutes contain definitions of certain words and expressions used in an Act. Definition gives the interpretation of certain words or expressions, they may include or exclude something, may be of restrictive extensive, ordinary or special kind. When a word or expression has been defined *prima facie*, such definition governs that word in the body of an Act everywhere, unless specially excluded. The object of definitions is to avoid of frequent repetitions in describing the subject matter, to which the word or expression so defined is intended to apply. A definition is not to be read in isolation, it must be read in context of its use. Where definition itself is ambiguous, it has to be interpreted in the light of other provisions of the Act.

(7) **Proviso:** A clause which is an exception to the main provision is known as proviso. Thus, proviso is made when a special case is removed from the general clause and a separate provision is made for it.

The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there.

(8) **Illustrations or explanations:** An illustration is appended to a section with the purpose of illustrating the provision of law explained therein.

Example: 16 illustrations [(*a*) to (*p*)] have been appended to Section 378 of Indian Penal code, 1860 which illustrate various aspects of the offence of theft.

Illustrations appended to sections are part of the statute and they help to furnish some indication of the presumable intention of the legislature.

(9) **Exceptions & saving clauses:** The purpose of adding an exception to an enactment is exempting something which would otherwise fall within the ambit of main provision.

Example: Five exceptions have been provided under Section 300 of the Indian Penal Code, 1860 which deals with those exceptional circumstances when culpable homicide is not murder.

Similarly, a saving clause is generally appended in cases of repeal and re-enactment of statute. It is normally appended in the repealing statute and its object is that the right already created under the repealed enactment is not disturbed.

(10) **Schedules:** The schedules are attached to statue to deal with as to how claims or rights under it are to be asserted or as to how powers conferred under it are to be exercised.

Example: The Companies Act, 2013 contains 7 Schedules.

TAXMANN®

Schedules attached to a statute, forms part of it and must be read together with it for all purposes of construction. But expressions in the schedule cannot control or prevail against the express enactment.

(11) Punctuations: Commas, semi-colons, full stops, etc. are also important in interpretation of statute.

(12) Non Obstante Clause: *Non obstante* clause usually starts with the words – **"Notwithstanding anything contained in ....."**. *Non obstante* clause is employed to give overriding effect to certain provisions over some contrary provisions that may be found in the same enactment or some other enactments, which is to say to avoid the operations and effect of all contrary provisions.

13. Explain the role of 'Preamble' as internal aid in interpretation of statute. Though the preamble cannot be used to defect the enacting clause of a statute, it has been treated to be a key for the interpretation of the statute. Examine. [Dec. 2019 (4 Marks)]

Ans.: The main objective and purpose of the Act are found in the Preamble of the statute. It contains the recitals showing the reason for enactment of the Act. If the language of the Act is clear the preamble must be ignored.

Example: *The Preamble of Indian Penal Code, 1860 reads:* Whereas it is expedient to provide a general Penal Code for India.

Like the Long Tile, the Preamble of a statute is a part of the enactment and can legitimately be used for construing it. However, the Preamble does not override the plain provision of the Act but if the wording of the statute gives rise to doubts as to its proper construction, *e.g.* where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

14. Discuss the importance of 'Illustrations' for interpretation of statutes. [June 2021 (4 Marks)]

Ans.: An illustration is appended to a section with the purpose of illustrating the provision of law explained therein.

Illustrations appended to sections are part of the statute and they help to furnish some indication of the presumable intention of the legislature.

Example: 16 illustrations [(*a*) to (*p*)] have been appended to Section 378 of Indian Penal Code, 1860 which illustrate various aspects of the offence of theft.

TAXMANN®

15. Briefly mention external aids to interpretation of statute.
[June 2009 (6 Marks)]

Or

What are 'External Aids' in the interpretation of Statutes? Briefly describe any two external aids in the interpretation of statutes.
[Dec. 2021 (4 Marks)]

Ans.: To find the true intention of the legislature, there exist many rules, principles and aids in interpretation of statutes. Apart from the intrinsic aids, such as preamble and purview of the act, the Court, can consider resources outside the Act, called the extrinsic or external aids. Where the words of an Act are clear and unambiguous, no recourse to extrinsic matter, even if it consists of the sources of the codification, is permissible.

Following are external aids used in interpretation of Statute:

(1) **Dictionaries:** When a word or expression is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. But courts must be careful because it is not necessary that dictionary meanings of a word may be the true meaning in a particular context.

(2) **Historical background:** The Courts take recourse of such historical facts and surrounding circumstance which existed at the time of passing of the Statutes and as may be necessary to understand the subject matter of the statutes. Like any other external aid, the inferences from historical facts and surrounding circumstances, must give way to the clear language employed in the enactment itself.

(3) **Parliamentary history:** The Supreme Court, enunciated the rule of exclusion of parliamentary history as in English Courts, but the court used this aid in resolving questions of construction in many occasions. The court has now changed the view that legislative history within circumspect limits may be consulted by courts in resolving ambiguities.

(4) **Reference to other statutes:** A statute must be read as a whole, as words are to be understood in their context. Extension of this rule or context, permits reference to other statutes in *pari materia*, *i.e.* statutes dealing with the same subject matter or forming part of the same system. Viscount Simonds conceived it to be a right and duty to construe every word of a statute in their context and he used the words in their widest sense including "other statutes in *pari materia*".

The phrase 'pari materia' is used in connection with two laws relating to the same subject matter that must be analyzed with each other.

(5) **Reference to reports of committees:** The report of a committee on whose report an enactment is based, can be looked into "so as to see the background against which the legislation was enacted, the fact cannot be

TAXMANN®

ignored that the Parliament may, and often does, decide to do something different to cure the mischief". So we should not be unduly influenced by the report. When the parliament has enacted a statute as recommended by the report of a committee and there is ambiguity or uncertainty in any provision of the statute, the court may have regard to the report for ascertaining the intention behind the provision.

(6) **Use of foreign decisions:** Use of foreign decisions of countries following the same system of jurisprudence as of India and rendered on statutes in *pari material*, has been permitted by practice in Indian Courts. The assistance of such decisions is subject to the qualification that prime importance is always to be given to the language of the relevant Indian Statute, the circumstances and the setting in which it is enacted and the Indian conditions where it is to be applied.

(7) **Statement of objects and reasons:** The statement of objects and reasons as well as the "Notes on clauses of the Bill" can be made use of in the interpretation of statutes, if the same have been adopted by the Parliament without any changes in enacting the bill.

16. Explain: Proviso. [Dec. 2009 (4 Marks)]

Ans.: Proviso: A clause which is an exception to the main provision is known as proviso. Thus, proviso is made when a special case is removed from the general clause and a separate provision is made for it.

The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there.

17. Comment: Parliamentary history as an external aid in the interpretation of statutes. [Dec. 2012 (4 Marks)]

Ans.: The Supreme Court, enunciated the rule of exclusion of Parliamentary history in the way it is enunciated by English Courts, but on many occasions, the Court used this aid in resolving questions of construction. The Court has now veered to the view that legislative history within circumspect limits may be consulted by Courts in resolving ambiguities.

It has already been noticed that the Court is entitled to take into account "such external or historical facts as may be necessary to understand the subject-matter of the statute", or to have regard to "the surrounding circumstances" which existed at the time of passing of the statute. Like any other external aid, the inferences from historical facts and surrounding circumstances must give way to the clear language employed in the enactment itself.

TAXMANN®

PRESUMPTIONS IN THE INTERPRETATION OF STATUTES

18. What are the presumptions in the interpretation of statutes when the intention of the legislature is not clear? [June 2012 (6 Marks)]

Or

What is presumption? When is it needed and not needed for interpretation? [Dec. 2022 (8 Marks)]

Or

If the intention of the legislature is not clear, there are number of presumptions, Explain *any four* presumptions. [June 2021 (4 Marks)]

Ans.: Where the meaning of the statute is clear, there is no need for presumptions. But if the intention of the legislature is not clear, there are number of presumptions. These are as follows:

- Words in a statute are used precisely and not loosely.
- Vested rights *i.e.* rights which a person possessed at the time the statute was passed, are not taken away without express words, or necessary implication or without compensation.
- *"Mens rea" i.e.* guilty mind is required for a criminal act. There is a very strong presumption that a statute creating a criminal offence does not intend to attach liability without a guilty intent. The general rule applicable to criminal cases is *"actus non facit reum nisi mens sit rea"* (The act itself does not constitute guilt unless done with a guilty intent).
- State is not affected by a statute unless it is expressly mentioned as being so affected.
- A statute is not intended to be consistent with the principles of International Law. Although the judges cannot declare a statute void as being repugnant to International Law, yet if two possible alternatives present themselves, the judges will choose that which is not at variance with it.
- Legislature knows the state of the law.
- Legislature does not make any alteration in the existing law unless by express enactment.
- Legislature knows the practice of the executive and the judiciary.
- Legislature confers powers necessary to carry out duties imposed by it.
- Legislature does not make mistake.
- Law compels no man to do that which is futile or fruitless.
- Doctrine of natural justice is really a doctrine for the interpretation of statutes, under which the Court will presume that the legislature while granting a drastic power must intend that it should be fairly exercised.

TAXMANN®

GENERAL CLAUSES ACT, 1897

19. Write a short note on: Importance of the General Clauses Act, 1897.

Ans.: The General Clauses Act, 1897, may be described as the **draftsman's Act.** It is the utmost importance to him for the purposes of his craft.

Its objects are –

(1) To shorten the language of statutory enactments.

(2) To provide for uniformity of expression giving *prima facie* definitions of a series of terms in common use

(3) To state explicitly certain common rules of construction.

(4) To guard against slips and oversights by incorporating by implication into every Act certain standard clauses which otherwise would have to be inserted expressly and which might otherwise have been overlooked.

In short, the value and utility of the General Clauses Act, 1897 is considerable, because it not only constitutes the **reference book of the judge** when dealing with statutes, but also serves as the draftsman's labour-saving device. It lays down rules which would have been tedious to repeat in every statute, thus shortening the language of legislative enactments.

20. Discuss the aim and objects of the General Clauses Act, 1897. [June 2021 (4 Marks)]

Ans.: The General Clauses Act, 1897 is a consolidating Act. It consolidates the General Clauses Act, 1868 and the General Clauses Act, 1887. The General Clauses Act, 1897 has been enacted with the aim and objective to provide one single statute as a composite structure in defining different provisions as regards to the interpretation of words and legal principles which would better placed to be defined for the general application for various rules and regulations.

The General Clauses Act, 1897 contains 'definitions' of some words and also some general principles of interpretation. The General Clauses Act is very operational in the absence of clear definition in the specific enactments and in the construction or interpretation of statute. The Act gives a clear suggestion for the conflicting provisions and differentiates the legislation according to the commencement and enforcement to avoid uncertainty.

This Act also defines certain words or expressions so that there is no unnecessary repetition of definition of those words in other Acts. It also provides a set of rules which regulate certain aspects of operation of other enactments. The definitions of General Clauses Act, 1987 are applicable to all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context.

TAXMANN®

21. The General Clauses Act, 1897 belongs to the class of Acts which may be called as 'Interpretation Act'. Comment.

Ans.: The General Clauses Act, 1897 belongs to the class of Acts which may be called as interpretation Acts. *In many countries, Legislatures similar to the General Clauses Act are called Interpretation Acts.*

An interpretation Act lays down the basic rules as to how courts should interpret the provisions of an Act of Parliament. It also defines certain words or expressions so that there is no unnecessary repetition of definition of those words in other Acts. In other words, an Interpretation Act provides a standard set of definitions or extended definitions of words and expressions which are commonly used in legislation. It also provides a set of rules which regulate certain aspects of operation of other enactments. In addition there are other provisions which are not merely definitions or rules of construction but substantive rules of law.

22. If the date of enactment is specified under the legislation, when does it come into force? Cite the relevant provisions of the General Clauses Act, 1897.
[June 2023 (4 Marks)]

Ans.: Coming into operation of enactment [Section 5]:

(1) Where any Central Act is not expressed to come into operation on particular day, then it shall come into operation on the day on which it receives the assent –

(*a*) In the case of a Central Act made before the commencement of the Constitution, of the Governor-General, and

(*b*) In the case of an Act of Parliament, of the President.

Unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

In the case of *State of Uttar Pradesh* v. *Mahesh Narain,* Supreme Court held that Effective date of Rules would be when the Rules are published *vide* Gazette notification and not from date when the Rules were under preparation.

Example 1: The Companies Act, 2013 received assent of President of India on 29th August, 2013 and was notified in official gazette on 30th August, 2013 with the enforcement of section 1 of the Act. Accordingly, the Companies Act, 2013 came into enforcement on the date of its publication in the Official Gazette.

Example 2: SEBI (Issue of Capital & Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI *vide* Notification dated 14.8.2015 with effect from 1.1.2016. Here, the regulation shall come into enforcement on 1.1.2016 rather than the date of its notification in the gazette.

TAXMANN®

23. Where any central legislation or any regulation enacted after the commencement of the General Clauses Act, 1897 repeals any Act, what shall not be affected by such repeal? [Dec. 2019 (4 Marks)]

Or

Discuss the effect of repeal under section 6 of General Clauses Act, 1897 [Dec. 2022 (5 Marks)]

Ans.: Effect of repeal [Section 6]: Where this Act, or any Central Act or Regulation made after the commencement of the Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears –

(*a*) The repeal shall not revive anything not in force or existing at the time at which the repeal takes effect.

(*b*) The repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder.

(*c*) The repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

(*d*) The repeal shall not affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed.

(*e*) The repeal shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.

Any investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Repealing Act or Regulation had not been passed.

In *State of Uttar Pradesh* v. *Hirendra Pal Singh*, SC held that whenever an Act is repealed, it must be considered as if it had never existed. Object of repeal is to obliterate the Act from statutory books, except for certain purposes as provided under Section 6 of the Act.

24. Excel Ltd. declared dividend for its shareholder in its AGM held on 30-9-2019. Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration. As per the provisions of the General Clauses Act, 1897, discuss what will be the commencement and termination time for posting of declared dividend?

Ans.: Commencement and termination of time [Section 9]: In any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

TAXMANN®

Section 127 of the Companies Act, 2013 uses the words, *"30 days from"*. Thus, in the given situation Excel Ltd. is required to pay declared dividend within 30 days from the date of declaration *i.e.* from 1-10-2019 to 30-10-2019. In this series of 30 days, 30-9-2019 will be excluded and last 30th day *i.e.* 30-10-2019 will be included.

25. State the provisions of the General Clauses Act, 1897 relating to 'gender and number'.

Ans.: Gender and number [Section 13]: In all Central Acts or Regulations, unless there is anything repugnant in the subject or context –

- Words importing the masculine gender shall be taken to include females; and
- Words in the singular shall include the plural, and *vice versa*.

Example: In order to determine residential status the Income-tax Act, 1961 makes the following provisions:

A person is said to be resident in India, if he fulfils any one of the following conditions:

(1) ***He** is in India for 182 days or more in previous year.*

(2) ***He** must be in India for 60 days or more in previous year and 365 days or more in last 4 previous years.*

As per Section 13 of the General Clauses Act, 1897, words importing the masculine gender shall be taken to include females and thus provisions is applicable to 'males' as well as 'females' even though the word used in the Act is "he".

26. As per the provisions of the Companies Act, 2013, a whole time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to the Section 13 of the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary company?

Ans.: Section 203(*3*) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary companies or can be appointed in only one subsidiary company.

It can be noted that Section 13 of the General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context. Thus, a whole time Key Managerial Personnel (KMP) may hold office in more than one subsidiary company.

TAXMANN®

27. Explain the provision as to offences punishable under two or more enactments under section 26 of the General Clauses Act, 1897. [Dec. 2021 (4 Marks)]

Ans.: Provision as to offences punishable under two or more enactments [Section 26]: Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under *either* or *any* of those enactments, but shall not be liable to be punished twice for the same offence.

According to Article 20(2) of the Constitution of India, no person shall be prosecuted and punished for the same offence more than once.

According to the Supreme Court, a plain reading of Section 26 of the General Clauses Act, 1897 shows that there is no bar to the trial or conviction of an offender under two enactments, but there is only a bar to the punishment of the offender twice for the same offence. [*Baliah* v. *Rangachari*]

The section applies only when both complaints relate to the same offence. For a false statement in a verification of Income-tax return, a person may be prosecuted both under section 177 of the Indian Penal Code, 1860 and Section 52 of the Income-tax Act, 1922, at the same time. As stated earlier, Section 26 only bars punishment of the offender twice for the same offence and does not bar his trial or conviction.

Thus, section 26 of the General Clauses Act, 1897 protects the offender against a double penalty.

28. What is the meaning of service by post as per provisions of the General Clauses Act, 1897?

Ans.: Meaning of Service by post [Section 27]: Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

1. Properly addressing
2. Pre-paying, and
3. Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

In *Jagdish Singh* v. *Natthu Singh,* it was held that where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

In *Smt. Vandana Gulati* v. *Gurmeet Singh alias Mangal Singh,* it was held that where notice sent by registered post to person concerned at proper address is deemed to be served upon him in due course unless contrary is proved. Endorsement 'not claimed/not met' is sufficient to prove deemed service of notice.

TAXMANN®

4 CHAPTER ADMINISTRATIVE LAW

INTRODUCTION & NEED OF ADMINISTRATIVE LAW

1. Administrative law is the law relating to the administration. It determines the organization, powers and duties of administrative authorities. Discuss.

Ans.: Administrative law is that branch of law that deals with **powers, functions & responsibilities** of various organs of the State. There is no single universal definition of 'administrative law' because it means different things to different theorists.

Administrative Law is the law concerning the powers and procedures of administrative agencies, including especially the law governing the judicial review of administrative action.

Administrative law is the branch of the law governing the relationship between the individual and the executive branch of the government when the latter acts in its administrative capacity.

Administrative law determines the organization, powers and duties of administrative authorities.

Administrative law deals with the powers of administrative authorities the manner in which the powers are exercised and the remedies which are available to the aggrieved persons, when those powers are abused by these authorities.

The primary function of administrative law is to keep governmental powers within the limits of law and to protect private rights and individual interests.

Rule-making power (*delegated legislation*) and an authority to decide (*Tribunal/ Court*) are described as effective and powerful weapons in the armory of administration.

All power have two inherent characteristics:

(*a*) They are not absolute or unfettered.

(*b*) They are likely to be abused.

Administrative law attempts to control the power of the government, and its instrumentalities and agencies. To achieve that objective, administrative law

provides an effective mechanism and adequate protection. It helps to strike between two conflicting force:

(1) Individual rights

(2) Public interest.

2. Do you consider that there is no antithesis between effective government and controlling the exercise of administrative powers? [Dec. 2022 (4 Marks)]

Ans.: The goal of administrative law is to ensure that the individual is not at receiving end of State's administrative power and in cases where the individual is aggrieved by any action of the administration, he or she can get it redressed.

There is no antithesis between an effective government and controlling the exercise of administrative powers.

Administrative powers are exercised by thousands of officials and affect millions of people. Administrative efficiency cannot be the end-all of administrative powers and the interests of people must be at the centre of any conferment of administrative power.

If exercised properly, the vast powers of the administration may lead to the welfare state; but, if abused, they may lead to administrative despotism and a totalitarian state.

3. What are the Principal sources of Administrative Law in India? Explain in brief. [Dec. 2020 (4 Marks)]

Ans.: There are four principal sources of administrative law in India:

(1) **Constitution of India:** It is the primary source of administrative law. Article 73 of the Constitution provides that the executive power of the Union shall extend to matters with respect to which the Parliament has power to make laws. Similar powers are provided to States under Article, 162. Indian Constitution has not recognized the doctrine of separation of powers in its absolute rigidity.

(2) **Acts/Statutes:** Acts passed by the central and state governments for the maintenance of peace and order, tax collection, economic and social growth empower the administrative organs to carry on various tasks necessary for it. These Acts list the responsibilities of the administration, limit their power in certain respects and provide for grievance redressal mechanism for the people affected by the administrative action.

(3) **Ordinances, Administrative directions, Notifications & Circulars:** Ordinances are issued when there are unforeseen developments and the legislature is not in session and therefore cannot make laws. Ordinances allow the administration to take necessary steps to deal with such developments. Administrative directions, notifications and circulars are issued by the executive in the exercise of power granted under various Acts.

TAXMANN®

(4) **Judicial decisions:** Judiciary is the final arbiter in case of any dispute between various wings of government or between the citizen and the administration. In India, we have the supremacy of Constitution and the Supreme Court is vested with the authority to interpret it. The courts through their various decisions on the exercise of power by the administration, the liability of the government in case of breach of contract or tortious acts of Governments servants lay down administrative laws which guide their future conduct.

4. Administrative Law is the by-product of ever increasing functions of the Governments. Now, States have no longer policies limited to maintaining internal order and external threats. Examine. [June 2021 (4 Marks)]

Ans.: Administrative law is the by-product of ever increasing functions of the Governments. States are no longer police states, limited to maintaining internal order and protecting from external threats. These, no doubt continue to be the basic functions but a state that is limited to this traditional role will delegitimize itself.

With the rise of political consciousness, the citizens of a state are no longer satisfied with the state's provisioning of traditional services. The modern state is, therefore, striving to be a welfare state.

It has taken the task to improve social and economic conditions of its people. It involves undertaking a large number of complex tasks. Development produces economic and social changes and creates challenges in the field of health, education, pollution, inequality, *etc.* These complex problems cannot be solved except with the growth of administration. States have also taken over a number of functions, which were previously left to private enterprise. All this has led to the origin and the growth of administrative law.

5. Distinguish between: Constitutional Law & Administrative Law.

Ans.: Following are the main points of distinction between constitutional law & administrative law:

Points	Constitutional Law	Administrative Law
Meaning	Constitutional law is the body of law that evolves from a constitution, setting out the fundamental right and duties for its citizens and also the principles according to which a State is governed and defining the relationship between the various branches of government within the State.	Administrative Law is the law concerning the powers and procedures of administrative agencies, including especially the law governing the judicial review of administrative action.
Class	Constitutional law is **genus**. It is the mother of all law of India.	Administrative law is a **species** of the Constitutional Law.

TAXMANN®

Points	Constitutional Law	Administrative Law
Deals with	Constitutional law deals with various organs of the State. It also deals with **structure** of the State.	Administrative law deals with those organs as in motion/function. Thus, it deals with **functions** of the State.
Superiority	Constitutional law is the supreme and highest law in the country.	Administrative law is subordinate to Constitutional Law.
Type	Constitutional law is theoretical one.	Administrative law is practical and functional.

ADMINISTRATIVE DISCRETION

6. Write a short note on: Administrative Discretion

Or

Examine the necessity of administrative discretion.

[June 2022 (4 Marks)]

Ans.: Discretion in layman's language means choosing from amongst the various available alternatives without reference to any predetermined criterion, no matter how fanciful that choice may be.

The term "discretion" when qualified by the word "administrative" has somewhat different overtones. 'Discretion' in this sense means choosing from amongst the various available alternatives, but with reference to the rules of reason and justice and not according to personal whims. Such exercise is not to be arbitrary, vague and fanciful but legal and regular.

Conferment of discretion: Discretion is conferred in the area of rule-making or delegated legislation *e.g.* when the statutory formula says that the government may makes rules which it thinks expedient to carry out the purposes of the Act. In effect, a broad discretion and choice are being conferred on the government to make rules. Similarly, discretion is conferred on adjudicatory and administrative authorities on a liberal basis, that is, the power is given to apply a vague statutory standards from case to case.

Need of discretion: Because of the complexity of socio-economic conditions which the administration in modern times has to contend with, it is realized that a government having only ministerial duties with no discretionary functions will be extremely rigid and unworkable and that, too some extent, officials must be allowed a choice as to when, how, and whether they will act. The reason for this attitude is that, more often than not, the administration is required to handle intricate problems which involve investigation of facts, making of choices and exercise of discretion before deciding upon what action to take. Thus, the modern tendency is to leave a large amount of discretion with various authorities.

TAXMANN®

7. Judicial review is the authority of Courts to declare void the acts of the legislature and executive, if they are found in violation of provisions of the Constitution. Comment. [Dec. 2019 (4 Marks)]

Or

The biggest check over administrative action is the power of judicial review. Elaborate. [Dec. 2022 (4 Marks)]

Ans.: The biggest check over administrative action is the power of judicial review. Judicial review is the authority of Courts to declare void the acts of the legislature and executive, if they are found in violation of provisions of the Constitution. Judicial Review is the power of the highest Court of a jurisdiction to invalidate on Constitutional grounds, the acts of other Government agency within that jurisdiction.

The doctrine of judicial review has been originated and developed by the American Supreme Court, although there is no express provision in the American Constitution for the judicial review. The judicial review is not an appeal from a decision but a review of the manner in which the decision has been made. The judicial review is concerned not with the decision but with the decision making process.

The power of judicial review controls not only the legislative but also the executive or administrative act. The Court scrutinizes the executive act for determining the issue as to whether it is within the scope of authority or power conferred on the authority exercising the power. Where the act of executive or administration is found *ultra virus* the Constitution or the relevant Act, it is declared void. The Courts attitude appears to be stiffer in respect of discretionary powers of the executive or administrative authorities.

The Court is not against the vesting of discretionary power in the executive, but it expects that there would be proper guidelines for the exercise of power. The Court interferes when the uncontrolled and unguided discretion is vested in the executive or administrative authorities or the repository of the power abuses its discretion.

8. If the discretionary power is exercised by the authority with bad faith or dishonest intention, the action is quashed by the Court. Discuss.

Ans.: If the discretionary power is exercised by the authority with bad faith or dishonest intention, the action is quashed by the Court.

Mala fide (bad faith) may be taken to mean dishonest intention or corrupt motive. In relation to the exercise of statutory powers it may be said to comprise dishonesty, fraud and malice. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred. The intention may be to promote another public interest or private interest.

In *Partap Singh* v. *State of Punjab,* the Supreme Court, by a majority judgment, set aside an order of suspension and departmental proceedings against a Civil

TAXMANN®

Surgeon on the ground that the order of the Government was made at the instance of Chief Minister who had grudge against the appellant.

9. Under what circumstances the decisions exercised by administrative authorities are treated as abuse of discretion? Explain any four.
[Dec. 2019 (4 Marks)]

Ans.: Abuse of discretion:

(1) ***Mala fides* (bad faith):** If the discretionary power is exercised by the authority with bad faith or dishonest intention, the action is quashed by the Court.

(2) **Leaving out relevant considerations:** The administrative authority exercising the discretionary power is required to take into account all the relevant facts. If it leaves out relevant consideration, its action will be invalid.

(3) **Arbitrary orders:** The order made should be based on facts and cogent reasoning and not on the whims and fancies of the adjudicatory authority.

(4) **Improper purpose:** The discretionary power is required to be used for the purpose for which it has been given. If it is given for one purpose and used for another purpose it will amount to abuse of power.

(5) **Colourable exercise of power:** Colourable exercise means that under the "colour" or "guise" of power conferred for one purpose, the authority is seeking to achieve something else which it is not authorized to do under the law in question.

(6) **Exceeding jurisdiction:** An administrative authority is required to exercise discretion within the limits of the statute. An action or decision going beyond what is authorized by law is *ultra-vires*.

10. Write a short note on: Non-application of mind

Ans.: Where the authority exercises its discretionary power under the instructions or dictation from superior authority it is taken as non-exercise of power by the authority and its decision or action is bad. In such condition the authority purports to act on its own but in substance the power is not exercised by it but by the other authority. The authority entrusted with the powers does not take action on its own judgment and does not apply its mind.

In *Commissioner of Police* v. *Gordhandas Bhanji,* the Police Commissioner empowered to grant license for construction of cinema theatres, granted the license but later cancelled it on the discretion of the Government. The cancellation order was declared bad as the Police Commissioner did not apply his mind and acted under the dictation of the Government.

TAXMANN®

PREVENTIVE RELIEF

11. Write a short note on: Preventive relief

Ans.: Preventive relief means preventing a person from doing such things or act, which he is under an obligation not to do. It is directed to prevent the violation of negative act and the therefore it is called as preventive relief. The power upon Courts to prevent and to restrain is absolutely necessary for effective administration of justice. Preventive relief is granted at the discretion of the Court by injunctions – temporary or perpetual.

12. Write a short note on: Temporary and perpetual injunction [June 2011 (4 Marks)]

Or

Distinguish between: Temporary Injunction & Perpetual Injunction [Dec. 2022 (3 Marks)]

Ans.: Following are main points of distinction between temporary and perpetual injunction:

Points	Temporary Injunction	Perpetual Injunction
Meaning	A temporary injunction is a Court Order prohibiting an action until there has been a trial or other Court action.	A perpetual injunction is a type of order issued by a Court after a full trial on the merits of a case has been conducted.
Nature	A temporary injunction is provisional in nature as it does not conclude or determine a right.	Perpetual injunction is permanent in nature as it determines a right on merits of the suit.
Governing statue	Temporary injunctions also known as interlocutory and are granted under the **Civil Procedure Code 1908**.	Perpetual injunctions are granted under **Section 38** of the **Specific Relief Act, 1963**.
Stage of granting	It is granted before plaintiff establishing his case at the trial and continues up to a specified time.	Perpetual injunction can be granted only after hearing the defendant and upon the merits of the suit.
Replacement	Temporary injunction may be replaced by perpetual injunction on merits of the case.	Perpetual injunction cannot be replaced by temporary injunction.

13. The Civil Court has power to grant temporary injunction, but for obtaining the same the plaintiff is required to satisfy the Court. Explain in brief. [June 2019 (4 Marks)]

Ans.: Temporary injunctions are such as to continue until a specified time or until the further order of the court. It is granted as an interim measure to preserve *status quo* until the case is heard and decided. Temporary injunction

TAXMANN®

may be granted at any stage of a suit. Temporary injunctions are regulated by the Civil Procedure Code and are provisional in nature. It does not conclude or determine a right. Besides, a temporary injunction is a mere order. The granting of temporary injunction is a matter of discretion of the Court.

Court may grant temporary injunction to restrain any such act (*as set out below*) or make such other order for the purpose of staying and preventing the wasting, damaging, alienation or sale or removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit; where it is proved by affidavit or otherwise:

(*a*) That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree.

(*b*) That the defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors.

(*c*) That the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

(*d*) It would be necessary for the plaintiff to satisfy the Court that substantial and irreparable harm or injury would be suffered by him if such temporary injunction (*till the disposal of the suit*) is not granted and that such loss or damage or harm cannot be compensated by damages.

TAXMANN®

PRINCIPLES OF NATURAL JUSTICE

14. No person should be made a judge in his own cause. Comment.

Ans.: It is a fundamental principle that no man shall be a judge of his own cause. The principle is that a judge is disqualified from determining any case in which he may, or may fairly be suspected to have an interest in the subject matter. The underlying principle is that 'justice should not only be done, but should manifestly and undoubtedly be seen to be done.

In the case of *A. K. Kraipak* v. *Union of India,* the facts show that one of the members of a selection board constituted to make the selection to a Central cadre, was also a candidate for the interview. After the interview, the name of the candidate appeared at the top of the list. This was challenged as infringing the principles of natural justice. It was held that as the member was one of the persons to be considered for selection it was against all canons of justice to make him judge of his own cause. Though he did not participate in the deliberation of the committee when his name was considered, his presence in the selection board must have had its own impact on the decision of the board. It was also held that it was his interest to keep out his rivals in order to keep his position safe. It follows that the Supreme Court has declared that there need not be any actual deliberation to make it invalid.

The first requirement is that the Judge should be impartial and natural and must be free from bias. One cannot act as judge of a cause in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. One must be in a position to act judicially and to decide the matter objectively. If the judge is subject to bias in favour of or against either party to the dispute or is in a position that a bias can be assumed, he is disqualified to act as a judge and the proceedings will be vitiated. It is a well settled principle of law that justice should not only be done but manifestly and undoubtedly be seen to be done.

15. Write a short note on: Rule against bias

Or

Explain the rule of *'Nemo Judex in Causa Sua'* under Administrative Law. [June 2019 (4 Marks)], [Dec. 2020 (4 Marks)]

Or

Define the rule against bias under Administrative Law and also discuss its kinds. [Dec. 2021 (4 Marks)]

Or

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. [June 2023 (4 Marks)]

Ans.: Rule against bias (*nemo judex in causa sua*): According to this rule no person should be made a judge in his own cause. Bias means an operative prejudice whether conscious or unconscious in relation to a party or issue. It is a presumption that a person cannot take an objective decision in a case in which he has an interest.

The rule against bias has two main aspects – one, that the judge must not have any direct personal stake in the matter at hand and two, there must not be any real likelihood of bias.

Bias can be of the following three types:

(1) **Pecuniary bias:** Pecuniary bias, however slight, will vitiate the decision. This is a case where the deciding authority has monitory or proprietary interest in the subject matter.

The historical example is the decision of the House of Lords in *Dimes* v. *Grand Junction Canal Co.* In this case judgment of Lord Cottonham was set aside since he held shares in the respondent company. It was observed, *"no man is to be a judge in his own cause should be held sacred"*. It was rightly stated that a pecuniary interest however slight, will disqualify even though it is not proved that the decision is in any way affected.

(2) **Personal bias:** Personal bias may arise owing to friendship, personal animosity or near relationship. But it is difficult to say when it will vitiate

the order. What is required is taking a decision. Personal animosity will vitiate the order.

In *P. H. Kalyani* v. *Air France, Culcutta,* it was held that where an enquiry was conducted by an Officer against whom the delinquent employee had earlier given evidence in a criminal proceeding was held incompetent to hold a disciplinary enquiry.

(3) **Subject matter bias:** A judge may have a bias in the subject matter, which means that he himself is a party, or has some direct connection with the litigation. To disqualify on the ground of bias there must be intimate and direct connection between adjudicator and the issues in dispute. To vitiate the decision on the ground of bias as for the subject matter there must be real likelihood of bias.

In *Baidvanath Mahapatra* v. *State of Orissa,* Committee recommended for the Premature retirement of a Government Servant at the age of 50 years. One of the members of the Review Committee who recommended premature retirement of the Appellant was appointed as the Chairman of the Tribunal and confirmed the Order of premature retirement. The Supreme Court held that the Order of the Tribunal was vitiated since the member, "who had administratively taken a decision against the Appellant, considered the matter judicially as a Chairman of the Tribunal, thereby he acted as a judge of his own cause".

16. Notice is the first limb of a proper hearing. Explain.

Ans.: Notice is the first limb of a proper hearing. Notice should be definite. It should specify the authority issuing the notice. The notice must give sufficient time to the person concerned to prepare his case. Whether the person concerned has been allowed sufficient time or not depends upon the facts of each case. The notice must be adequate and reasonable. The notice is required to be clear and unambiguous. If it is ambiguous or vague, it will not be treated as reasonable or proper notice.

The Courts insist that sufficient time should be given to the person against whom action is proposed to be taken to prepare his defence. The Court has struck down a notice which stated that an enquiry would be held in the next morning. Notice need not be reissued if the concerned party acquires knowledge of the proceeding and appears before the authority. But if the statute specifically provides for a notice the proceeding may be struck down for failure to issue the notice

In *R* v. *University of Cambridge,* Dr. Bentley was deprived of his degrees by the Cambridge University on account of his alleged misconduct without giving any notice or opportunity of hearing. The Court of King's Bench declared the decision as *null and void*.

TAXMANN®

17. Abhay a student of Dayaram Medical College was debarred from entering into premises of the college and attending the class till the pendency of a criminal case against him for stabbing Ranvir, another student of the college. In preliminary enquiry before the college authority he submitted that he has not stabbed Ranvir and debarring him from attending the college will cause lot of loss in his studies and such order is against the principle of natural justice as he has not been given opportunity of being heard in preliminary enquiry. Decide.

Ans.: The rules of natural justice are not attracted in the case of interim disciplinary action. In *Abhay Kumar* v. *K. Srinivasan* AIR 1981 Delhi 381, an order was passed by the college authority debarring the student from entering the premises of the college and attending the class till the *pendency of a criminal* case against him for stabbing a student. The Court held that the order was interim and not final. It was preventive in nature. It was passed with the object to maintain peace in the campus. The rules of natural justice were not applicable in such case.

Thus, keeping in view of above decision it can be concluded that there is no violation of principle of natural justice. Further only preliminary enquiry is started and on completion of final proceedings of complaint if college authorities & police do not found Abhay guilty of charges, he will be allowed to attend the college. Hence, Abhay is advised to cooperate in enquiry so that proceedings are completed as early as possible to avoid further loss of his studies.

18. Explain in brief *'Audi Alteram Partem Rule'* under the Administrative law. [Dec. 2018 (4 Marks)]

Ans.: The second principle of natural justice is *audi alteram partem*. Hear the other side is the essence of the principle.

The authority –

- Must not hear one side in absence of other, or
- Must not make decision without hearing the other side.

Being part of natural justice, it was made applicable even to administrative authority adjudicating matter having civil consequences. In practice it is more frequently invoked than the rule against bias. No proposition can be more clearly established than that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity of answering the case against him.

19. Enumerate in short the exceptional circumstances of the application of natural justice under Administrative Law. [Dec. 2019 (4 Marks)]

Ans.: The principles of natural justice have taken deep root in the judicial conscience of our people. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a

TAXMANN®

particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. So the principles of natural justice can be modified and also in exceptional cases they can even be excluded. Some the exceptions are given below:

(1) **Statutory Exclusion:** The principle of natural justice may be excluded by the statutory provision. Where the statute expressly provides for the observance of the principles of natural justice, the provision is treated as mandatory and the authority is bound by it. Where the statute is silent as to the observance of the principle of natural justice, such silence is taken to imply the observance thereto. However, the principles of natural justice are not incapable of exclusion. The statute may exclude them. When the statute expressly or by necessary implication excludes the application of the principles of natural justice the courts do not ignore the statutory mandate.

(2) **Emergency:** In exceptional cases of urgency or emergency where prompt and preventive action is required the principles of natural justice need not be observed.

Emergency or prompt action in case of public interest, public safety or public health was held to be a reasonable, valid and justifiable ground for exclusion of Principles of Natural Justice. Thus, the pre-decisional hearing may be excluded where the prompt action is required to be taken in the interest of the public safety or public morality.

(3) **Interim disciplinary action:** The rules of natural justice are not attracted in the case of interim disciplinary action.

(4) **Academic evaluation:** Where a student is removed from an educational institution on the grounds of unsatisfactory academic performance, the requirement of pre-decisional hearing is excluded. The Supreme Court has made it clear that if the competent academic authority assess the work of a student over the period of time and thereafter declare his work unsatisfactory the rule of natural justice may be excluded but this exclusion does not apply in the case of disciplinary matters.

(5) **Impracticability:** Where the authority deals with a large number of person it is not practicable to give all of them opportunity of being heard and therefore in such condition the court does not insist on the observance of the rules of natural justice.

TAXMANN©

GOVERNMENT CONTRACT

20. Discuss the provisions relating to formation of Government Contract under the Constitution of India.

Ans.: Formation of Government Contracts: The executive power of the Union of India and the States to carry on any trade or business, acquire, hold and dispose property and make contracts is affirmed by Article 298 of the Constitution of India. If the formal requirements required by Article 299 are complied with, the contract can be enforced against the Union or the States.

Article 299 provides:

1. All contracts made in the exercise of executive power of the union or a state shall be expressed to be made by the President or by the Governor of the State as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such person and in such manner as he may direct or authorize.
2. Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purpose of any enactment relating to Government of India hereto before in force, nor shall any such contract or assurance on behalf of any of them be personally liable in respect thereof.

Thus, Article 299 lays down three conditions which the contracts made in the exercise of the executive power of the Center or a State must fulfil to be valid –

- The contract must be expressed to be made by the President or the Governor as the case may be.
- These contracts made in the exercise of the executive power are to be executed on behalf of the President/Governor as the case may be.
- The execution must be by such person and in such manner as the President or the Governor of the case as the case may be, may direct or authorize.

It has been held by the Supreme Court in the case of *Bhikaraj Jaipuria* v. *Union of India,* it is clear from the words "expressed to be made" and "executed" that there must be a formal written contract. The provisions of Article 299(1) are mandatory in character and any contravention thereof nullify the contract and makes it void.

Where a contract is made by tender and acceptance, the acceptance must be made by a duly authorized person and on behalf of the President, and a valid contract may result from correspondence.

Implied Contract with the Government: In view of Article 299(1) there can be no implied contract between the government and another person, the reason being that if such implied contracts between the government and another person were allowed, they would in effect make Article 299(1) useless, for then

TAXMANN®

a person who had a contract with the government which was not executed at all in the manner provided under Article 299(1) could get away by saying that an implied contract may be inferred on the facts and the circumstances of the particular case.

21. Write a short note on: Quasi contractual liability of the Government

Ans.: Obligation of person enjoying benefit of non-gratuitous act [Section 70 of the Indian Contract Act, 1872]: Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Illustrations: (*As given in Indian Contract Act, 1872*)

(*a*) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(*b*) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

If the requirements of Section 70 are fulfilled, even the Government will be liable to pay compensation for the work actually done or services rendered by the State.

Section 70 is not based on any subsisting contract between the parties but is based on quasi-contract or restitution. Section 70 enables a person who actually supplies goods or renders some services not intending to do gratuitously, to claim compensation from the person who enjoys the benefit of the supply made or services rendered. It is a liability, which arise on equitable grounds even though express agreement or contract may not be proved.

SUIT AGAINST STATE IN TORTS

22. Write a short note on: Vicarious liability of Government

Ans.: Unlike the **Crown Proceeding Act, 1947** of England, we have no statutory provision with respect to the liability of the State in India. When a case of Government liability in tort comes before the Courts, the question is whether the particular Government activity, which gave rise to the tort, was the sovereign function or non-sovereign function. If it is a sovereign function it could claim immunity from the tortuous liability, otherwise not. Generally, the activities of commercial nature or those which can be carried out by the private individual are termed as non-sovereign functions.

In India **Article 300** of the Constitution declares that the Government of India or of a State may be sued for the tortious acts of its servants in the same manner as the Dominion of India and the corresponding provinces could have sued or have been sued before the commencement of the Constitution. This

TAXMANN®

rule is, however, subject to any such law made by the Parliament or the State Legislature. No law has so far been passed as contemplated by Article 300(1).

23. The driver of a jeep, owned and maintained by the State of Rajasthan for the official use of the Collector of the district, drove it rashly and negligently while taking it back from the workshop to the residence of the Collector after repairs, knocked down a pedestrian and fatally injured him. Whether State is vicariously liable for damages caused by the negligence of the driver?

Ans.: In *State of Rajasthan* v. *Vidyawati*, the driver of a jeep, owned and maintained by the State of Rajasthan for the official use of the Collector of the district, drove it rashly and negligently while taking it back from the workshop to the residence of the Collector after repairs, knocked down a pedestrian and fatally injured him. The State was sued for damages. The Supreme Court held that the State was vicariously liable for damages caused by the negligence of the driver.

The decision of the Supreme Court in above case introduces an important qualification on the State immunity in tort based on the doctrines of sovereign and non-sovereign functions. It decided that the immunity for State action can only be claimed if the act in question was done in the course of the exercise of sovereign functions. Thus, immunity is not available for non-sovereign functions and State will liable for the damages.

24. A lady doctor of a government hospital was negligent while conducting operation of Dinkar's leg. The lady doctor amputated left leg of Dinkar instead of his right leg by mistake. Dinkar filed suit against the authority of the government hospital and lady doctor for damages on the plea of negligence. Will he succeed?

Ans.: *Yes.* Dinkar will succeed. Where the relations of master and servant exits, a master is liable not only for those authorized acts which have been committed by the servants but also for the acts done by him which not specifically authorized in the course of his employment.

The defence of the government that running of a hospital is a sovereign function and hence it is not liable will not hold good, as declared in various cases. The extent of liability of lady doctor would be determined by the rules/conditions of her employment.

LIABILITY OF THE PUBLIC SERVANT & STATUTORY CORPORATIONS

25. What do you understand by the term 'Statutory Corporations'? Give examples. Also state their main features.

Ans.: A public corporation is that form of public enterprise which is created as an autonomous unit, by a Special Act of the Parliament or the State Legislature.

TAXMANN®

Since, a public corporation is created by a Statute; it is also known as a statutory corporation.

Following are some of the examples of Public Corporations:

- Life Insurance Corporation (LIC)
- Food Corporation of India (FCI)
- Oil and Natural Gas Corporation (ONGC)
- Air India
- State Bank of India (SBI)
- Reserve Bank of India (RBI)
- Employees State Insurance Corporation (ESIC)

Features: Features of statutory corporations are as follows:

Special statute: A public corporation is created by a special Act of the Parliament or the State Legislature. The Act defines its powers, objectives, functions and relations with the ministry and the Parliament or State Legislature.

Separate legal entity: A public corporation is a separate legal entity with perpetual succession and common seal. It has an existence, independent of the Government. It can own properly; can make contracts and file suits, in its own name.

Capital provided by the Government: The capital of a public corporation is provided by the Government or by agencies controlled by the government. However, many public corporations have also begun to raise money from the capital market.

Financial autonomy: A public corporation enjoys financial autonomy. It prepares its own budget; and has authority to retain and utilize its earnings for its business.

Management by Board of Directors: Its management is vested in a Board of Directors, appointed or nominated by the Government. But there is no Governmental interference in the day-to-day working of the corporation.

Own Staff: A publication corporation has its own staff; whose appointment, remuneration and service conditions are decided by the corporation itself.

Service Motive: The main objective of a public corporation is service-motive; though it is expected to the self-supporting and earn reasonable profits.

Public Accountability: A public corporation has to submit its annual report on its working. Its accounts are audited by the Comptroller and Auditor General of India. Annual report and audited accounts of a public corporation are presented to the Parliament or State Legislatures, which is entitled to discuss these.

26. Can 'Government Company' is treated as 'State or Central Government' for claiming exemption under the various statutes or Constitution of India?

Ans.: In *Andhra Pradesh Road Transport Corporation* v. *ITO*, the Andhra Pradesh State Road Transport Corporation claimed exemption from taxation by invoking

Article 289 of the Constitution of India according to which the property and income of the State are exempted from the Union taxation. The Supreme Court, while rejecting the Corporation's claim, held that though it was wholly controlled by the State Government, it had a separate entity and its income was not the income of the State Government. The Court observed that the companies which are incorporated under the Companies Act have a corporate personality of their own, distinct from that of the Government of India. The land and buildings are vested in and owned by the companies, the Government of India only owns the share capital.

In *Hindustan Steel Works Construction Ltd.* v. *State of Kerala,* it was held that in spite of all the control of the Government, the company is neither a Government department nor a Government establishment, it is just an agency of the Government, and hence not exempt from the purview of Kerala Construction Workers Welfare Funds Act. The employees of a Government Company are not the employees of the Central or State Government.

TAXMANN®

5 CHAPTER

LAW OF TORTS

TORT – MEANING

1. "To constitute a tort, there must be a wrongful act and legal damages". Explain. [June 2021 (4 Marks)]

Ans: A tort consists of some act or omission done by the defendant whereby he has without just cause or excuse caused some harm to plaintiff. To constitute a tort, there must be:

(1) Wrongful act: The act complained of, should under the circumstances, be legally wrongful as regards the party complaining. Thus, every person whose legal rights, e.g. right of reputation, right of bodily safety and freedom, and right to property are violated without legal excuse, has a right of action against the person who violated them, whether loss results from such violation or not.

(2) Legal damages: It is not every damage that is a 'damage' in the eye of the law. It must be a damage which the law recognizes as such. In other words, there should be legal injury or invasion of the legal right. In the absence of an infringement of a legal right, an action does not lie. Also, where there is infringement of a legal right, an action lies even though no damage may have been caused.

2. Distinguish between: 'Tort' & 'Crime'.

Ans:

Points	Tort	Crime
Meaning	A tort consists of some *act* or *omissions* done by defendant whereby he has without a lawful excuse caused some harm to plaintiff.	Crime means any act or omission made punishable under any law.
Seriousness	Less serious wrongs are considered as private wrongs and have been labelled as civil wrong.	More serious wrongs have been considered to be public wrongs and are known as crimes.

TAXMANN®

Points	Tort	Crime
Suit	Suit is filed by the injured person himself.	Case is brought by the State.
Compromise	Compromise is always possible.	Except in certain cases, compromise is not possible.
Penalty	Wrongdoer pays compensation to the injured party.	Wrongdoer is punished.

DAMNUM SINE INJURIA & INJURIA SINE DAMNUM

3. Explain the Latin maxims *'damnum sine injuria'* and *'injuria sine damnum'*.
[Dec. 2021 (4 Marks)]

Or

Distinguish between *'Damnum Sine Injuria'* and *'Injuria Sine Damnum'* under the law relating to Torts.
[June 2014 (4 Marks)], [Dec. 2018 (4 Marks)]

Or

Explain with suitable examples that legal damage is neither identical with actual damage nor is it necessarily pecuniary.
[Dec. 2022 (4 Marks)]

Ans: It is not every damage that is a damage in the eye of the law. It must be a damage which the law recognizes as such. In other words, there should be legal injury or invasion of the legal right. In the absence of an infringement of a legal right, an action does not lie.

Also, where there is infringement of a legal right, an action lies even though no damage may have been caused. As was stated in *Ashby* v. *White*, legal damage is neither identical with actual damage nor is it necessarily pecuniary.

Two maxims, namely: (*i*) *Damnum sine injuria* and (*ii*) *injuria sine damnum*, explain this proposition.

***Damnum sine injuria*:** *Damnum* means damage in the sense of loss of money, comfort, health, service or physical hurt or the like.

Injuria means breach of a legal right *i.e.* infringement of a right conferred by law on the plaintiff.

In some cases the act or omission of the defendant may have caused damage to the claimant but the claimant may have no action as the interest affected may not be one protected by law. Lawyers refer to this as *damnum sine injuria* or ***harm without legal wrong***. Therefore, causing damage however substantial to another person is not actionable in law, unless there is also violation of legal right of the plaintiff.

Example: A opens a fish & chip shop in the same street as B's fish & chip shop. A reduces his prices with the intention of putting B out of business. A

TAXMANN®

has committed no tort as losses caused by lawful business competition are not actionable in tort.

Injuria Sine Damnum: There are cases where conduct is actionable even though no damage has been caused. This is known as *injuria sine damno*. The maxim *'injuria sine damno'* means ***breach of legal right without damage***. In other words, there is an injury without damage or loss. It means infringement of legal rights not resulting in damages but giving the right to sue, to the plaintiff as the infringement is an injury in law. This is because there are certain absolute private rights or interests of an individual, so vital, that the infringement itself would be actionable in tort even if there is no proof of damages.

Example: If A walks across B's land without B's permission then A will commit the tort of trespass to land, even though he does not cause any damage to the land.

4. Alok was running a school at a certain place. Bimal started another school near the school of Alok. As a result of this, most of the students of Alok's school left his school and joined Bimal's school. Due to competition, Alok had to reduce the fees by ₹ 40 per student per quarter thereby suffering huge monetary loss. Alok instituted a suit against Bimal in the court for claiming compensation. Is the suit instituted by Alok maintainable? [June 2011 (6 Marks)]

Ans: In some cases the act or omission of the defendant may have caused damage to the claimant but the claimant may have no action as the interest affected may not be one protected by law. This is explained by doctrine of *"damnum sine injuria"*, which means *harm without legal wrong*.

The maxim *'damnum sine injuria'* is applicable for the given case.

Bimal has committed no tort as losses caused by lawful business competition are not actionable in tort. Therefore, suit instituted by Alok is not maintainable as per doctrine *damnum sine injuria*.

STRICT & VICARIOUS LIABILITY

5. Write a short note on: Rule of strict liability as laid down in *Rylands* v. *Fletcher*. [Dec. 2010 (4 Marks)], [Dec. 2018 (4 Marks)]

Or

Explain strict or absolute liability under the law of torts. [Dec. 2011 (6 Marks)]

Ans: Rules of strict liability refers that if a person bring anything from outside and accumulates on his land, which it escapes may cause damage to his neighbours, he does so at his own risk. He will be responsible for damage, however carefully he might have been and whatever precautions he might have taken to prevent damage. This principle was laid down in the case of *Rylands* v. *Fletcher*.

TAXMANN®

Fletcher (*plaintiff*) leased several underground coal mines from land adjacent to that owned by Rylands (*defendant*). Rylands owned a mill, and built a reservoir on his land for the purpose of supplying water to that mill. Rylands employed engineers and contractors to build the reservoir. In the course of building the reservoir, these employees learned that it was being built on top of abandoned underground coal mines. This fact was unknown by Rylands. After the reservoir was completed, it broke and flooded Fletcher's coal mines. This caused damage to Fletcher's property, and Fletcher brought suit against Rylands.

Rylands was held strictly liable for damage caused to Fletcher's property by water from the broken reservoir.

But, later, it was decided in the case of *Read* v. *Lyons*, that following two conditions were necessary for application of the rule decided in the case of *Rylands* v. *Fletcher*.

(1) Escape of something from the control of defendant, which is likely to do mischief.

(2) When defendant is making a non-natural use of the land.

If either of these conditions is absent, the rule of strict liability will not apply.

TAXMANN®

6. A mill owner employed an independent contractor to construct a reservoir on his land to provide water for his mill. There were old disused mining shafts under the site of the reservoir, which the contractor failed to observe because they were filled with soil. Therefore, the contractor did not block them. When water was filled in the reservoir, it burst through the shaft and flooded the plaintiff's coal mines on the adjoining land. Is the mill owner liable to compensate for loss or damage caused to the plaintiff? Give reasons. [June 2011 (6 Marks)]

Ans: As per rules of strict liability, if a person brings anything from outside and accumulates on his land, which it escapes may cause damage to his neighbours; he does so at his own risk. He will be responsible for damage, however carefully he might have been and whatever precautions he might have taken to prevent damage. This principle was laid down in the case of *Rylands* v. *Fletcher*.

As per the facts given in case an independent contractor employed by mill owner was negligent as he failed to block the old disused mining shafts under the site of the reservoir and due this negligence water was filled in the reservoir and it burst through the shaft and flooded the plaintiff's coal mines on the adjoining land. Thus, applying the 'rules of strict liability' the mill owner will be liable for damages to the coal mine owner.

7. Explain the exceptions to the rule of strict liability under Law of Torts. [June 2012 (5 Marks)], [June 2022 (4 Marks)]

Ans: Rules of strict liability refers that if a person bring anything from outside and accumulates on his land, which it escapes may cause damage to his neighbours, he does so at his own risk. He will be responsible for damage, however carefully

he might have been and whatever precautions he might have taken to prevent damage. This principle was laid down in the case of *Rylands* v. *Fletcher.*

Exceptions to the rule of strict liability:

(1) **Damage due to natural use of the land:** The rule of strict liability does not apply in the case where the things are present on a person's land in the natural form or arise on the land, even though they are dangerous.

(2) **Consent of the plaintiff:** The rule of strict liability is not applicable in the cases where the things which escapes was brought or kept upon defendant's premises by the defendant with the consent of the plaintiff.

(3) **Act of third party:** If the harm has been caused due to the act of a stranger, who is neither the defendant's servant nor agent or has no control over him the defendant will not be liable.

(4) **Statutory authority:** Public bodies performing a statutory duty such as supply of water, electricity etc., are exempted from liability, so long as they have taken reasonable care and are not negligent.

(5) **Act of God:** The principle of strict liability does not apply for the damage caused due to acts which are irresistible & beyond human contemplation & caused due to operation of some superior force which is beyond human control.

(6) **Escape due to plaintiffs own default:** If the damage is caused due to the plaintiffs own action or default the defendant is exempted from liability, *i.e.* if plaintiff suffers damage by his own intrusion into defendant's property, he cannot complain for damage so caused.

8. The driver of a petrol lorry, while transferring petrol from the lorry to an underground tank at a garage, struck a matchstick in order to light a cigarette and then threw it, still alight on the floor. An explosion and a fire ensued. Who is liable for the damage so caused? Decide giving case law on this point.
[June 2013 (5 Marks)]

Ans: When a servant commits a tort in the ordinary course of his employment as servant, the master is liable for the same.

An act is deemed to be done in the course of employment if it is either:

(1) A wrongful act authorized by the employer, *or*

(2) A wrongful and unauthorized mode of doing some act authorized by the employer.

The facts of the given case are similar to *Century Insurance Co. Ltd.* v. *Northern Ireland Road Transport Board.* In this case, the driver of a petrol lorry, while transferring petrol from the lorry to an underground tank at a garage, struck a match in order to light a cigarette and then threw it, still alight on the floor. An explosion and a fire ensued. The House of Lords held his employers liable for the damage caused, for he did the act in the course of carrying out his task of

TAXMANN®

delivering petrol; it was an unauthorized way of doing what he was employed to do.

9. Vicarious liability of the State. Discuss. [Dec. 2013 (4 Marks)]

Or

Discuss the vicarious or tortious liability of state for the act of his servant. Refer relevant Judgments. [June 2019 (4 Marks)]

Ans: Unlike the Crown Proceeding Act, 1947 of England, we have no statutory provision with respect to the liability of the State in India. When a case of Government liability in tort comes before the Courts, the question is whether the particular Government activity, which gave rise to the tort, was the sovereign function or non-sovereign function. If it is a sovereign function it could claim immunity from the tortuous liability, otherwise not. Generally, the activities of commercial nature or those which can be carried out by the private individual are termed as non-sovereign functions.

In India Article 300 of the Constitution declares that the Government of India or of a State may be sued for the tortious acts of its servants in the same manner as the Dominion of India and the corresponding provinces could have sued or have been sued before the commencement of the Constitution. This rule is, however, subject to any such law made by the Parliament or the State Legislature. No law has so far been passed as contemplated by Article 300(*1*).

In *Kasturi Lal* v. *State of U.P.,* the Government was not held liable for the tort committed by its servant because the tort was said to have been committed by him in the course of the discharge of statutory duties. The statutory functions imposed on the employee were referable to and ultimately based on the delegation of sovereign powers of the State. The Court held that the Government was not liable as the activity involved was a sovereign activity.

In *State of Rajasthan* v. *Vidyawati,* the driver of a jeep, owned and maintained by the State of Rajasthan for the official use of the Collector of the district, drove it rashly and negligently while taking it back from the workshop to the residence of the Collector after repairs, knocked down a pedestrian and fatally injured him. The State was sued for damages. The Supreme Court held that the State was vicariously liable for damages caused by the negligence of the driver.

10. Swaraj an employer of ABC Company Ltd., appointed Rakesh as an independent contractor. Discuss under what circumstances Swaraj would be liable for the fault of Rakesh. [Dec. 2018 (4 Marks)]

Or

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? [June 2023 (5 Marks)]

Ans.: Vicarious liability: When a person is held liable for the torts committed by another, it is called vicarious liability.

TAXMANN®

Vicarious liability of employer for independent contractor: The employer is generally not liable for the acts of an independent contractor.

In *Philips* v. *Britania Hygienic Laundry Co.*, the owner of lorry was held not liable when a third-party's vehicle was damaged, in consequence of the negligent repair of his lorry by a garage proprietor.

However, the employer is liable in following cases for the acts of an independent contractor:

- When employer authorizes him to commit a tort.
- In torts of strict liability.
- Negligence of independent contractor.

Thus, employer Swaraj is generally not liable for the acts of Rakesh (independent contractor) but may be held liable in above three cases stated above.

Liability of employer for collateral negligence of contractor: Employers of independent contractors are liable for the "collateral negligence" of their contractors in the course of his employment.

Example: Where *A* employed *B* to fit casement windows into certain premises. *B*'s servant negligently put a tool on the still of the window on which he was working at the time. The wind blew the casement open and the tool was knocked off the still on to a passerby. The employer was held to be liable, because the harm was caused by the work on a highway and duty lies upon the employer to avoid harm.

11. Anil and Amit are two partners of a firm. Anil, while ordinarily dealing with another firm, bribed that firm's clerk to divulge secret relating to the other firm where that clerk was working, in this case, who shall be liable – whether both the Partners *i.e.* Anil and Amit or only Anil? Explain. [Dec. 2019 (4 Marks)]

Ans: For the tort committed by a partner in the ordinary course of the business of the firm, all the other partners are liable therefore to the same extent as the guilty partner. The liability of the partners is joint and several.

In *Hamlyn* v. *Houston & Co.*, one of the two partners bribed the plaintiff's clerk and induced him to divulge secrets relating to his employer's business. It was held that both the partners were liable for the tort committed by only one of them.

12. The managing clerk of a firm of solicitors, while acting in the ordinary course of business committed fraud, against a lady client by fraudulently inducing her to sign documents transferring her property to him. He had done so without the knowledge of his Principal. Explain whether the Principal will be liable? [June 2021 (4 Marks)]

Ans: When a person is held liable for the torts committed by another, it is called vicarious liability. Thus, principal may be held liable for the tort committed by his agent.

TAXMANN®

"Qui facit alium facit per se" which means, he who acts through another is deemed to act himself. When an agent commits a tort in the ordinary course of his duties as an agent, the principal is liable for the same.

In *Lloyd* v. *Grace, Smith & Co.*, the managing clerk of a firm of solicitors, while acting in the ordinary course of business committed fraud, against a lady client by fraudulently inducing her to sign documents transferring her property to him. He had done so without the knowledge of his principal who was liable because the fraud was committed in the course of employment.

Therefore, the principal, in the given case, is liable for the acts done in the ordinary course by his managing clerk even though such act is done without the knowledge of his Principal.

13. Explain the liability of master for the act of his servant under the law of torts. [Dec. 2021 (5 marks)]

Ans: When a person is held liable for the torts committed by another, it is called vicarious liability. Thus, when a servant commits a tort in the ordinary course of his employment as servant, the master is liable for the same.

An act is deemed to be done in the course of employment if it is either:

- Wrongful act authorized by the employer *or*
- Authorized act done in wrongful and unauthorized manner

Following two conditions has to be satisfied by the plaintiff before he can succeed against the defendant for fixing vicarious liability for wrongful act done by his servant.

(1) Relationship of master and servant subsisted between defendant and actual wrongdoer.

(2) Wrongful act was done by the servant while he was engaged in the course of employment of the defendant.

14. Critically examine the applicability of liability rule in the tort applied in cases of enterprises engaged in a hazardous industry in India. [June 2022 (8 Marks)]

Ans:

- Supreme Court in *M.C. Mehta* v. *Union of India & others* ruled that an application for compensation in a pollution case can be maintained under Article 32 of the Constitution, for, such application is for the protection of the fundamental rights of the people and the Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce fundamental rights.
- On the question of liability of an enterprise engaged in hazardous activities, the Supreme Court laid down for the first time a far-reaching ruling, that an enterprise which is engaged in hazardous or inherently dangerous

TAXMANN®

activity and an industry which poses a potential threat to the health and safety of the persons working in the factory and of those residing in the surrounding area owes an absolute and non-delegatable duty to the community to ensure that no harm results to any one on account of an hazardous or inherently dangerous nature of the activity which it has undertaken.

- The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged, must be conducted with the highest standards of safety; and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm; and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without negligence on its part.
- The Court further reiterated that the rule in *Rylands* v. *Fletcher* of strict liability would apply in India but without any exceptions whatsoever recognised in England. The Court also ruled that the measure of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect.

MISCELLANEOUS

15. Distinguish between: Battery & Assault [June 2010 (4 Marks)], [June 2013 (4 Marks)]

Ans: Following are the main points of difference between battery & assault:

Points	Battery	Assault
Meaning	Any direct application of force to the person without his consent or lawful justification is a wrong of battery.	When the defendant by his act creates an apprehension in the mind of the plaintiff that he is going to commit battery against him, the tort of assault is committed.
Purpose	To cause physical harm to other person.	To just threaten to other person.
Important aspect	Physical contact is mandatory.	Threat of violence is enough; no physical contact is necessary.
Example	To throw a stone so that other person gets physical injury.	If person shows a stone to other person and make apprehension that he is going to throw it on him but actually do not throw a stone.

16. Distinguish between: Libel & Slander [Dec 2012 (4 Marks)]

Ans: Defamation is an attack on the reputation of a person. It means that something is said or done by a person which affects the reputation of another. Defamation may be classified into following two heads:

TAXMANN®

Libel: It is a representation made in some permanent from, e.g. written words, pictures, caricatures, cinema films, effigy, statue and recorded words. In a cinema films both the photographic part of it and the speech which is synchronized with it amount to tort.

Slander: It is the publication of a defamatory statement in a transient form, statement of temporary nature such as spoken words, or gestures.

Defamation is *tort* as well as a *crime* in India.

In India both libel and slander are treated as a crime. Section 499 of the IPC recognizes both libel and slander as an offence. However, torts in criminal law are stricter than in law of torts.

17. Distinguish between 'Judicial remedies' and 'extra-judicial remedies'.
[Dec. 2013 (4 Marks)]

Or

What remedies can be sought under the Law of Torts?
[Dec. 2018 (4 Marks)]

Or

Discuss any four Extra Judicial Remedies under Law of Torts.
[Dec. 2020 (4 Marks)]

Or

State the remedies available in tort other than an action for unliquidated damages.
[Dec. 2022 (4 Marks)]

Ans: Judicial Remedies: Three types of judicial remedies are available to the plaintiff in an action for tort namely: (*i*) Damages, (*ii*) Injunction, and (*iii*) Specific Restitution of Property.

Extra Judicial Remedies: In certain cases it is lawful to redress one's injuries by means of self help without recourse to the court. These remedies are:

(*a*) **Self defence:** It is lawful for any person to use reasonable forces to protect himself, or any other person against any unlawful use of force.

(*b*) **Prevention of trespass:** An occupier of land or any person with his authority may use reasonable force to prevent trespassers entering or to eject them but the force should be reasonable for the purpose.

(*c*) **Re-entry on Land:** A person wrongfully disposed of land may retake possession of land if he can do so in a peaceful and reasonable manner.

(*d*) **Re-caption of goods:** It is neither a crime nor a tort for a person entitled to possession of a chattel to take it either peacefully or by the use of a reasonable force from one who has wrongly taken it or wrongfully detained it.

(*e*) **Abatement of nuisance:** The occupier of land may lawfully abate (*i.e.* terminate by his own act), any nuisance injuriously affecting it. Thus, he may cut overhanging branches as spreading roots from his neighbours

TAXMANN®

trees, but (*i*) upon giving notice; (*ii*) by choosing the least mischievous method; (*iii*) avoiding unnecessary damage.

(*f*) **Distress damage feasant:** An occupier may lawfully seize any cattle or any chattels which are unlawfully on his land doing damage there and detain them until compensation is paid for the damage. The right is known as that of distress damage feasant-to distrain things which are doing damage.

18. Write a short note on: Malicious prosecution [June 2011 (4 Marks)]

Or

Distinguish between: 'False imprisonment' and 'malicious prosecution'. [June 2014 (4 Marks)]

Or

Discuss briefly "Malicious Prosecution" and its essential elements under the law relating to Torts. [Dec. 2019 (4 Marks)]

Or

Describe the concept of False Imprisonment under Law of Torts. Cite case law in support of your answer. [Dec. 2021 (4 Marks)]

Ans: False Imprisonment: The illegal confinement of one individual against his or her will by another individual in such a manner as to violate the confined individual's right to be free from restraint of movement.

False imprisonment is the unlawful restraint of a person against his or her will by someone without legal authority or justification. In fact, any person who intentionally restricts another's freedom of movement without their consent (and without legal justification) may be liable for false imprisonment.

Elements of a false imprisonment: To prove a false imprisonment claim in a civil lawsuit, the following elements must be present:

(*a*) There must have been a *wilful* detention.

(*b*) The detention must have been *without consent*.

(*c*) The detention was *unlawful*.

Malicious Prosecution: Malicious prosecution is the tort of initiating a criminal prosecution or civil suit against another party with malice and without probable cause.

Elements of Malicious Prosecution: Following are the essential elements of the tort of malicious prosecution:

(1) There must have been a **prosecution** of the plaintiff by the **defendant.**

(2) There must have been **want of reasonable** and **probable cause** for that **prosecution.**

TAXMANN®

(3) The defendant must have **acted maliciously** (*i.e. with an improper motive and not to further the end of justice*).

(4) The **plaintiff** must have **suffered damages** as a result of the prosecution.

(5) The **prosecution** must have **terminated** in favour of the **plaintiff**.

TAXMANN®

CHAPTER 6
LAW RELATING TO CIVIL PROCEDURE

IMPORTANT TERMS & DEFINITIONS

1. How 'Decree' is defined under section 2(2) of the Civil Procedure Code, 1908 and mention essentials of a Decree. [Dec. 2020 (4 Marks)]

Ans.: Decree [Section 2(2)]: Decree means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but *shall not include*:

(*i*) Any adjudication from which an appeal lies as an appeal from an order.

(*ii*) Any order of dismissal for default.

Explanation:

(*a*) Preliminary Decree: A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of.

(*b*) Final Decree: It is final when such adjudication completely disposes of the suit, it may be partly preliminary and partly final.

Essential elements of decree:

(1) There must be adjudication.

(2) It must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit.

(3) Such determination must be of conclusive of nature.

(4) There must be formal expression of such adjudication.

On judgment a decree follows. Every endeavour must be made to ensure that decree is drawn up expeditiously within a period of 15 days from the date on which the judgment is pronounced. It should contain the:

- Number of the suit.
- Names and descriptions of the parties and their registered addresses.
- Particulars of the claim.

TAXMANN®

- Relief granted or other determination of the suit.
- Amount of cost incurred and by whom it is to be paid.

2. Distinguish between: Decree & Order.
[Dec. 2011 (4 Marks)], [June 2014 (4 Marks)]

Ans.: Following are the main points of distinction between decree and order:

Points	Decree	Order
When passed	Decree can only be passed in a suit originated by the presentation of a plaint.	Order can be passed in a suit originated by the presentation of a plaint, application, or petition.
Determination of a right	Decree contains conclusive determination of a right.	Order may or may not finally determine a right.
Preliminary/ Final	Decree may be final, preliminary or partly preliminary–partly final.	Order cannot be a preliminary order.
Number	In general, there can only be one decree or at the most one preliminary and one final decree in a suit.	There can be any number of orders in a suit.
Appeal	Every decree is appealable unless an appeal is expressly barred.	Only those orders which are specified as appealable in the code are appealable.
Second appeal	A second appeal may lie against a decree to a High Court on certain grounds.	There is no second appeal for orders.

3. Explain: Cause of actions under Code of Civil Procedure, 1908.
[June 2012 (4 Marks)]

Ans.: Cause of action means every fact that it would be necessary for the plaintiff to prove in order to support his right to the judgment of the Court. It means all the essential facts constituting the rights and its infringement.

It means every fact which will be necessary for the plaintiff to prove, if traversed in order to support his right to the judgment.

STAY OF SUITS/RES SUB JUDICE

4. Discuss the doctrine of '*Res Sub Judice*' under Section 10 of the Civil Procedure Code, 1908.
[Dec. 2018 (5 Marks)]

Or

Discuss the provision of Civil Procedure Code, 1908 which prevents multiplicity of suits in respect of same cause of action.
[Dec. 2021 (4 Marks)]

TAXMANN®

Ans.: Stay of suit (Doctrine of *res sub judice*) [Section 10]: No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, where such suit is pending in the same or any other Court (in India) having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court. The provision of Section 10 popularly known as principal of *res sub judice*.

In simple words if suit is pending in one Court then other Court cannot take such suit in which matter is same i.e. to say two courts cannot deal with the same matter at the same time.

Essential conditions for stay of suits:

(1) There must be two suits instituted at different times.

(2) The matter in issue in the later suit should be directly and substantially in issue in the earlier suit.

(3) Such earlier suit should be between the same parties.

(4) Such earlier suit is still pending either in the same Court or in any other competent Court but not before a foreign Court.

Object of Section 10: Object of Section 10 is to prevent multiplicity of proceedings with regard to the same subject matter and avoid contradictory judgment being given by the Courts.

5. A suit was instituted by the Plaintiff Company alleging infringement by the Defendant Company for using trade name of medicine and selling the same in wrapper and carton of identical designs with same colour combination, *etc.*, as that of Plaintiff Company. A subsequent suit was instituted in a different Court by the Defendant Company against the Plaintiff Company with similar allegations. In such a situation, advise the Plaintiff Company the procedure adopted by the Courts.
[Dec. 2009 (5 Marks)], [Dec. 2012 (5 Marks)], [Dec. 2014 (6 Marks)]

Ans.: As per Section 10 of the Civil Procedure Code, 1908, if suit is pending in one Court then other Court cannot take such suit in which matter is same and parties are also same. The doctrine of *res sub judice* is applicable in this case.

In given case, the parties are same in both suits and subject matter of both suits is also same, the second suit would be barred by application of principal of *res sub judice* as per Section 10.

RES JUDICATA

6. Discuss the doctrine of *res judicata* under section 11 of the Code of Civil Procedure, 1908. [Dec. 2009 (5 Marks)]

Or

Define *res judicata* and state the conditions of its application. [June 2011 (5 Marks)]

Ans.: ***Res judicata*** **[Section 11]:** No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

In simple words once a matter is finally decided by a competent Court, no party can be permitted to reopen it in a subsequent litigation.

Essential conditions of *res judicata*:

(1) Matter must be directly and substantially in issue in two suits.

(2) Prior suit should be between the same parties.

(3) Parties should have litigated under the same title.

(4) Court which determined the earlier suit must be competent to try the latter suit.

(5) Same question is directly and substantially in issue in the latter suit.

7. Whether in case of consent and compromise decree in between parties, principle of *Res Judicata* shall apply? Discuss. [June 2021 (4 Marks)]

Ans.: A consent or compromise decree is not a decision by Court. It is an acceptance of something to which the parties had agreed. The Court does not decide anything. The compromise decree merely has the seat of the Court on the agreement of the parties. As such, the principle of *res judicata* does not generally apply to a consent or compromise decree. But when the court on the facts proved comes to a conclusion that the parties intended that the consent decree should have the effect of deciding the question finally, the principle of *res judicata* may apply to it.

Section 11 of the Code of Civil Procedure, 1908 deals with the doctrine of *res judicata*. The doctrine underlines the general principle that once a matter is finally decided by a competent Court, no party can be permitted to reopen it in a subsequent litigation. However, it does not apply in case of Consent and

TAXMANN®

Compromise between parties, but depends on the Court, subject to the facts of the case.

8. Anil was a trustee of a trust. After Anil's death, Brij wrongfully takes the possession of the trust property. Chandan, the son of Anil files a suit for recovery of possession of the property against Brij as the legal heir of Anil in his individual capacity. But Chandan did not succeed. Then Chandan files another suit for recovery of trust property against Brij in the capacity of trustee as he was appointed as trustee after the death of Anil. Whether the second suit is barred by the doctrine of constructive *res judicata*? Explain. [June 2010 (6 Marks)]

Ans.: Constructive *res judicata*: As per Explanation IV to Section 11 of the Code of Civil Procedure, 1908, any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. The doctrine of constructive *Res Judicata* prevents further suits being filed for a matter that is at the core of a former suit.

In this case, the two suits are filed by Chandan in two different capacities and hence, the second suit is not barred.

9. Distinguish between: 'Doctrine of *res sub judice*' and 'doctrine of *res judicata*'. [Dec. 2013 (4 Marks)]

Or

Explain the difference if any, in between '*Res Judicata*' and '*Res sub judice*'. [June 2019 (4 Marks)]

Or

Differentiate between rule of *res judicata* and *res subjudice*. [June 2023 (4 Marks)]

Ans.: Following are the main points of distinction between *res sub-judice* and *res judicta*:

Points	*Res sub judice*	*Res judicata*
When applies	*Res sub judice* applies to matter pending trial.	*Res judicta* applies to a matter adjudicated upon.
Bar	*Res sub judice* bars the trial of a suit of pending suit.	*Res judicta* bars the trial of a suit or an issue which has been decided in a former suit.
Section	Section 10 of the Civil Procedure Code, 1908 incorporates this rule.	Section 11 of the Civil Procedure Code, 1908 incorporates this rule.

TAXMANN®

PLACE OF SUING

10. Discuss the provisions relating to place of suing under section 16 of the Code of Civil Procedure, 1908. [Dec. 2021 (4 Marks)]

Or

Which are the cases relating to property that can be instituted under section 16 of Civil Procedure Code, 1908? State the limitations, if any. [June 2022 (4 Marks)]

Ans.: Suits to be instituted where subject-matter situate [Section 16]: Following suits relating to property shall be instituted in the Court within the local limits of whose jurisdiction the property is situated:

(*a*) For recovery of immovable property with or without rent or profits.

(*b*) For partition of immovable property.

(*c*) For foreclosure of sale or redemption in the case of a mortgage or charge upon immovable property.

(*d*) For the determination of any other right to or interest in immovable property.

(*e*) For compensation for wrong to immovable property.

(*f*) For the recovery of movable property actually distraint or attachment.

11. X, Y & Z own a house at Delhi, a shop at Mumbai and a farm at Ganaganagar in Rajasthan. They made a partition of this property by an agreement at Jaipur. X, being aggrieved by this partition, files a suit for challenging this partition in a Court at Delhi. Y & Z raised an objection that the suit should have been filed in a Court at Jaipur. How will the Court decide this issue?

Ans.: Where immovable property is situated within the jurisdiction of different Courts [Section 17]: Where immovable property situated within the local limits of jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction the property is situated wholly or partly.

In the given case, the properties sought to be partitioned are situated partly at Delhi, partly at Mumbai and Ganaganagar. Thus, a suit relating these properties can be filed in a Court at Delhi, Mumbai or Ganaganagar. Thus, objection of Y and Z that the suit should have been filed in a Court at Jaipur cannot be upheld by Court.

12. Anita, residing in Delhi, publishes in Calcutta statements defamatory of Babita of Mumbai. Babita wants to sue Anita either in Calcutta. Advice Anita & Babita.

Ans.: Where wrong done to the person or to movable property [Section 19]: Where a suit is for compensation for wrong done to the person or to movable

TAXMANN®

property, the suit may be instituted at the *option of the plaintiff* in either of the following Courts.

- In jurisdiction of Court where the wrong was done.
- In jurisdiction of Court where the defendant resides, or carries on business, or personally works for gain.

Keeping in view the above provisions Babita can sue Anita in the Court of:

- Calcutta, where wrong was done *or*
- Delhi, where the defendant Anita resides.

13. A transport company has its head office at Delhi and branch offices at Chennai, Jaipur and Mumbai. A dispute cropped up between Sam and the company in respect of a transaction made through Chennai office. Sam files a suit in respect of this dispute against the company in a Court at Jaipur. How will the Court decide? [June 2012 (3 Marks)]

Or

A real estate company has its head office at Delhi and branch offices at Ahmedabad, Patna and Indore. A dispute cropped up between Sorabh and the company in respect of a transaction through Ahmedabad office. Sorabh files a suit in respect of this dispute against the company in a court at Patna. How will the court decide? [June 2014 (6 Marks)]

Or

Explain the limitations under Civil Procedure Code that every suit shall be instituted in a court within the local limit of whose jurisdiction the defendant actually resides or carries on business. [Dec. 2022 (4 Marks)]

Ans.: Other Suits [Section 20]: Subject to limitations provided by Sections 15 to 19:

(*a*) Every suit shall be instituted in Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

(*b*) If there are more than one defendants suit shall be instituted in Court within the local limits of whose jurisdiction any of the defendants actually and voluntarily resides, or carries on business, or personally works for gain. However, in such case the leave of the Court has to be taken or the defendants who do not reside, or carry on business, or personally work for gain, acquiesce in such institution.

(*c*) Suit can also be instituted where the cause of action, wholly or in part, arises.

Explanation: A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

TAXMANN®

Accordingly, the suit filed in the Jaipur Court will be dismissed on account of jurisdiction.

The suit ought to have been filed in Court of:

- Chennai where the cause of action arisen *or*
- Delhi where corporation has its principal office.

SET-OFF, COUNTER CLAIM & EQUITABLE SET-OFF

14. Distinguish between: Set-off & Counter-claim. [Dec. 2010 (4 Marks)], [June 2013 (4 Marks)]

Ans.: Following are the main points of distinction between Set-off & Counter-claim:

Points	Set-off	Counter-claim
When passed	Set-off is a reciprocal acquittal of debts between the plaintiff and defendant.	A claim made by defendant in a suit against plaintiff is called counter-claim.
Nature	Set-off is a statutory defence to a plaintiff's action.	Counter-claim is substantially a cross action.
Transaction	Claim of set-off need not originate from the same transaction. However, claim of equitable set-off must originate from the same transaction.	Counter-claim need not arise out of the same transaction.
Claim	An equitable set-off is a claim by the defendant in defence which generally cannot exceed the plaintiffs claim.	A counter-claim by the defendant may, however, exceed the plaintiffs claim being in the nature of a cross-action.

15. Ram and Shyam sell wheat for ₹ 10,000 to Sohan and Mohan. Sohan sells cloth worth ₹ 12,000 to Shyam. Sohan files a suit against Shyam for recovery of price of cloth. Shyam claims set-off of the cost of wheat in this suit. Will he succeed? [Dec. 2010 (5 Marks)]

Ans.: *No.* As per Order 8, Rule 6, set-off is possible only when the parties to both claims are the same. So, Shyam's claims for set-off will not be allowed by the Court.

16. Distinguish between: Set-off & Equitable Set-off [June 2012 (4 Marks)]

Ans.: Following are the main points of distinction between set-off & equitable set-off:

TAXMANN®

Points	Set-off	Equitable Set-off
Sum	Principal of set-off is applied in case of ascertained some of money.	Principal of equitable set-off is applied in case of un-ascertained some of money.
Claim	Claim of set-off need not originate from the same transaction.	Claim of equitable set-off must originate from the same transaction.
Court's discretion	Legal set off can be claimed as a right by the defendant and the Court is bound to adjudicate upon the claim.	Equitable set-off cannot be claimed as a right but by Court's discretion.
Limitation	In case of set-off amount claimed should not be time barred.	Principal of equitable set-off may be applied even in case of time barred amounts.
Court fee	Court fee must be paid on set-off amount.	No court fee is required.

PROCEDURE RELATING TO SUIT & TEMPORARY INJUNCTION

17. In a civil case what remedies are available for the defendant against whom an *ex parte* decree has been passed by the court?
[June 2013 (5 Marks)], [Dec. 2018 (5 Marks)]

Or

Discuss the remedies available to the defendant when an *ex parte* decree is passed against him. **[June 2022 (4 Marks)]**

Ans.: Where the plaintiff appears and the defendant does not appear before the Court, in spite of due service of summons, then the Court may proceed against the defendant *ex parte*.

An *'Ex parte decree'* is a *decree* passed against a defendant in absentia. Despite service of summons, where on the date of hearing only plaintiff does and a defendant does not appear the Court may hear the suit *ex parte* and pass a *decree* against the defendant.

A defendant has four remedies available if an *ex parte* decree is passed against him:

(*a*) He may file an appeal against the *ex parte* decree.

(*b*) He may file an application for review of the judgment.

(*c*) He may apply for setting aside the *ex parte* decree.

(*d*) A suit can also be filed to set aside an *ex parte* decree obtained by fraud but no suit shall lie for non-service of summons.

TAXMANN®

18. Explain Substituted mode of service of summons and its effect.
[Dec. 2022 (5 Marks)]

Ans.: Issue of summon: When the suit has been duly instituted, the Court issues an order known as summons to the defendant to appear and answer the claim and to file the written statement of his defence if any within a period of 30 days from the date of service of summons.

Service of summon: The ordinary mode of service of summons *i.e.* direct service is by delivery or tendering a copy of it signed by the judge or competent officer of the Court to the person summoned either personally or to his agent or any adult male or female member of his family, against signature obtained in acknowledgement of the services.

Substituted Service of summons: Where defendant resides in another province, a summons may be sent for service in another State to such Court and in such manner as may be prescribed by rules in force in that State.

The above provisions shall apply also to summons to witnesses.

In the case of a defendant who is a public officer, servant of railways or local authority, the Court may, if more convenient, send the summons to the head of the office in which he is employed.

19. The Civil Court has power to grant temporary injunction, but for obtaining the same the plaintiff is required to satisfy the Court. Explain in brief.
[June 2019 (4 Marks)]

Or

What is temporary injunction under the Code of Civil Procedure, 1908? Under what circumstances can it be granted? Discuss.
[June 2021 (4 Marks)]

Or

It is well settled law that for grant of temporary injunction, three factors have to be satisfied, which are *prima facie* case, balance of convenience and irreparable loss. Discuss.
[Dec. 2021 (4 Marks)]

Ans.: Temporary injunctions are regulated by the Code of Civil Procedure, 1908 and are provisional in nature. It does not conclude or determine a right. The purpose of a temporary injunction is to maintain the *status quo* and prevent irreparable damage or preserve the subject matter of the litigation until the trial is over. After the trial, the Court may issue a permanent injunction or dissolve the temporary injunction. It is a provisional remedy granted to temporarily curb activity until the court can make a final decision after trial.

Temporary injunction may be granted at any stage of a suit.

Court may grant temporary injunction to restrain any act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation or sale or removal or disposition of the property or dispossession of the plaintiff;

TAXMANN®

or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit; where it is proved by affidavit or otherwise:

(*a*) That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree.

(*b*) That the defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors.

(*c*) That the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

It would be necessary for the plaintiff to satisfy the Court that –

(*i*) Substantial and irreparable harm or injury would be suffered by him if such temporary injunction (till the disposal of the suit) is not granted.

(*ii*) The balance of convenience lies in his/her favour.

(*iii*) Such loss or damage or harm cannot be compensated by damages.

APPEAL, REFERENCE, REVIEW & REVISION

20. Discuss briefly the provision relating to Reference, Review and Revision.
[Dec. 2002 (8 Marks)]

Or

"Reference and Review are various remedies provided under the Civil Procedure Code, 1908 to cater to different situations." Explain.
[June 2023 (4 Marks)]

Ans.: Reference to High Court [Section 113]: At any time before judgment, 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 [Section 114]: Any person considering himself aggrieved by a decree or order may apply for a review of judgment to the Court which passed the decree or order on any of the grounds as mentioned below:

(*a*) 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.

(*b*) On account of some mistake or error apparent on the face of the record.

(*c*) Any other sufficient reason.

Revision [Section 115]: The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies and if such subordinate Court appears:

TAXMANN®

(*a*) to have exercise a jurisdiction not vested in it by law, or

(*b*) to have failed to exercise a jurisdiction so vested, or

(*c*) to have acted in the exercise of its jurisdiction illegally or with material irregularity the High Court may make such order as it thinks fit.

21. Distinguish between: Review & Revision in civil law. [June 2013 (4 Marks)], [June 2019 (4 Marks)]

Ans.: Following are the main points of distinction between review & revision:

Points	Review	Revision
Meaning	Any person considering himself aggrieved by a decree or order may apply for a review of judgment to the Court which passed the decree or order on any of the grounds as mentioned in **Order 47 Rule 1**.	The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies and in certain cases and may make such order as it thinks fit which is revision.
Court	Any Court, which passed the decree or made order, can review the case.	The High Court can only do revision of any case which has been decided by any court subordinate to it.
By whom	The review can be made only on an application by an aggrieved party.	Revision power can be exercised by the High Court on an application or even *suo moto*.
Appeal	Review can be made even when an appeal lies to the High Court.	Revision power can be exercised by the High Court only in a case where no appeal lies to the High Court.
Grounds	Grounds for review are: (*a*) Discovery of new and important matter or evidence. (*b*) Mistake or error apparent on the face of the record. (*c*) Any other sufficient reason.	Conditions for revisions are: (*a*) A case must have been decided. (*b*) The Court which has decided the case must be a Court subordinate to the High Court. (*c*) The order should not be an appealable one. (*d*) The subordinate court must have – (*i*) exercised jurisdiction not vested in it by law; or (*ii*) failed to exercise jurisdiction vested in it, or (*iii*) acted in the exercise of its jurisdiction illegally or with material irregularity.

TAXMANN®

SUITS BY OR AGAINST – CORPORATIONS, MINORS

22. Write a short note on: Suits by or against corporations

Ans.: Signature or verification of pleading [Order 29, Rule 1]: In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation, by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Service of summons [Order 29, Rule 2]: Subject to any provision regulating service of process, where the suit is against a corporation, the summons may be served.

- On the secretary or any director or other principal officer of the corporation or
- By leaving it or sending it by post addressed to the corporation at the registered office or if there is no registered office then at the place where the corporation carries on business.

Power of the Court to require personal attendance [Order 29, Rule 3]: The Court may at any stage of the suit, require the personal appearance of the secretary or any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

23. Discuss the law relating to suits by or against minors.
Or
Elaborate the provisions of Civil Procedure Code, 1908 regarding suits by or against minors and what will be the impact after minor attains the age of majority? [Dec. 2021 (8 Marks)]

Ans.: A minor is a person:

(*i*) who has not completed the age of *18 years* and

(*ii*) for whose person or property a guardian has been appointed by a Court, for whose property is under a Court of Wards, the age of majority is completed at the age of *21 years*.

Important points relating to suits by or against minor:

- Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the *next friend* of the minor.
- The next friend should be a person who is of sound mind and has attained majority.
- Interest of next friend is not adverse to that of the minor.
- Where the suit is instituted without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

TAXMANN®

- Where the defendant is a minor the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.
- An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.
- A person appointed as guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continues as such throughout all proceeding arising out of e-suit including proceedings in any appellate or revisional court and any proceedings in the execution of a decree.

SUMMARY PROCEDURE

24. Summary suit applies to a suit to prevent unreasonable obstruction by a defendant. [Dec. 2013 (4 Marks)]

Or

Explain provisions of summary procedure including leave to defend under Civil Procedure Code. [June 2019 (4 Marks)]

Ans.: A procedure by way of summary suit applies to suits upon bill of exchange, hundies or promissory notes, when the plaintiff desires to proceed under the provision of Order 37.

Order 37 provides for a summary procedure to respect of certain suits. *The object is to prevent unreasonable obstruction by a defendant.*

The rules for summary procedure are applicable to the following Courts.

- High Courts, City Civil Courts and Small Courts.
- High Courts may restrict the operation of Order 37 by issuing a notification in the Official Gazette.

The debt or liquidated demand in money payable by the defendant should arise on a written contract or on an enactment or on a guarantee.

Institution of summary suits: Such suit may be instituted by presenting a plaint containing the following essentials:

- A specific averment to the effect that the suit is filed under this order.
- That no relief which does not fall within the ambit of this rule has been claimed.
- The inscription immediately below the number of the suit in the title of the suit that the suit is being established under Order 37 of the CPC.

Leave to defend: Order 37, Rule 3 prescribes the mode of service of summons *etc.* and leave to defend. The defendant is not entitled to defend the suit unless

TAXMANN®

he enters an appearance within **10 days** from the service of summons. Such leave to defend may be granted unconditional or upon such term as the Court or the judge may think fit.

However, such leave shall not be granted where.

- Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence or that the defences are frivolous or veracious, and
- The part of the amount claimed by the plaintiff and admitted by the defendant to be due from him is deposited by him in the Court.

The summary suit must be brought within one year from the date on which the debt becomes due and payable, whereas the period of limitation for suits for ordinary cases under negotiable instrument is three years.

25. A Ltd. filled a summary suit against B Ltd. The summons was served on the defendants on 10th February, 2024 when the Company Secretary of the defendant company was on medical leave. He appeared on behalf of the defendant on 17th March, 2024, two days after he resumed his duty. State the consequences.

Ans.: As per Order 37, Rule 3 the defendant may at any time **within 10 days of service of summon** enter an appearance either in person or by a pleader. According to Order 37, Rule 2(3) the defendant shall not defend the suit unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree.

In the given case the summons were served on the defendants on 10th February, 2024, when the company secretary of the defendant's company was on medical leave and he appeared on behalf of defendant on 17th March 2024, well beyond the aforesaid limit.

However, if the defendant company shows sufficient cause, the Court may excuse the delay of the defendant in entering an appearance.

26. A & Co. files a suit under Order XXXVII of the Code of Civil Procedure, 1908 for the recovery of ₹ 50,000 which were given by it as loan to its employee B against the promissory note executed by B in the Court of the district judge. B received the summons for judgment in the suit under Order XXXVII of the Code Civil Procedure, 1908. B files a written statement only after 20 days of the receipt of the summons in the said suit. The Court of district judge ignores the written statement of B and outright passes judgment and decree for recovery of ₹ 50,000 with costs against B. [Dec. 2000 (5 Marks)]

Ans.: In a suit under Order 37, the defendant cannot defend the suit unless he enters his appearance in the said suit within a period of 10 days from the date

of service of summons on him and obtains leave to defend from the Court of District Judge.

In the absence thereof the allegations in the plaintiff shall be deemed to be admitted and A & Co. shall be entitled to a decree. In view of this, the judgment against B is justified.

TAXMANN®

CHAPTER 7

LAW RELATING TO CRIME AND ITS PROCEDURE

STAGES OF CRIME & PUNISHMENTS

1. Distinguish between: Crime & Civil Wrong

Ans.: Following are the main points of distinction between Crime & Civil Wrong:

Points	Crime	Civil Wrong
Meaning	Crime means any act or omission made punishable under any law.	Wrongs that affect the interests of a particular individual are called civil wrong.
Wrong	Crime is a wrong against society.	Civil wrong is against a private individual or individuals.
Seriousness	More serious wrongs have been considered to be public wrongs and are known as crimes.	Less serious wrongs are considered as private wrongs and have been labelled as civil wrong.
Intention	In crime intention is essential element.	In civil wrong intention is not relevant.
Action	In case of crime action is taken by the State *i.e.* Government.	In case of civil wrong the suit is filed by the aggrieved person himself.
Compromise	In case of crime compromise is not possible except in certain cases.	In case of civil suit, compromise is always possible.
Penalty	Wrongdoer is punished.	Wrongdoer pays compensation or damages to the injured party.

2. Discuss in detail various stages of crime.

Ans.: In every crime, there is first intention to commit it, secondly, preparation to commit it, thirdly, attempt to commit it and fourthly the accomplishment. The stages can be explained as under –

(1) **Intention:** This is the first stage in commission of a crime. The law does not take notice of an intention, mere intention to commit an offence not followed by any act, cannot constitute an offence. The obvious reason for not prosecuting the accused at this stage is that it is very difficult for the prosecution to prove the guilty mind of a person. This stage is a significant progress from mere deliberation towards actual commission of the crime. At this stage, the person has made up his mind to actually implement or execute his devious plans. There is an intention to cause harm but yet no action taken that manifests intention. Further, there is no way to prove an intention because even devil can't read a human mind. Thus, this is not considered a crime. For example, intention to kill anyone is not a crime in itself. However, it is an essential ingredient of crime because without intention to cause harm, there can be no crime.

(2) **Preparation:** Preparation is the second stage in the commission of a crime. It means to arrange the necessary measures for the commission of the intended criminal act. Intention alone or the intention followed by a preparation is not enough to constitute the crime. Preparation has not been made punishable because in most of the cases the prosecution has failed to prove that the preparations in the question were made for the commission of the particular crime.

Example: If Arun purchases a pistol and keeps the same in his pocket duly loaded in order to kill his bitter enemy Ballu, but does nothing more. Arun has not committed any offence as still he is at the stage of preparation and it will be impossible for the prosecution to prove that Arun was carrying the loaded pistol only for the purpose of killing Ballu.

(3) **Attempt:** Attempt, which is the third stage in the commission of a crime, is punishable. Attempt is the direct movement towards the commission of a crime after the preparation is made. A person may be guilty of an attempt to commit an offence if he does an act which is more than merely preparatory to the commission of the offence and a person will be guilty of attempting to commit an offence even though the facts are such that the commission of the offence is impossible.

(4) **Accomplishment/Completion:** Last stage in the commission of an offence is its accomplishment or completion. If the accused succeeds in his attempt to commit the crime, he will be guilty of the complete offence and if his attempt is unsuccessful he will be guilty of an attempt only. For example, A fires at B with the intention to kill him, if B dies, A will be guilty for committing the offence of murder and if B is only injured, it will be a case of attempt to murder.

3. In exceptional cases, mere 'preparation' to commit an offence is punishable under Indian Penal Code, 1860. Discuss.

[Dec. 2018 (4 Marks)]

TAXMANN®

Ans.: Preparation is the second stage in the commission of a crime. It means to arrange the necessary measures for the commission of the intended criminal act. Intention alone or the intention followed by a preparation is not enough to constitute the crime. Preparation has not been made punishable because in most of the cases the prosecution has failed to prove that the preparations in the question were made for the commission of the particular crime.

Example: If Arun purchases a pistol and keeps the same in his pocket duly loaded in order to kill his bitter enemy Ballu, but does nothing more. Arun has not committed any offence as still he is at the stage of preparation and it will be impossible for the prosecution to prove that Arun was carrying the loaded pistol only for the purpose of killing Ballu.

Generally, preparation to commit any offence is not punishable but in some exceptional cases preparation is punishable, following are some examples of such exceptional circumstances which are punishable under the IPC –

(*a*) Preparation to wage war against the Government.

(*b*) Preparation to commit depredation on territories of a power at peace with Government of India.

(*c*) Preparation to commit dacoity.

(*d*) Preparation for counterfeiting of coins or Government stamps.

(*e*) Possessing counterfeit coins, false weights or measurements and forged documents.

4. Distinguish between: Motive & Intention

Ans.: Following are the main points of distinction between Motive & Intention:

Points	Motive	Intention
Meaning	Motive refers to the reason a crime was committed. It is often the background of the suspect in committing the alleged crime.	Intention mean doing any act with one's will or desire for some purpose.
Nature	Motive is the reason that drives a person to do an act or refrain from acting in a specific manner.	Intention of a person can be determined by the use of particular means and the circumstances that resulted in the criminal offence.
Criminal liability	Motive is insubstantial to determine criminal liability.	Intention is substantial to determine criminal liability.
Purpose	Motive is hidden or implied purpose.	Intention is the expressly defined purpose of the crime
What is it?	Motive is driving force of crime.	Intention is first stage of crime.

Points	Motive	Intention
Example	Assume that Y is accused of murdering his wife and it turns out that his wife has a policy of ₹ 1 Crore that will come to Y after the death of his wife. The law will assume that the ₹ 1 Crore is a profit that Y will gain by his wife's death and so prosecution will try to establish that since Y's wife death is a profit to him of ₹ 1 Crore, Y have motive. Thus, Y has a reason to commit the crime.	Assume that X is caught with 2 kilos of heroin in his house. A rational man will assume that X cannot be keeping the heroin at home for private consumption, so the normal assumption will be that X mean to sell this heroin (*i.e.* distribute). So X will be charged with possession with intent to distribute. This means the law can assume what your intentions are with respect to a criminal offence.

5. Briefly discuss various types of punishments provided under the Indian Penal Code, 1860.

Ans.: The punishments to which offenders are liable under the provisions of IPC are as follows –

(1) **Death/Capital punishment:** A death sentence is the harshest of punishments provided in the IPC, which involves taking the life of the accused as a form of punishment. The Supreme Court has ruled that death sentence ought to be imposed only in the **'rarest of rare cases'**. The IPC provides for capital punishment for the following offences:

(*a*) Murder

(*b*) Dacoity with murder

(*c*) Waging War against the Government of India

(*d*) Abetting mutiny actually committed. (*mutiny means forcible or passive resistance to lawful authority*)

(*e*) Giving or fabricating false evidence upon which an innocent person suffers death

(*f*) Abetment of a suicide by a minor or insane person

(*g*) Attempted murder by a life convict.

The death punishment is also called 'capital punishment'. The word 'capital' means the head or top of the column. Thus, the capital punishment means 'removal of head', 'death penalty' or 'beheading'. The capital punishment is awarded only in two categories of offences, namely treason and murder.

(2) **Life imprisonment:** Imprisonment for life meant rigorous imprisonment, that is, till the last breath of the convict.

(3) **Imprisonment:** Imprisonment which is of two descriptions namely – (*i*) rigorous imprisonment, that is hard labour; (*ii*) simple imprisonment.

(4) **Forfeiture of property:** Forfeiture is the divestiture of specific property without compensation in consequence of some default or act forbidden

TAXMANN®

by law. The Courts may order for forfeiture of property of the accused in certain occasions. The Courts are empowered to forfeit property of the guilty person under sections 126 & 127.

(5) **Fine:** Fine is forfeiture of money by way of penalty. It should be imposed individually and not collectively.

(6) **Default sentence:** When court sentences an accused for a punishment, which includes a fine amount, it can specify that in the event the convict does not pay the fine amount, he would have to suffer imprisonment for a further period as indicated by the court, which is generally referred to as default sentence.

6. Distinguish between: Fine & Penalty

Ans.: Following are main points of difference between fine & penalty:

Points	Fine	Penalty
Meaning	Fine is a sum imposed as punishment for an offense.	Penalty is the suffering or the sum to be forfeited to which a person agrees to be subjected in case of non-fulfilment of stipulations.
Base	Fines are against offences.	Penalties are against non-compliances.
Example	According to Section 16(3) of the Companies Act, 2013, if a company makes default in complying with any direction given under section 16(*1*), the company shall be punishable with fine of ₹ 1,000 for every day during which the default continues and every officer who is in default shall be punishable with fine which shall not be less than ₹ 5,000 but which may extend to ₹ 1 lakh. Here the default is in nature of offence and the provision provides for fine as a punishment.	According to Section 12(*8*) of the Companies Act, 2013, if any default is made in complying with the requirements of Section 12, the company and every officer who is in default shall be liable to a penalty of ₹ 1,000 for every day during which the default continues but not exceeding ₹ 1 lakh. Here the default is in nature of non-compliance and hence the provision creates the liability of penalty.

ESSENTIAL ELEMENTS CRIME

7. State the fundamental elements of a crime.

Ans.: There are four elements which constitute a crime, these are as follows:

(1) **Human Being:** The first element requires that the wrongful act must be committed by a human being. In ancient times, when criminal law was largely dominated by the idea of retribution, punishments were inflicted

TAXMANN®

on animals also for the injury caused by them, for example, a pig was burnt in Paris for having devoured a child, a horse was killed for having kicked a man. But now, if an animal causes an injury we hold not the animal liable but its owner liable for such injury. So the first element of crime is a human being who must be under the legal obligation to act in a particular manner and should be a fit subject for awarding appropriate punishment.

(2) ***Mens Rea*:** There can be no crime of any nature without *mens rea* or an evil mind. Every crime requires a mental element and that is considered as the fundamental principle of criminal liability. The basic requirement of the principle *mens rea* is that the accused must have been aware of those elements in his act which make the crime with which he is charged. There is a well known maxim in this regard, *i.e. "actus non facit reum nisi mens sit rea"* which means that, the guilty intention and guilty act together constitute a crime.

(3) ***Actus Reus*:** The third essential element of a crime is *actus reus*. In other words, some overt act or illegal omission must take place in pursuance of the guilty intention. *Actus reus* is the manifestation of *mens rea* in the external world.

(4) **Injury:** The fourth requirement of a crime is injury to another person or to the society at large. The injury should be illegally caused to any person in body, mind, reputation or property. According to Section 44 the injury denotes any harm whatever illegally caused to any person in body, mind, reputation or property.

TAXMANN®

8. Distinguish between: *Mens Rea & Actus Reus*

Ans.: Following are the main points of distinction between *mens rea & actus reus*:

Points	*Mens Rea*	*Actus Reus*
Meaning	*Mens rea* means bad intention of the person committing crime.	*Actus reus* is some overt act or illegal omission must take place in pursuance of the guilty intention.
What it is?	*Mens rea* is the intent a person has behind committing a crime.	*Actus reus* is the action the person takes to perform the criminal act.
Element of crime	*Mens rea* is the second important essential element of a crime.	*Actus reus* is the third important essential element of a crime.
Aspect	*Mens Rea* refers to the mental aspect of crime.	*Actus Reus* refers to the physical aspect of a crime.

9. Discuss the important forms of *'mens rea'* under the Indian Penal Code, 1860. [June 2021 (4 Marks)]

Ans.: One of the essential elements of a crime is *mens rea* or evil intent or guilty mind. There can be no crime of any nature without *mens rea*. The basic requirement of the principle *mens rea* is that no person can be punished in a proceeding of criminal nature unless it can be showed that he had a guilty mind.

Forms of *mens rea*: Intention, Negligence and Recklessness are the important forms of *mens rea*.

(1) **Intention:** Intention is defined as – 'the purpose or design with which an act is done'. Intention indicates the position of mind, condition of someone at particular time of commission of offence and also will of the accused to see effects of his unlawful conduct. Criminal intention does not mean only the specific intention but it includes the generic intention as well.

Example: Anil poisons the food which Barun was supposed to eat with the intention of killing Barun. Chandan eats that food instead of Barun and is killed. Anil is liable for killing Chandan although Anil never intended it.

(2) **Negligence:** Negligence is the second form of *mens rea*. Negligence is not taking care, where there is a duty to take care. Negligence or carelessness indicates a state of mind where there is absence of a desire to cause a particular consequence. The standard of care established by law is that of a reasonable man in identical circumstances. What amounts to reasonable care differs from thing to thing depending situation of each case. In criminal law, the negligent conduct amounts to *mens rea*.

Example: If a child is injured because his or her caretaker failed to perform her duties, she may be guilty of criminal negligence.

(3) **Recklessness:** Recklessness is the decision to commit a certain action despite knowing about associated risks.

Example: If a person causes injury while driving drunk, he can be found guilty of recklessly causing harm. He did not intend to hurt anyone, and did not expect it to happen, but he knew he was taking the risk of hurting someone by driving the car after drinking.

10. State the exceptional cases where *mens rea* is not required in criminal law.

Ans.: There are many exceptional cases where *mens rea* is not required in criminal law. Some of them are as follows:

(*a*) **Statute excludes *mens rea*:** Where a statute imposes liability, the presence or absence of a guilty mind is irrelevant. The classical view of that '*no mens rea*, no crime' has long been eroded and several laws in India and abroad, especially regarding economic crimes and departmental penalties, have created severe punishment even where the offences have been defined to exclude *mens rea*. Many laws passed in the interest of

TAXMANN®

public safety and social welfare imposes absolute liability. There is absolute liability (*mens rea* is not essential) in the licensing of shops, hotels, restaurants and chemists establishments. The same is true of cases under the Motor Vehicles Act and the Arms Act, offences against the State like waging of war, sedition etc.

(*b*) **Speedy disposal of case:** Where it is difficult to prove *mens rea* and penalties are petty fines. In such petty cases, speedy disposal of cases is necessary and the proving of *mens rea* is not easy. An accused may be fined even without any proof of *mens rea*.

(*c*) **Strict liability:** In the interest of public safety, strict liability is imposed and whether a person causes public nuisance with a guilty mind or without guilty mind, he is punished.

(*d*) **Ignorance of the law:** If a person violates a law even without the knowledge of the existence of the law, it can still be said that he has committed an act which is prohibited by law. In such cases, the fact that he was not aware of the law and hence did not intend to violate it is no defense and he would be liable as if he was aware of the law. This follows from the maxim 'ignorance of the law is no excuse'.

11. Companies can no longer claim immunity from criminal liability on the ground that they are incapable of possessing the necessary *mens rea* for commission of offences. Critically examine. [June 2022 (4 Marks)]

Ans.:

- Criminal liability presupposes the existence of *mens rea* (guilty mind) and *actus reus* (guilty act) – the two essential ingredients of an offence under the IPC.
- Natural persons can be convicted of an offence as they possess mind. However, when an offence has been committed by a company (legal person), the question arises as to whether the company can be convicted of a criminal offence.
- According to Section 11 of the IPC, the word 'person' includes any Company or Association, or body of persons, whether incorporated or not. Thus, companies are covered under the provisions of the IPC.
- Virtually in all jurisdictions across the world governed by the rule of law, companies can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary *mens rea* for the commission of criminal offences. The criminal intent of the 'alter ego' of the company/body corporate *i.e.* the person or group of persons that guide the business of the company, is imputed to the company.
- In *State of Maharashtra* v. *M/s Syndicate Transport*, it was held that the question whether a corporate body should or should not be liable for criminal action resulting from the acts of some individual must depend

TAXMANN®

on the nature of offence disclosed by the allegations in the complaint or in the charge sheet, the relative position of the officer or agent *vis-à-vis* the corporate body and other relevant facts and circumstances which could show that the corporate body, as such, meant or intended to commit that act.

- In the case of corporate criminal liability, the settled position of law is now that a company is virtually in the same position as any individual and may be convicted of offences including those requiring *mens rea*. Furthermore, a company cannot escape liability for a criminal offence merely because the punishment prescribed is that of *"imprisonment **and** a fine"*.
- A corporation did not have a physical body to imprison and therefore could not be sentenced to imprisonment but it could be fined for offence as provided in law.

OFFENCES UNDER CRPC

12. Distinguish between: Bailable offence & non-bailable offence [June 2011 (4 Marks)]

Ans.: Following are the main points of difference between bailable & non-bailable offence:

Points	Bailable Offence	Non-bailable Offence
Meaning	A bailable offence is an offence which is shown as bailable in **First Schedule** to the Code or which is made bailable by any other law.	A non-bailable offence means offence other than bailable offence.
Example	The First Schedule to the Code of Criminal Procedure gives a list of bailable offense, as for instance: - Rioting, - Being a member of an unlawful assembly, - Bribery.	The examples of non-bailable offences are: - Murder, - Culpable homicide, - Counter feting coins *etc.*
Seriousness	Bailable offences are **less serious.**	Non-bailable offences are **more serious.**
Cognizable/ Non-Cognizable	Bailable offences are generally **non-cognizable.**	Non-bailable offences are generally **cognizable.**
IPC	If an offence which is punishable with imprisonment for **less than 3 years or with fine only,** it is bailable.	A Non-Bailable offence is one which is punishable with a death penalty or life imprisonment for **3 years or more.**

TAXMANN®

Points	Bailable Offence	Non-bailable Offence
Arrest	Police officer is authorized to arrest **with warrant**.	Police officer is authorized arrest **without warrant**.

13. Distinguish between: Cognizable Offence & Non-Cognizable Offence [Dec. 2014 (4 Marks)], [June 2019 (4 Marks)]

Ans.: Following are the main points of difference between cognizable & non-cognizable offences:

Points	Non-cognizable offence	Cognizable offence
Meaning	Non-cognizable offence means an offence for which a police officer can make arrest with warrant.	Cognizable offence means an offence for which a police officer may arrest without warrant.
Cognizable/ Non-Cognizable	Non-cognizable offences are generally **bailable**.	Cognizable offences are generally **non-bailable**.
Seriousness	Non-cognizable offences are **less serious.**	Cognizable offences are **more serious.**
Arrest by Police Officer	Police officer is authorized to arrest **with warrant**.	Police officer is authorized arrest **without warrant.**
Example	Intentional insult, voluntarily causing hurt, assault, cheating, forgery, *etc.*	Rioting, murder, voluntarily causing grievous hurt, *etc.*

POWER OF COURTS TO PASS SENTENCE

14. Discuss the powers of various courts under the Code of Criminal Procedure, 1973. [Dec. 2009 (5 Marks)]

Ans.: Following are the powers of Court to pass sentence:

Section	Court/Magistrate	Sentence that can be passed
Section 28	High Court	Can pass **any sentence** authorized by law.
	Session Judge or Additional Session Judge	Can pass **any sentence** authorized by law. However death sentence has to be confirmed by High Court.
	Assistant Session Judge	Can pass sentence for term up to **10 years** imprisonment.

TAXMANN®

Section	Court/Magistrate	Sentence that can be passed
Section 29	Chief Judicial Magistrate	Can pass sentence for term up to **7 years** imprisonment.
	Magistrate of First Class	◆ Can pass sentence for term up to **3 years** imprisonment *or* ◆ Fine up to ₹ **10,000** *or* ◆ Both
	Magistrate of Second Class	◆ Can pass sentence for term up to **1 year** imprisonment or ◆ Fine up to ₹ **5,000** *or* ◆ **Both**
	Chief Metropolitan Magistrate	Shall have all the powers of Chief Judicial Magistrate, Magistrate of First Class and Magistrate of Second Class.

15. A Magistrate of the First Class passes a sentence of imprisonment for a term of 3 years with a fine of ₹ 10,000, and in case of failure to pay the fine, to serve an additional imprisonment for another 1 year. The convict feels aggrieved by the sentence. Can he prefer an appeal against the judgment? [Dec. 2010 (6 Marks)], [Dec. 2014 (5 Marks)]

Ans.: As Section 29 of the Code of Criminal Procedure, 1973, Magistrate of First Class:

- Can pass sentence for term up to **3 years** imprisonment or
- Fine up to ₹ **10,000** or
- **Both.**

As per Section 30, the Court of a Magistrate may award additional imprisonment in default of payment of fine. However the term of imprisonment shall not exceed 1/4th of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence.

In present case, the Judicial Magistrate of the First Class can inflict sentence of imprisonment which may extend to 3 years as punishment for the offence of theft. Therefore, the term of additional imprisonment which can be awarded in default of payment of fine cannot be more than 1/4th of 3 years. In other words, the term of additional imprisonment in default of payment fine cannot exceed 9 months. [*36 months* × *1/4* = *9 months*]

The accused is advised to challenge the validity of the sentence accordingly.

16. Angad is charged for murder of Binod. The charge sheet is filed in the Court of Chief Judicial Magistrate, who passed an order of sentence of imprisonment for life. Angad engages you as an advocate. Advise the course of action to Angad giving reasons. [Dec. 2010 (5 Marks)]

Or

'X' is charged for murder of 'Y'. The charge sheet is filed in the court of Chief Judicial Magistrate, who passed the order of sentence of life imprisonment. 'X' engages you as an Advocate. What shall be your advice in the matter? [Dec. 2013 (5 Marks)]

Answer:

According to Section 29 of the Code of Criminal Procedure, 1973, Chief Judicial Magistrate is competent to pass sentence for term up to **7 years** imprisonment. Hence, Angad can file appeal against the order of the Chief Judicial Magistrate.

17. The powers of the High Court u/s 482 of the Code of Criminal Procedure, 1973 are partly administrative and partly judicial. Elaborate.

Ans.: Section 482 of the Code of Criminal Procedure, 1973 is one of the most important sections. It says that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

The powers of the High Court u/s 482 are partly administrative and partly judicial. Inherent powers u/s 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any Courts subordinate to it and are of wide magnitude and ramification.

Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under section 482. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly and with caution.

It is well settled that the inherent powers u/s 482 can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. If an effective alternative remedy is available, the High Court will not exercise its powers under this section, especially when the applicant may not have availed of that remedy.

ARREST OF PERSONS

18. State any four categories of cases in which a police officer may arrest a person without an order from a Magistrate and without a warrant. [Dec. 2013 (4 Marks)]

TAXMANN®

Or

Section 41 of the Criminal Procedure Code, 1973 enumerates the different categories of cases in which a police officer may arrest a person without an order from a Magistrate and without a warrant. Explain any five Categories of such cases. [Dec. 2019 (4 Marks)], [Dec. 2020 (5 Marks)]

Ans.: When police may arrest without warrant [Section 41]: Any police officer may without an order from a Magistrate and without a warrant arrest any person in following cases:

(1) **Cognizable offence:** Who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned.

(2) **House-breaking:** Who has in possession, without any lawful excuse an implement of house-breaking.

(3) **Proclaimed offender:** Who has been proclaimed as an offender, either under the Criminal Procedure Code or by any order of the State Government.

(4) **Stolen property:** In whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing.

(5) **Obstruction to police officer:** Who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody.

(6) **Deserter of Armed Forces:** Who is reasonably suspected of being a deserter from any of the Armed Forces of the Union.

(7) **Offence committed out of India:** Who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India.

(8) **Breach of rule:** Who, being a released convict, commits a breach of any rule made u/s 356(5).

(9) **Requisition from another police officer:** For whose arrest any requisition, whether written or oral, has been received from another police officer. However, the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made *and* it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

Further, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or

TAXMANN®

reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate

19. A requisition was received by the sub-inspector of a police station from another police station to arrest Sameer in connection with the commission of a non-cognizable offence. Can the sub-inspector arrest Sameer?

Ans.: According to Section 41 of the Code of Criminal Procedure, 1973, the police officer can arrest a person without warrant for whose arrest a requisition is received from another police station only when the offence in connection with which arrest is required to be made is such for which that person can be lawfully arrested without a warrant.

In this case, arrest is required to be made in connection with a non-cognizable (*i.e.* bailable) offence for which warrant is necessary. Hence, Sameer cannot be lawfully arrested without a warrant. Therefore, the sub-inspector cannot arrest Sameer as per the requisition alone.

20. Can a person accused of committing a bailable offence be arrested if he refuses to give name and residence?

Ans.: Arrest on refusal to give name and residence [Section 42]: When any person who, in the presence of a police officer, has committed or has been accused of committing a *non-cognizable offence (bailable offence)* refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

21. Discuss in brief, the provisions relating to arrest by private persons.

Ans.: Arrest by a private person and procedure on such arrest [Section 43]: Any private person can arrest any person who has in his presence, committed a non-bailable or cognizable offence, or any person who is proclaimed offender.

Any person so arrested must, without unnecessary delay, be handed over to a police officer or to the nearest police station.

If, however, there is a reason to believe that he has committed a non-cognizable (*bailable*) offence, and if refuses to give his name and address to the police officer or if he gives name and address which appears to be false such a person is to be dealt with section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

22. Discuss how an arrest should be made under section 46 of the Criminal Procedure Code, 1973. [June 2023 (4 Marks)]

Ans.: Arrest how made [Section 46]:

(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

TAXMANN®

Where a woman is to be arrested, her submission to custody on an oral intimation of arrest shall be presumed. Unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest. *Thus, in normal circumstances woman can be arrested by woman police officer.*

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) 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.

(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise.

Where exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

SUMMON & WARRANT

23. Distinguish between: Warrant Case & Summons Case [June 2010 (4 Marks)]

Ans.: Following are main points of difference between warrant case & summons case.

Points	Summons Case	Warrant Case
Meaning	Summons case means relating to an offence, and not being a warrant-case.	Warrant-case means a case relating to an offence punishable with – ◆ Death *or* ◆ Imprisonment for life *or* ◆ Imprisonment for a term exceeding 2 years.
Charge	No charge need be framed.	Charge is to be framed.
Conviction	Magistrate has discretion to convict an accused, if he pleads guilty.	After the charge is framed, if the accused pleads guilty, the Magistrate may Convict him.
Discharge/ release	Accused may be released if the complainant does not appear.	Magistrate cannot discharge the accused if the complainant does not appear.

TAXMANN®

Points	Summons Case	Warrant Case
Consent for withdrawn	With the permission of the Magistrate, the compliant can withdraw his compliant.	With the consent of the Court, the compliant can withdraw the remaining charges if the accused is convicted on one or more charges.
Conversion	A summons case can be converted into a warrant case.	A warrant case cannot be converted into a summons case.

24. Distinguish between: Summons and warrant of arrest [June 2013 (4 Marks)]

Ans.: Following are main points of difference between summons and warrants.

Points	Summons	Warrants
Meaning	A Summons is a form of process issued by a Court, calling upon a person to appear before Magistrate, or to produce a document or thing.	A warrant is an order to a police officer or other person to arrest a person.
Absconding to evade service	Absconding to evade service of a summons is not punishable.	Absconding to evade service of a warrant is punishable under the Indian Penal Code, 1860.
Substituted service	Substituted service is available for summons.	Substituted service is not available for warrant.
Step	Issue of a warrant is a more drastic step than the issue of a summons.	A warrant is justified, if summon, which is duly served is disobeyed or if the accused wilfully avoids service of the summons.

25. What do you understand by 'Summon'? What the requirements of valid summon?

Ans.: Summon – Meaning: A Summon is a form of process issued by a Court, calling upon a person to appear before Magistrate, or to produce a document or thing.

Requirements of valid summon [Section 61]:

(1) It must be in writing.

(2) It must be in duplicate.

(3) It must be signed by the presiding officer of Court.

(4) It must have seal of the Court.

If any summons does not comply with all these requirements it is invalid and it can be objected to and be disregarded by the person to whom it is addressed.

TAXMANN®

It is to be noted that a Summons should be clear and specific in its terms, as to the description of the Court, the place, date and time at which the person Summoned is to attend.

26. Explain the requisites of a 'warrant of arrest'. What is the time limit within which the police officer should bring the person arrested before the Court? [June 2021 (4 Marks)]

Ans.: Warrant – Meaning: A warrant is an order to a police officer or other person to arrest a person.

Warrant of arrest [Section 70]: The issue of a warrant is a more drastic step than the issue of a summons. Ordinarily, a warrant is issued only in serious cases and after a duly served summons is disobeyed or if the accused has wilfully avoided the service of summons.

Requirements of valid warrant of arrest:

(1) It must be in writing.

(2) It must bear the name and designation of the person who is to execute it.

(3) It must give full name and description of the person to be arrested.

(4) It must state the offence charged.

(5) It must be signed by the presiding officer; and

(6) It must be sealed.

The Court issuing a warrant for the arrest of a person may, in its direction make an endorsement on the warrant that if person named in warrant execute a bond with sufficient sureties for his attendance before the Court at specified times, the officer executing the warrant can take such a Security and release the person from custody.

Person arrested to be brought before Court without delay [Section 76]: The police officer or other person executing the warrant of arrest shall bring the person arrested before the Court provided that such delay shall not in any case exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

27. What are the remedies under Criminal Procedure Code, where a warrant remains unexecuted? [Dec. 2022 (4 Marks)]

Or

Explain the procedure given in Criminal Procedure Code, 1973 for publication of proclamation regarding absconding persons. [Dec. 2021 (4 marks)]

Ans.: When a warrant remains unexecuted, the Code of Criminal Procedure, 1973 provides following two remedies:

TAXMANN®

(1) **Proclamation for person absconding [Section 82]:** If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may public a written proclamation requiring him to appear at a specified place and at a specified time not less than 30 days from the date of publishing such proclamation.

(2) **Attachment of property of person absconding [Section 83]:** The Court issuing a proclamation u/s 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person.

The object of attaching property is not to punish him but to compel his appearance.

28. Describe in brief the cases in which a Search Warrant can be issued under Section 93 in the Criminal Procedure Code, 1973.
[Dec. 2019 (4 Marks)]

Ans.: When search-warrant may be issued [Section 93]: A search warrant can be issued in the following three cases:

(1) Where the Court has reason to believe that the person to whom a Summons or order is addressed will not produce document or thing as required by summons or requisition.

(2) Where document or thing is not known to the Court to be in the possession of any person.

(3) Where general search or inspection is necessary.

The person to whom such warrant is directed may search or inspect in accordance with search warrant.

A search warrant shall not be issued for searching a document, parcel or other thing in the custody of the postal or telegraph authority by a Magistrate other than a District Magistrate or Chief Judicial Magistrate.

Similarly, Search Warrant also cannot be issued so as to affect Sections 123 & 124 of the Indian Evidence Act, 1872 or the Bankers Books Evidence Act, 1981.

TAXMANN®

SUMMARY TRIAL

29. Discuss the summary trial by a Magistrate under the Criminal Procedure Code, 1973. [Dec. 2018 (4 Marks)]

Or

What are the objects of summary trials under Criminal Procedure Code, 1973. State any four offences which may be summarily tried. [June 2023 (4 Marks)]

Ans.: Section 260 to **Section 265** of the Criminal Procedure Code, 1973 deals with the various provisions relating to summary trials.

Meaning: A summary trial implies *speedy disposal*. A summary case is thus which can be tried and disposed at once. Thus, the summary procedure is not applicable contentious and complicated case which requires a full and lengthy inquiry. Generally, it will apply to such offences not punishable with imprisonment for a term exceeding two years.

Procedure: In a summary trial, all cases should be tried by the summons procedure whether the case is a summons case or warrant case.

Offences that can be dealt with summary trial:

- Offences not punishable with death, imprisonment for life, or imprisonment for a term exceeding **2 years**.
- **Theft** of value of property **up to ₹ 2,000** u/ss 379, 380, 381 of IPC, 1860.
- Assisting in the concealment or disposal of stolen property **up to ₹ 2,000** u/s 414 of IPC.
- Receiving or retaining stolen property **up to ₹ 2,000** under Section 411 of IPC.
- Offences under Sections 454 & 456 of IPC. (lurking house, trespass *etc.*)
- In suit with intend to **provoke breach of peace** under Section 504 and Criminal Intimidation u/s 506 of IPC.
- Abetment of any foregoing offences.
- An **attempt to commit any forgoing offence**, when such attempt also is an offence.
- Any offence constituted by an act in respect of which a compliant may be made u/s 20 of the Cattle Trespass Act, 1871.

Procedure for summary trials [Section 262]: In all summary trials the summons case procedure should be followed irrespective of the nature of the case *i.e.* whether it is a summons case or a warrant case.

No sentence of imprisonment for a term **exceeding 3 months** shall be passed in any conviction in summary trials. *No limit for fine.*

TAXMANN®

Judgment in summary trials: In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reason for the finding. The concerned Magistrate must sign such record and judgment.

30. Sohan is tried summarily by the Chief Judicial Magistrate on the charge of committing theft and is sentenced to undergo rigorous imprisonment for 6 months. Sohan wants to challenge this decision. Can he do so? Discuss. [June 2012 (5 Marks)]

Ans.: According to Section 262 of the Code of Criminal Procedure, 1973, no sentence of imprisonment for a term exceeding 3 months can be passed in case of conviction in a summary trial. Thus, the sentence of 6 months imprisonment could not have been legally awarded in the given case by Chief Judicial Magistrate.

Sohan should, therefore, file an appeal before the appropriate Court challenging the quantum of punishment.

COMPOUNDING OF OFFENCES, BAIL & CONTINUING OFFENCE

31. What do you understand by Compounding of offences? Give list of offences that can be compounded under the IPC?

Ans.: Section 320 enumerates the provisions related to compounding of offences. Compounding means settlement of offence committed by a person. The settlement must be with the consent of the court of law.

There may be the times when parties to a suit do not want to continue further proceedings in the court and they want to settle it out of the court amicably, then the compounding comes into picture. In such case, future proceedings do not take place in the court.

Compoundable offence and its authority: Section 320(2) of the IPC, list of the offences which are punishable and can be compounded only with the permission of the court. Few examples are provided herewith.

Sections of IPC	Name of the offence	Who can compound the offence
325, 337 & 338	Voluntarily causing grievous hurt.	To whom hurt has been caused
357	Assault or criminal force in attempting wrongfully to confine a person.	The person assaulted or to whom the force was used.
381	Theft, by clerk or servant of property in possession of master.	The owner of the property stolen.
406 & 408	Criminal breach of trust.	The owner of the property on which a breach of trust has occurred.

TAXMANN®

Sections of IPC	Name of the offence	Who can compound the offence
418	Cheating with knowledge that wrongful loss may ensue to a person whose interest offender is bound to protect.	The person who has been cheated.
420	Cheating and dishonestly inducing delivery of property.	The person who has been cheated.

32. What do you understand by the term 'Bail'? Discuss the types of bail available under the Criminal Procedure Code, 1973

Ans.: Bail means the release of the accused from the custody and entrusting him to the private custody of persons who are sureties to produce the accused to answer the charge at the stipulated time or date.

Types of Bail:

(1) **Regular Bail:** A bail granted after the offence is committed.

(2) **Interim Bail:** A bail given during pendency of application.

(3) **Anticipatory Bail:** A bail given when a person has apprehension that he may be arrested on an accusation of having committed a non-bailable offence.

33. What is 'anticipatory bail'? Which Courts can grant anticipatory bail? [June 2001 (4 Marks)]

Ans: Anticipatory Bail: A bail given when a person has apprehension that he may be arrested on an accusation of having committed a non-bailable offence.

When granting anticipatory bail, the Court must strike a balance, so that, on the one hand, a person is protected from unnecessary humiliation, and on the other, the faith of the public and of the society in the administration of justice is not shaken.

Direction for grant of bail to person apprehending arrest [Section 438]: When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or to the Court of Session for anticipatory bail. If such a bail is granted, it may include such conditions as the Court thinks fit, including the following.

(*a*) A condition that the person should make himself available for interrogation by a police officer as and when required.

(*b*) A condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court, or to any police officer.

TAXMANN®

(*c*) A condition that the person shall not leave India without the previous permission of the Court.

(*d*) Such other condition imposed u/s 437(3) as if the bail were granted under that section.

34. Raman moves an application for anticipatory bail before a Judicial Magistrate of First Class of the area, for bailable offence. Can A get anticipatory bail?

Ans.: As per Section 438 of the Code of Criminal Procedure, 1973, anticipatory bail can be granted in a **non-bailable offence** only by the **High Court** or the **Court of Session**. Judicial Magistrate of First Class has got no power to grant anticipatory bail. Further anticipatory bail cannot be granted for bailable offence.

35. Write a short note on: Continuing Offence

Ans.: Continuing offence means an offence which is committed for a very long period. It is neither clearly defined in the IPC or CPC. Whether the offence is continuing one or not depends on its nature.

The offence which is happening and continuing again and again comes in the category of continuing offence.

Example: Munna Bhai kidnaps Babalu on 1-12-2023 and demands money from Babalu's father. Munna Bhai committed a continuing offence as long as Babalu is in possession of Munna Bhai. The offence will be over as soon as the Babalu is rescued from Munna Bhai.

Section 472 of CPC mentioned the term 'continuing offence' and states that in the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

THEFT, ROBBERY, EXTORTION & DACOITY

36. What are the essential elements of 'Theft' under the IPC? Also state the punishment for the offence of theft.

Ans.: Theft [Section 378]: Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Essential elements of theft:

1. There should an intention to dishonestly take the property.
2. The property should be movable property.
3. The property should be taken out of the possession without that person's consent.
4. The property should be moved in order to take that property.

TAXMANN®

Explanation 1: A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2: A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Punishment for theft [Section 379]: Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to **3 years** *or* with **fine** *or* with **both**.

However, there are different punishments for theft depending upon situation, which may understood with the help of below:

Situation	Punishment
Theft in dwelling house *etc.*	Imprisonment of either description for a term which may extend to 7 years, and shall also be liable to fine.
Theft by clerk or servant of property in possession of master	Imprisonment of either description for a term which may extend to 7 years, and shall also be liable to fine.
Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.	Rigorous imprisonment for a term which may extend to 10 years and shall also be liable to fine.

37. A gang of five dacoits, one of whom had a gun, raided the house of X. After looting, while they were running away with their booty, they shot down one villager. Examining the provisions of the Indian Penal Code, 1860, you are required to state whether all the Dacoits can be charged for the offence of murder?

Ans.: Dacoity [Section 391]: When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

The essentials elements of dacoity are:

1. There should be at least five persons by active participation or aiding.
2. They will commit robbery or its attempt.
3. Every person whether committing or aiding is said to commit dacoity.

As per the facts given case, the murder committed by the dacoits while carrying away the stolen property was murder committed in the commission of dacoity, and every offender was therefore liable for the murder.

CRIMINAL MISAPPROPRIATION OF PROPERTY

38. X and Y an illiterate woman were on the railway platform of Kanpur. X had ticket form Kanpur to Lucknow and Y had a ticket from Kanpur to Jhansi. Y handed over her ticket to X in order to ascertain that whether she had a genuine ticket. X under the pretence of returning Y's ticket substituted therefore his own ticket and kept Y ticket. What offence is committed by X under the Indian Penal Code, 1860?

Ans.: As per Section 403 of the Indian Penal Code, 1860, whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to 2 years *or* with fine *or* with both.

Section 403 has following ingredients:

- Dishonest misappropriation or conversion of property by a person to his use.
- Movable property.

The facts of the case are similar to the facts of the case *Raza Hussain* v. *Emperor,* in which accused was held guilty of offence of criminal misappropriation of property u/s 403 of the Indian Penal Code, 1860.

39. Naveen takes property belonging to Ganesh out of Ganesh possession in good faith belonging at the time when he takes it that the property belongs to himself. Later on Naveen discovers his mistake, dishonestly misappropriates the property to his own use. Explain what offence he has done? [June 2019 (5 Marks)]

Ans.: Dishonest misappropriation of property [Section 403]: Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished

- With imprisonment of either description for a term which may extend to **2 years** *or*
- With **fine** *or*
- With **both.**

Thus, if *A* takes property belonging to *Z* out of *Z*'s possession, in good faith, believing, at any time when he takes it, that the property belongs to himself. *A* is not guilty of theft; but if *A*, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

Facts given in case are similar to illustration appended to the Section 403 of the Indian Penal Code, 1860 and thus if Naveen dishonestly appropriates the property to his own use he commits the offence of 'dishonest misappropriation of property' and will be liable to punishment as stated above.

TAXMANN®

40. There is a contract between A and contractor B. There is another contract between B and sub-contractor C to execute same work. On completion of work C demanded money from B. On non-payment C filed a criminal complaint against B alleging that B having received the money from A had misappropriated the money. Discuss with reasons the matter of the case and offence committed by B, if any.

[Dec. 2022 (4 Marks)]

Ans.: The facts of the given case are similar to case of *U. Dhar* v. *State of Jharkhand*. In this case, there were two contracts – one between the principal and contractor and another between contractor and sub-contractor.

On completion of work sub-contractor demanded money for completion of work and on non-payment filed a criminal complaint alleging that contractor having received the payment from principal had misappropriated the money. The Magistrate took cognizance of the case and High Court refused to quash the order of Magistrate.

On appeal to the Supreme Court, it was held that matter was of civil nature and criminal complaint was not maintainable and was liable to be quashed. The Supreme Court also observed that money paid by the principal to the contractor was not money belonging to the complainant, sub-contractor, hence there was no question of misappropriation.

Thus, no offence has committed by B under the Indian Penal Code, 1860.

41. An accused was found in possession of some property which a murdered person was carrying at the time of murder. There was neither eye-witness of the murder nor did the prosecution succeed in establishing any other incriminating circumstances against the accused. Of what offence, if any, can the accused be convicted under the Indian Penal Code, 1860? Give reasons.

Ans.: If the accused was found in possession of some property which a murdered person was carrying at the time of murder and there was neither eye-witness of the murder nor did the prosecution succeed in establishing any other incriminating circumstances against the accused, the accused cannot be convicted of the offence of murder.

However, accused can be convicted for the offence of dishonest misappropriation of property possessed by the deceased person at the time of his death under Section 404 of the Indian Penal Code, 1860.

If the offence is proved then such offender shall be liable to punishment of imprisonment of either description for a term which may extend to **3 years**, and shall also be liable to **fine**. Such punishment may extend to **7 years** if the offender was employee of the deceased person.

CRIMINAL BREACH OF TRUST

42. State the essential ingredients of the offence of criminal breach of trust. [June 2021 (4 Marks)]

Ans.: Criminal breach of trust [Section 405]: Essential ingredients of the offence of criminal breach of trust are as under:

(1) The accused must be entrusted with the property or with dominion over it.

(2) The person so entrusted must use that property.

(3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation of –

- Any direction of law prescribing the mode in which such trust is to be discharged.
- Any legal contract made touching the discharge of such trust.

Example 1: *A* is a warehouse-keeper. *Z* going on a journey, entrusts his furniture to *A*, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. *A* dishonestly sells the goods. *A* has committed criminal breach of trust.

Example 2: *A*, residing in Calcutta, is agent for *Z*, residing at Delhi. There is an express or implied contract between *A* and *Z*, that all sums remitted by *Z* to *A* shall be invested by *A*, according to *Z*'s direction. *Z* remits a lakh of rupees to *A*, with directions to *A* to invest the same in Company's paper. *A* dishonestly disobeys the direction and employs the money in his own business. *A* has committed criminal breach of trust.

43. Harish instructs Somnath to invest a certain amount of money in Government securities. Somnath buys shares of XYZ Ltd. instead, believing in good faith that it would be Harish advantage. The investment results in loss. What offence, if any, is committed by Somnath under the Indian Penal Code, 1860?

Ans.: The problem is based in Criminal breach of trust as defined in Section 405 of the Indian Penal Code, 1860.

Section 405 has following ingredients:

- A person should be entrusted with property or should have control over property.
- Such person to whom the property is entrusted should dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law.

As per facts given in case, Harish instructs Somnath to invest a certain amount of money in Government securities but Somnath invest in shares of XYZ Ltd. instead, believing in good faith that it would be Harish advantage. Somnath not

TAXMANN®

having acted dishonestly has not committed criminal breach of trust although he may be liable to civil action.

44. A is a warehouse-keeper. Z going on journey entrusted his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. Before coming Z from journey, A has sold furniture. What offence has been committed by the A and what is punishment for it. Explain. [Dec. 2021 (4 Marks)]

Ans.: The problem is based in Criminal breach of trust as defined in Section 405 of the Indian Penal Code, 1860.

Section 405 has following ingredients:

- A person should be entrusted with property or should have control over property.
- Such person to whom the property is entrusted should dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law.

As per Section 406, whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to **3 years**, *or* with **fine**, *or* with **both**.

A is a warehouse-keeper. *Z* going on a journey, entrusts his furniture to *A*, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. *A* dishonestly sells the goods. *A* has committed criminal breach of trust as per Section 405 and hence can be punished as per Section 406.

45. Distinguish between: Criminal misappropriation of property & Criminal breach of trust

Ans.: Following are the main points of distinctions between criminal misappropriation of property & criminal breach of trust:

Points	Criminal misappropriation of property	Criminal breach of trust
Meaning	Dishonestly misappropriating or converting property of others for own use or benefit is known as criminal misappropriation of property.	If a person entrusted with property dishonestly misappropriates or converts it to his own use that property, or dishonestly uses or disposes of property in violation of any direction of law prescribing the mode in which such trust is to be discharged it is known as criminal breach of trust.
Section of IPC	Criminal misappropriation of property is explained in dealt by sections 403 to 404 of the Indian Penal Code, 1860.	Criminal breach of trust is explained in dealt by sections 405 to 409 of the Indian Penal Code, 1860.

TAXMANN®

Points	Criminal misappropriation of property	Criminal breach of trust
Property	Criminal misappropriation is always regarding movable property.	Criminal breach of trust may be regarding movable and immovable property.
Person	Generally, criminal misappropriation is done by near relatives, friends, joint owners etc.	Generally, the criminal breach of trust is committed by bailee, carrier, executor, agent, employee etc.
Essential element	Dishonest is the essential element of the criminal misappropriation.	In this case, the property is entrusted by the owner to offender with good faith and trust. Thereafter, the wrongdoer misappropriates it causing breach of trust.
Example	*A* finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence criminal misappropriation.	*A* is a warehouse-keeper. *Z* going on a journey, entrusts his furniture to *A*, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. *A* dishonestly sells the goods. *A* has committed criminal breach of trust.

TAXMANN®

CHEATING

46. Discuss briefly main ingredients of cheating.

Ans.: Cheating – Main Ingredients: The main ingredients of cheating are as under:

(1) Deception of any person.

(2) (*a*) Fraudulently or dishonestly inducing that person –

(*i*) to deliver any property to any person or

(*ii*) to consent that any person shall retain any property

(*b*) Intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

47. A prostitute communicated venereal disease to X who had sexual intercourse with her, on the strength of her representation that she is free from any disease. Whether the prostitute is guilty of any offence under the Indian Penal Code, 1860?

Ans.: As per facts given in case, X has sexual intercourse with a prostitute on the strength of her representation that she is free from any venereal disease but the prostitute communicated venereal disease to X. The prostitute is guilty of offence of cheating under Section 415 as act of prostitute caused damage to body and mind of X.

X would not have done sexual intercourse with the prostitute if she had not fraudulently induced him to do sexual intercourse by representing her free from venereal disease. Thus, prostitute will be held guilty of offence of cheating u/s 415 and will be punished as per Section 417 of the Indian Penal Code, 1860.

48. Write a short note on: Cheating by personation

Ans.: Cheating by personation [Section 416]: A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Punishment for cheating by personation [Section 419]: Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to **3 years**, or with **fine**, or with **both.**

Example: *Renuka receives a Face Book message and friend request that appears to have been sent from a young and smart boy – Rahul. The information sent by Rahul shows that he is Government Officer working in Satara and draws attractive salary and also that he is bachelor and seeking a beautiful girl for marriage. Attracted by the message of Rahul, Renuka meets with Rahul and they fall in love. Gradually it led to sexual relations. Later Rahul began to ask money from Renuka for one or other reason. In enquiry, it is discovered that Rahul is not a Government employee and he has taken education only up to 10th Standard. Rahul has committed offence of cheating by personation u/s 416 and will be punished u/s 419 of the Indian Penal Code, 1860.*

49. 'A' under a bona fide belief that certain property belongs to him and purchaser also under the same belief purchased the property from A. Subsequently real owner 'C' filed a complaint of cheating against 'A' for having executed a false sale deed. Whether A is liable for punishment under Indian Penal Code, 1860? Discuss. [June 2022 (4 Marks)]

Ans.: Cheating and dishonestly inducing delivery of property [Section 420]: Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to **7 years**, *and* shall also be liable to **fine.**

In *Mohd. Ibrahim & others* v. *State of Bihar and another,* the accused was alleged to have executed false sale deeds and a complaint was filed by real owner of

TAXMANN®

property. The accused had a *bona fide* belief that the property belonged to him and purchaser also believed that suit property belongs to the accused. It was held that accused was not guilty of cheating as ingredients of cheating were not present.

FRAUDULENT DEEDS & DISPOSITIONS OF PROPERTY

50. Write a short note on: Frauds connected with insolvency

Ans.: Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors [Section 421]: Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to **2 years**, *or* with **fine**, *or* with **both**.

Guwahati High Court in *Ramautar Chaukhany* v. *Hari Ram Todi*, held that an offence under this section has following essential ingredients:

(*a*) That the accused removed, concealed or delivered the property or that he transferred, it caused it to be transferred to someone.

(*b*) That such a transfer was without adequate consideration.

(*c*) That the accused thereby intended to prevent or knew that he was thereby likely to prevent the distribution of that property according to law among his creditors or creditors of another person.

(*d*) That he acted dishonestly and fraudulently.

This section specifically refers to frauds connected with insolvency. The offence under it consists in a dishonest disposition of property with intent to cause wrongful loss to the creditors. It applies to *movable* as well as *immovable properties*. In view of this section, the property of a debtor cannot be distributed according to law except after the provisions of the relevant enactments have been complied with.

51. Write a short note on: Fraudulent concealment of property

Ans.:

Dishonest or fraudulent removal or concealment of property [Section 424]: Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to **2 years**, *or* with **fine**, or with **both**.

TAXMANN®

The essential ingredients to bring an offence u/s 424 are as follows:

(*a*) There is a property.

(*b*) That the accused concealed or removed the said property or assisted in concealing or removing the said property.

(*c*) That the said concealment or removal or assisting in removal or concealment was done dishonestly or fraudulently.

OFFENCES RELATING TO DOCUMENTS & PROPERTY MARKS

52. What do you understand by the term 'forgery'? Also state the punishment for the offence of forgery as provide under the Indian Penal Code, 1860?

Or

"A mere alteration of the document does not make it a forged document unless made for some gain." Explain this statement under the Indian Penal Code, 1860. [June 2023 (4 Marks)]

Ans.: Forgery means fraudulently making or alteration of any record, deed, writing, instrument, register, stamp etc. to the prejudice of another person's right. It is a false making of written instrument for the purpose of fraud or deceit; including every alteration of or addition to a true instrument.

Provisions relating to forgery are contained in sections 463 to 465 of the Indian Penal Code, 1860.

Forgery [Section 463]: Essential elements of forgery under section 463 are as under:

1. Document or electronic record or the part of it must be false in fact.
2. It must have been made dishonestly or fraudulently.
3. Making of false document or electronic record should be with intent to –
   (*a*) cause danger or injury to public or any person *or*
   (*b*) support any claim or title *or*
   (*c*) cause any person to part with property *or*
   (*d*) enter into any express or implied contract *or*
   (*e*) commit fraud or that fraud may be committed.

Punishment for forgery [Section 465]: Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to **2 years**, *or* with **fine**, *or* with **both**.

In *Ramchandran* v. *State*, the Supreme Court held that to constitute an offence of forgery document must be made with dishonest or fraudulent intention. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

TAXMANN®

In *Parminder Kaur* v. *State of UP*, the Supreme Court held that mere alteration of document does not make it a forged document. Alteration must be made for some gain or for some objective.

53. Allegation against the accused was that he furnished a certificate to get employment as ETT Teacher which was found to be bogus and forged inasmuch as school was not recognized for period given in the certificate. However, the certificate did not anywhere say that school was recognized. Whether the accused is guilty of any offence? Explain with the help of decided judicial precedent. [Dec. 2019 (4 Marks)]

Ans.: In *Balbir Kaur v. State of Punjab,* the allegation against the accused was that she furnished a certificate to get employment as ETT teacher which was found to be bogus and forged inasmuch as school was not recognized for period given in certificate. However the certificate did not anywhere say that school was recognized.

It was held that merely indicating teaching experience of the accused, *per se*, cannot be said to indicate wrong facts. So the direction which was issued for prosecution is liable to be quashed.

54. What is property mark? What is the penalty for using a false property mark?

Ans.: Property Mark [Section 479]: A mark used for denoting that movable property belongs to a particular person is called a property mark.

Using a false property mark [Section 481]: Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

Punishment for using false property mark [Section 482]: Whoever uses any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to **1 year**, *or* with **fine**, *or* with **both**.

DEFAMATION

55. Explain the term 'Defamation'.

Ans.: Defamation is an attack on the reputation of a person. It means that something is said or done by a person which affects the reputation of another.

Defamation may be classified into following two heads:

TAXMANN©

(1) **Libel:** It is a representation made in some permanent form, *e.g.* written words, pictures, caricatures, cinema films, effigy, statue and recorded words. In a cinema films both the photographic part of it and the speech which is synchronized with it amount to tort.

(2) **Slander:** It is the publication of a defamatory statement in a transient form, statement of temporary nature such as spoken words, or gestures.

Defamation is *tort* as well as a *crime* in India.

In India both libel and slander are treated as a crime. Section 499 of the IPC recognizes both libel and slander as an offence. However, torts in criminal law are stricter than in law of torts.

56. *A*, a shopkeeper, says to *B*, who manages his business – "Sell nothing to *Z* unless he pays you ready money, for I have no opinion of his honesty." *Z* prosecutes A for defamation. Decide.

Ans.: The facts of the given case are based on Section 499 of the Indian Penal Code, 1860 and illustration appended *9th Exception*.

It is not defamation to make an imputation on the character of another provided that the imputation is made in good faith for the protection of the interests of the person making it. *A* is within the exception, as he has made this imputation on *Z* in good faith for the protection of his own interests. Thus, Z will not succeed in his case.

57. *A* was raped. *B*, the accused and owner of newspaper, published the story of *A*. *A* filed a complaint against *B*. *B* filed writ petition to quash the proceedings before the trial Court seeking the defense of first exception of Section 499 of the Indian Penal Code, 1860. State with reason whether *B* can be prosecuted and punished for the offence of defamation under the Indian Penal Code, 1860?

Ans.: The facts of the given case are similar to *A.B.K. Prasad and others v. Union of India and others*. The A.P. High Court dismissed the write petition and held that "right to privacy and right to freedom of press have to be balanced". Therefore, *Laxman Rekha* has to be drawn somewhere in public interest. If publication of truth is in public interest it would not be defamation, but if it has nothing to do with public interest and relates to privacy of an individual then it would certainly de defamatory.

Keeping in view of above decision, A will succeed in his case against B.

TAXMANN®

GENERAL EXCEPTIONS

58. *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 relive 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 India Penal Code, 1860 for a person accused of committing any offence. [June 2023 (8 Marks)]

Ans.: As per section 88 of the Indian Penal Code, 1860, nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Thus, a surgeon, knowing that a particular operation is likely to cause the death of patient, who suffers under a painful complaint, but not intending to cause patient's death and intending in good faith, patient's benefit performs that operation on patient, with patient's consent, the surgeon has committed no offence as provided in section 88.

General Exceptions: The Indian Penal Code, 1860 also provides for general exceptions for a person accused of committing any offence under the Code to plead in his defense. General defences or exceptions are contained in sections 76 to 106 of the IPC. In general exceptions to criminal liability there will be absence of *mens rea* (guilty mind) on the part of the wrongdoer. If there is any general defense of the accused in a criminal case, the burden of proving lies on him u/s 105 of the Indian Evidence Act, 1872.

The exceptions strictly speaking came within the following six categories.

(1) Judicial acts (2) Mistake of fact (3) Accident (4) Trifling Act (5) Consent (6) Absence of Criminal Intention.

(1) Mistake of fact – believing bound by law [Section 76]: Nothing is an offence, which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Examples (*As given in the Indian Penal Code, 1860*):

(*a*) *A*, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. *A* has committed no offence.

(*b*) *A*, an officer of a Court of Justice, being ordered by that Court to arrest *Y*, and, after due enquiry, believing *Z* to be *Y*, arrests *Z*. *A* has committed no offence.

(2) Act of Judge when acting judicially [Section 77]: Nothing is an offence which is done by a Judge when acting judicially in the exercise of any

TAXMANN®

power which is, or which in good faith he believes to be, given to him by law.

(3) **Act done pursuant to the judgment or order of Court [Section 78]:** Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice; if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

(4) **Mistake of fact – justified by law [Section 79]:** Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Example (*As given in the Indian Penal Code, 1860*):

A sees *Z* commit what appears to *A* to be a murder. *A*, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes *Z*, in order to bring *Z* before the proper authorities. *A* has committed no offence, though it may turn out that *Z* was acting in self-defence.

(5) **Accident in doing a lawful act [Section 80]:** Nothing is an offence, which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

The protection under this section will apply only if the act is a result of an accident or a misfortune.

The word 'accident' means an unintentional, an unexpected act.

Thus, injuries caused due to accidents in games and sports are all covered by this section.

Example (*As given in the Indian Penal Code, 1860*):

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of *A*, his act is excusable and not an offence.

(6) **Act likely to cause harm, but done without criminal intent, and to prevent other harm [Section 81]:** Nothing is an offence which is done by a child under 7 years of age.

(7) **Act of a child above seven and under twelve of immature understanding [Section 83]:** Nothing is an offence which is done by a child above 7 years of age and under 12, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

(8) **Act of a person of unsound mind [Section 84]:** Nothing is an offence which is done by a person who, at the time of doing it, by reason of

TAXMANN®

unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

(9) **Act of a person incapable of judgment by reason of intoxication caused against his will [Section 85]:** Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

(10) **Offence requiring a particular intent or knowledge committed by one who is intoxicated [Section 86]:** In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

(11) **Act not intended and not known to be likely to cause death or grievous hurt, done by consent [Section 87]:** Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above 18 years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Example (*As given in the Indian Penal Code, 1860*):

A and *Z* agrees to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if *A*, while playing fairly, hurts *Z*, *A* commits no offence.

(12) **Act not intended to cause death, done by consent in good faith for person's benefit [Section 88]:** Nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Example (*As given in the Indian Penal Code, 1860*):

A, a surgeon, knowing that a particular operation is likely to cause the death of *Z*, who suffers under a painful complaint, but not intending to cause *Z's* death and intending in good faith, *Z's* benefit performs that operation on *Z*, with *Z's* consent. *A* has committed no offence.

(13) **Act done in good faith for benefit of child or insane person, by or by consent of guardian [Section 89]:** Nothing which is done in good faith

TAXMANN®

for the benefit of a person under 12 years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person.

Example (*As given in the Indian Penal Code, 1860*):

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. *A* is within the exception in as much as his object was the cure of the child.

(14) **Consent known to be given under fear or misconception [Section 90]:** A consent is not such a consent as it intended by any section of the Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; *or*

Consent of insane person: If the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; *or*

Consent of child: Unless the contrary appears from the context, if the consent is given by a person who is under 12 years of age.

(15) **Exclusion of acts which are offences independently of harm caused [Section 91]:** The exceptions in sections 87, 88 & 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Example (*As given in the Indian Penal Code, 1860*):

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence *"by reason of such harm"* and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

(16) **Communication made in good faith [Section 93]:** No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Example (*As given in the Indian Penal Code, 1860*):

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. *A* has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

(17) **Act causing slight harm [Section 95]:** Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

NOTE: ***Student's are expected write any six points out of the above as required by the question.***

TAXMANN®

8 CHAPTER LAW RELATING TO EVIDENCE

EVIDENCE, FACT IN ISSUE & RELEVANT FACTS

1. Section 3 of the Indian Evidence Act, 1872 deals with the term 'Evidence'. Explain it. [Dec. 2020 (4 Marks)]

Ans: Evidence [Section 3]: Evidence means and includes:

(1) All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; **(*i.e.* oral evidence)**

(2) All documents including electronic records produced for the inspection of the Court. **(*i.e.* documentary evidence)**

Evidence may be either oral or personal *i.e.* all statements which the Court permits or requires to be made before it by witnesses, and documentary, which may be adduced in order to prove a certain fact which is in issue.

2. Distinguish between: 'Relevant Facts' & 'Facts in issue' [Dec. 2011 (4 Marks)]

Ans: Relevant Fact [Section 3]: One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

Where in a case direct evidence is not available to prove a fact in issue then it may be proved by any circumstantial evidence and in such a case every piece of circumstantial evidence would be an instance of a "relevant fact".

Sections 6 to 55 of the Indian Evidence Act, 1872 deal with relevancy of facts. A fact is also known as *factum prolans* or a fact that proves.

Facts in issue [Section 3]: Facts in issue means and includes any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceedings, necessarily follows.

Explanation: Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

TAXMANN®

3. State the physical and psychological fact with suitable examples as enumerated in Indian Evidence Act, 1872. [June 2022 (4 Marks)]

Ans: Fact [Section 3]: Fact means and includes –

(1) Anything, state of things, or relation of things, capable of being perceived by the senses.

(2) Any mental condition of which any person is conscious.

Physical Facts: Physical facts mean and include anything, state of a thing or relation of things, capable of being perceived by senses. In other words, all facts which are subject to the perception by bodily senses are physical facts. They are also called external facts.

Psychological Facts: Psychological facts cannot be perceived by senses. They are also known as internal facts.

Illustrations:

(*a*) That there are certain objects arranged in a certain order in a certain place, is a fact.

(*b*) That a man heard or saw something, is a fact.

(*c*) That a man said certain words, is a fact.

(*d*) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(*e*) That a man has a certain reputation, is a fact.

Illustrations (*a*), (*b*) and (*c*), are the examples of physical facts whereas the illustrations (*d*) and (*e*) are the examples of psychological bids.

4. All facts logically relevant are not legally relevant. Narrate. [Dec. 2022 (4 Marks)]

Ans: One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of the Act relating to the relevancy of facts. Sections 6 to 55 deals with relevancy of facts. Every fact legally relevant will be found to be logically relevant. But there are some facts which though logically relevant but legally not relevant as common sense or logical relevancy is wider than legal relevancy.

Legal relevancy and admissibility: Relevancy and admissibility are not co-extensive or interchangeable terms. A fact may be legally relevant, yet its reception in evidence may be prohibited on the grounds of public policy, or on some other ground.

Similarly every admissible fact is not necessarily relevant. The tenth Chapter of the Act makes a number of facts receivable in evidence, but these facts are not "relevant" under the second Chapter, which alone defines relevancy.

TAXMANN®

RELEVANCY OF FACTS CONNECTED WITH THE FACT TO BE PROVED

5. Write a short note on: Rule of *res gestae* [June 2011 (4 Marks)]

Or

'A' is accused of the murder of 'B' by beating him. Discuss the rule of relevancy of fact of the statement said or done by 'A' or, 'B' or the by standers at the beating, or so shortly before or after it.

[Dec. 2021 (4 Marks)]

Ans: There are certain facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction. This is known *as rule of res gestae*.

Section 6 embodies the rule of admission of evidence relating to what is commonly known as *res gestae*.

Relevancy of facts forming part of same transaction [Section 6]: Facts which, though not in issue are so connected with the fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different time and place.

Example: A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after is as to form part of the transaction, is a relevant fact.

The above section lays down the rule which in English text books is treated under the head of *res gestae*.

The essence of the doctrine of *res gestae* is that the facts which, though not in issue are so connected with the fact in issue as to form part of the same transaction and thereby become relevant like fact in issue.

6. Ajoy, after learning that Chander had been murdered by Bijoy, went to the spot and found that the body of Chander was being taken to the house of Chander by four persons who told him that Bijoy had murdered Chander and he had run away. Is the statement of Ajoy that he was told by four persons that Bijoy had murdered Chander and run away admissible as evidence? [Dec. 2004 (6 Marks)]

Ans: As per Section 6 of the Indian Evidence Act, 1872, facts which, though not in issue are so connected with the fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different time and place.

In this case, Ajoy is by stander he was told by other by stander that Bijoy had murdered Chander and run away. Hence, this is not admissible as evidence as it will be considered as hearsay.

7. Satyam is facing trial for the charge of committing murder of Raja at Pune at 5.00 p.m. on 5th November, 2019. Satyam wants to prove that he had a telephonic conversation with Nalin, from Delhi on 5th November, 2024 at about 3.30 p.m. Will he be permitted to do so?
[Dec. 2000 (5 Marks)]

Ans: As per Section 11 of the Indian Evidence Act, 1872, a fact which is inconsistent with fact in issue, is relevant fact.

The fact that Satyam had a telephonic conversation with Nalin from Delhi on 5th November, 2019 at about 3.30 p.m. is inconsistent with the fact that he was present on the date of murder *i.e.* 5th November, 2024 in Pune at 5.00 p.m.

ADMISSION & CONFESSIONS

8. Distinguish between: Confession & Admission
[Dec. 2013 (4 Marks)], [Dec. 2018 (4 Marks)]

Or

How far confession differs from admission as defined in Indian Evidence Act, 1872?
[June 2022 (4 Marks)]

Or

"Every confession must be an admission but every admission may not amount to a confession." Examine this statement. [June 2023 (4 Marks)]

Ans: Following are main points of distinction between confession & admission:

Points	Confession	Admission
Meaning	A confession is a statement made by an accused person admitting that he has committed an offence.	An admission is a statement which suggests any inference as to any 'fact in issue' or 'relevant fact'.
Who makes	A confession is made by an accused.	Admissions can be made by other persons also.
Proceedings	*Confession finds place in criminal proceedings.*	*Admissions are generally used in civil proceedings, yet they may be used in criminal proceedings.*
Treatment	Every confession is an admission.	Every admission in a criminal case is not a confession.
Culpatory	Confession statement is culpatory.	Admission is exculpatory.
Proved	Confession is proved only for purposes mentioned in the Indian Evidence Act, 1872.	Admitted facts need not be proved.
Where inadmissible	A confession is inadmissible in evidence if it has been made under promise, threat or due to inducement.	No such conditions are applicable to an admission.

TAXMANN®

Points	Confession	Admission
Effect	A confession always goes against the person making it.	An admission, on the contrary, may be used on behalf of the person making it under the exception provided in Section 21.

9. A confession made by an accused on the faith of a promise made by the police officer making the investigation that he would get off if he made a disclosure of the offence committed by him or would get pardon. Whether such a confession made by the accused is admissible in evidence? Answer citing the relevant provisions of law. [Dec. 2011 (6 Marks)]

Ans: As per Section 24 of the Indian Evidence Act, 1872, a confession is irrelevant as an admission if it is made to a person in authority in consequence of some inducement, threat or promise held out by him in reference to the charge against the accused. Further Section 25 provides that confession made to a police officer shall not be proved against a person accused of any offence. Hence, confession made by accused person to police officer is inadmissible in evidence.

10. 'Confession caused by inducement, threat or promise is irrelevant'. Explain briefly. [June 2019 (4 Marks)]

Ans: As per Section 24 of the Indian Evidence Act, 1872, a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any *inducement*, *threat* or *promise* having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

11. An accused person makes a confessional statement to the police officer in the hearing and presence of a private person. Can the private person give evidence of the confessional statement made by the accused person so as to be proved against the accused? [June 2006 (5 Marks)]

Ans: As per Section 25 of the Indian Evidence Act, 1872, no confession made to a police officer shall be proved as against a person accused of any offence.

As per Section 26, no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

In given case, there is no Magistrate present; hence, the private person cannot give evidence of the confessional statement of the accused so that it can be proved against the accused.

TAXMANN®

12. A was tried for the murder of B whose body was found in a well and the ornaments that B was wearing were missing from his body. A, while in police custody, during investigation said that he had removed the ornaments, pushed B into the well and had pledged the ornaments with C. In consequence of this statement the ornaments were recovered from C. Discuss the admissibility of A's statement. [June 2002 (5 Marks)]

Ans: As per Section 27 of the Indian Evidence Act, 1872, when any fact is deposed to as discovered in consequences of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether if amounts to a confessions or not, as relates distinctly to the fact thereby discovered, may be proved. The effect is that so much of the information as relates distinctly to the fact thereby discovered is admissible in evidence.

In given case, A had given three information's, namely –

- He had removed the ornaments.
- He pushed B into the well.
- He pledged the ornaments with C.

In consequence of the statement of A, the ornaments were recovered from C. However, only the last information that he pledged the ornaments with C is discovered and hence, it can be proved by A's admission. The other two information's do not distinctly relate to the recovery of ornaments from C. Hence, they cannot be proved by A's admission.

13. Anand is on his trial for the murder of Chanchal. There is evidence to show that Chanchal was murdered by Anand and Birender and that Birender said, "Anand and I murdered Chanchal." Can the Court take into consideration this statement against Anand? Will your reply be different in case there is joint trial against Anand and Birender? Give reasons. [June 2005 (6 Marks)]

Ans: According to Section 30 of the Indian Evidence Act, 1872, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

In given case Anand and Birender are not jointly tried hence Court cannot take into consideration this statement given by Birender against Anand.

If they are jointly tried then Court may take into consideration confession of Birender as against Anand as well as Birender.

TAXMANN®

14. On 20th March, Kamal told his wife that he was going to Berhmpore, as Pankaj's wife has written a letter and asked him to come and receive payments due to him. On 21st March, Kamal left his house in time to catch a train for Berhmpore, where Pankaj lived with his wife. On 23rd March, Kamal's dismembered body was found in a box which had been purchased for Pankaj. Decide whether on the trial of Pankaj for the murder of Kamal, the statement made by Kamal to his wife was admissible in evidence. If so, on what grounds? [June 2009 (6 Marks)]

Ans: In Indian law, for admissibility of a statement as dying declaration it is not necessary that, at the time when the deceased made the statement there must be danger to his death and he must also entertain a reasonable apprehension of his death.

The statement of Kamal is admissible in evidence as his dying declaration as per Section 32 of the Indian Evidence Act, 1872 because it throws light upon the probable cause of his death or as to any of the circumstances of the transaction which resulted in his death.

Therefore, although at the time Kamal made the statement, there was no danger to his life, yet this statement can be accepted in evidence as the dying declaration of Kamal.

15. Extra-judicial confession was made before a witness who was a close relative of accused and the testamony of said witness was reliable and truthful. Examine the relevancy of this confession. [June 2021 (4 Marks)]

Answer:

Confessions are classified as:

(*a*) **Judicial confessions:** Judicial confessions are those made before a Court or recorded by a Magistrate after following the prescribed procedure such as warning the accused that he need not to make the confession and that if he made it, it would be used against him.

(*b*) **Extra-judicial confessions:** Extra-judicial confessions are those which are made either to the police or to any person other than Judges and Magistrates as such.

An extra-judicial confession, if voluntary, can be relied upon by the Court along with other evidence. It will have to be proved just like any other fact. The value of the evidence depends upon the truthfulness of the witness to whom it is made.

In *Ram Khilari* v. *State of Rajasthan,* the Supreme Court held that where an extra-judicial confession was made before a witness who was a close relative of the accused and the testimony of said witness was reliable and truthful, the conviction on the basis of extra judicial confession is proper.

Therefore, in the given situation, the Extra-Judicial confession may be relevant.

TAXMANN®

OPINION OF EXPERTS/THIRD PERSONS

16. Explain: Expert Opinion under the Indian Evidence Act, 1872. [June 2012 (4 Marks)], [June 2019 (4 Marks)]

Ans: Opinion of experts [Section 45]: When the Court has to form and opinion upon a point of foreign law or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts.

Examples:

(*a*) *The question is, whether the death of A was caused by poison.*

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(*b*) *The question is, whether a certain document was written by X.*

Another document is produced which is proved or admitted to have been written by X. The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

17. When the opinion of any person is relevant except experts under the Indian Evidence Act, 1872? [June 2021 (4 Marks)]

Ans: The Indian Evidence Act, 1872 provides that, in addition to the opinions of experts, opinion of any other person is also relevant in the following cases:

(*a*) **Opinion as to hand-writing, when relevant [Section 47]:** Opinion as to the handwriting of a person if the person giving the opinion is acquainted with the handwriting of the person in question.

(*b*) **Opinion as to digital signature, when relevant [Section 47A]:** Opinion as to the digital signature of any person, the opinion of the Certifying Authority which has issued the Electronic Signature Certificate.

(*c*) **Opinion as to existence of right or custom, when relevant [Section 48]:** Opinion as to the existence of any general right or custom if the person giving the opinion is likely to be aware of the existence of such right or custom.

(*d*) **Opinion as to usages, tenets etc. when relevant [Section 49]:** Opinion as to usages etc. words and terms used in particular districts, if the person has special means of knowledge on the subject.

(*e*) **Opinion on relationship, when relevant [Section 50]:** Opinion expressed by conduct as the existence of any relationship by persons having special means of knowledge on the subject.

TAXMANN®

ORAL, DOCUMENTARY & CIRCUMSTANTIAL EVIDENCE

18. "Hearsay evidence is no evidence". Explain this rule of law. Is hearsay evidence ever admissible? [Dec. 2000 (8 Marks)]

Ans: Section 59 of the Indian Evidence Act, 1872 provides that, except contents of document, all other facts may be proved by oral evidence.

Section 60 enacts that, oral evidence must not be indirect or hearsay. The term 'hearsay' is not mentioned in the legislation, it is in constant use in the Court of law. In a larger context, it can be termed as statements oral or written reported to have been made by persons, not called witnesses.

Example: Amar gives the evidence in the Court that "he had seen Baban while making murder of Chirag". It is direct evidence and is admissible.

However, if Amar gives the evidence that he has heard from someone that "Baban murdered Chirag" is hearsay evidence and is not admissible.

Reasons for rejection of hearsay evidence: There are many reasons for rejection of hearsay evidence, among them being:

- Irresponsibility of the original declarant.
- Depreciation of truth in the process of repetition.
- Chances for fraud on its admission.
- Waste of time involved in listening to idle rumour *etc.*

Hearsay evidence is therefore not ordinarily accepted in line with the principle that best available evidence should be brought before the Court. Section 60 puts an embargo on reception of hearsay evidence. However, it does not apply when the object is not to establish the truth of one's statement but only to establish the fact that one did make a statement.

19. Distinguish between: Primary Evidence & Secondary Evidence [June 2010 (4 Marks)]

Or

Write a short note on: Primary Evidence & Secondary Evidence [June 2011 (4 Marks)]

Ans: Primary Evidence [Section 62]: Primary evidence means the document itself produced for the inspection of the Court.

Secondary Evidence [Section 63]: Secondary evidence is generally in the form of compared copies, certified copies or copies made by such mechanical processes as in themselves ensure accuracy. Secondary evidence means and includes –

(*a*) Certified copies.

(*b*) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies.

TAXMANN®

(c) Copies made from or compared with the original.

(d) Counterparts of documents as against the parties who did not execute them.

(e) Oral accounts of the contents of a document given by some person who has himself seen it.

20. Write a short note on: Circumstantial Evidence
[Dec. 2010 (4 Marks)]

Ans: Circumstantial evidence is evidence which strongly suggests something, but does not exactly prove it. Circumstantial evidence simply helps people draw inferences about a fact, or the events that took place. This type of evidence is, on its own, considered to be weak or ineffective, so it is used in conjunction with direct evidence in both criminal and civil cases. Whether or not the Court makes the intended inference has a major impact on the outcome of the case.

Example: Meena testifies in Court that she saw Rohan standing over a man with a bloody knife in his hand. Menna did not see Rohan stab the victim, so she can only testify and describe what she saw. This circumstantial evidence is likely not enough by itself to convict Rohan, so the prosecution provides other evidence which, when added to Meena's testimony, leads the Court to the conclusion that Rohan stabbed the victim.

21. What is 'documentary evidence' under Indian Evidence Act, 1872? Explain briefly.
[Dec. 2018 (4 Marks)]

Ans: Documentary Evidence: A "document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used for the purpose of recording that matter. Documents produced for the inspection of the Court is called documentary evidence.

Proof of contents of documents [Section 61]: The contents of documents may be proved either by primary or by secondary evidence.

FACTS OF WHICH EVIDENCE CANNOT BE GIVEN

22. A, a client, says to B, an advocate, "I have committed a murder and I want you to defend me". Whether the advocate can disclose the aforesaid communication to the court or to the police?

Ans: As per Section 126 of the Indian Evidence Act, 1872, no barrister, attorney, pleader or vakil shall at any time be permitted, to disclose any communication made to him in the course and for the purpose of his employment. However, disclosure is permitted with his client's express consent.

TAXMANN®

Accordingly, in the given case the communication of A to B cannot be disclosed by B.

23. Kamini informed Ajay in the year 2001 that she had committed theft of the jewellery of her neighbour. Thereafter, Kamini and Ajay were married in 2002. In the year 2003, criminal proceedings were instituted against Kamini in respect of the theft of jewellery. Ajay is called to give evidence in the case. Decide whether Ajay can disclose the communication made to him by Kamini. **[June 2010 (5 Marks)]**

Ans: As per Section 122 of the Indian Evidence Act, 1872, no person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married. No such person shall he be permitted to disclose any such communication, unless the person, who made it, or his representative, consents.

Thus, the communication made by Kamini or Ajay during married life is a privileged one and Ajay cannot be compelled or permitted to disclose the same in the capacity of a witness.

In this case, Kamini gave the information to Ajay in 2014, but they got married in 2015. Thus, communication is made 'before marriage' and not 'during the marriage'. Hence, Ajay can give evidence and disclose the communication made to him by Kamini because Kamini communicated with Ajay before her marriage with Ajay.

24. There are some facts of which evidence cannot be given, though they are relevant. They are also referred to as 'privileged communications'. Discuss briefly. **[Dec. 2014 (4 Marks)]**

Or

The 'Privileged Communications' are based on Public Policy and a witness cannot be compelled to answer the same during the evidence in the Court or before any other authority. Explain in brief. **[June 2019 (4 Marks)]**

Ans: There are some facts of which evidence cannot be given though they are relevant, such as facts coming under Sections 121 to 127, where evidence is prohibited under those sections. They are discussed as follows:

(1) **Privilege of Judge or Magistrate [Section 121]:** No Judge or Magistrate shall be compelled to answer any question as to his own conduct in Court or as to anything that has come to his knowledge in Court as a Judge or Magistrate. But he can be compelled to give evidence on a special order of Superior Court.

(2) **Communications during marriage [Section 122]:** No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been

TAXMANN®

married. No such person shall he be permitted to disclose any such communication, unless the person, who made it, or his representative, consents.

However in suits between married persons or proceedings in which one married person is prosecuted for any crime committed against the other disclosure of communication will be allowed.

(3) **Evidence as to affairs of State [Section 123]:** No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State. However, with the permission of the officer at the head of the department evidence as to unpublished official records can be given.

(4) **Official communications [Section 124]:** No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

(5) **Information as to commission of offences [Section 125]:** No Magistrate or Police Officer shall be compelled to say when he got any information as to the commission of any offence, and no Revenue-Officer shall be compelled to say when he got any information as to the commission of any offence against the public revenue.

(6) **Professional communication [Section 126]:** No barrister, attorney, pleader or vakil shall at any time be permitted, to disclose any communication made to him in the course and for the purpose of his employment. However, disclosure is permitted with his client's express consent. However, nothing in this section shall protect from disclosure –

(*a*) Any such communication made in furtherance of any illegal purpose.

(*b*) Any fact observed showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf on his client.

25. Explain in brief 'Principle of Estoppel' under Indian Evidence Act, 1872. [Dec. 2008 (4 Marks)], [Dec. 2018 (4 Marks)]

Ans: Estoppel [Section 115]: 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.

Example: A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

TAXMANN®

Principle of Estoppel is based on the maxim *'allegans contratia non est audiendus' i.e.* **a person alleging contrary facts should not be heard**. It says that man cannot ***approbate*** and ***reprobate***, or that a man cannot blow *hot* and *cold*, or that a man shall not say one thing at one time and later on say a different thing.

26. Write a short note on: Rules relating to presumptions [Dec. 2010 (4 Marks)]

Ans: Court may presume existence of certain facts [Section 114]: The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

(1) Presumptions are inferences which are drawn by the court with respect to the existence of certain facts.

(2) When certain facts are presumed to be in existence the party in whose favour they are presumed to exist need not discharge the burden of proof with respect to it. This is an exception to the general rule that the party which alleges the existence of certain facts has the initial burden of proof but presumptions do away with this requirement.

(3) Presumptions can be defined as an affirmative or negative inference drawn about the truth or falsehood of a fact by using a process of probable reasoning from what is taken to be granted.

(4) A presumption is said to operate where certain fact are taken to be in existence even there is no complete proof.

(5) A presumption is a rule where if one fact which is known as the primary fact is proved by a party then another fact which is known as the presumed fact is taken as proved if there is no contrary evidence of the same.

(6) Presumption is a rule which is used by judges and courts to draw inference from a particular fact or evidence unless such an inference is said to be disproved.

Presumptions can be classified into certain categories:

- Presumptions of fact
- Presumptions of law
- Mixed Presumptions

27. 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. [June 2023 (5 Marks)]

Ans.: Principle of Estoppel: Estoppel is based on the maxim *'allegans contratia non est audiendus' i.e.* a person alleging contrary facts should not be heard. The

TAXMANN®

principle of estoppel covers one kind of facts. It says that man **cannot approbate** and **reprobate**, or that a man **cannot blow hot** and **cold**, or that a man shall not say one thing at one time and later on say a different thing.

The doctrine of estoppel is based on the principle that it would be most inequitable and unjust that if one person, by a representation made, or by conduct amounting to a representation, has induced another to act as he would not otherwise have done, the person who made the representation should not be allowed to deny or repudiate the effect of his former statement to the loss and injury of the person who acted on it. [*Sorat Chunder* v. *Gopal Chunder*]

In *Biju Patnaik University of Tech. Orissa* v. *Sairam College*, one private university permitted to conduct special examination of students prosecuting studies under one time approval policy.

After inspection, 67 students were permitted to appear in the examination and their results declared. However, university declined to issue degree certificates to the students on the ground that they had to appear for further examination for another condensed course as per syllabus of university. It was held that once students appeared in an examination and their results declared, the university is estopped from withholding degree certificate after declaration of results.

In view of above, Patra University must issue degree to successful student who have appeared in an examination under a special scheme and cannot ask students to appear for further examination on the additional subject. Patra University is estopped from withholding degree certificate after declaration of results.

TAXMANN®

9 CHAPTER LAW RELATING TO SPECIFIC RELIEF

SPECIFIC PERFORMANCE OF CONTRACTS

1. "A contract may not always be specifically enforceable." Comment. [Dec. 2011 (4 Marks)]
What are the contracts which cannot be specifically enforced under the Specific Relief Act, 1963?
[Dec. 2019 (3 Marks)], [Dec. 2020 (3 Marks)], [June 2022 (3 Marks)]

Ans.: The specific performance of a contract shall be enforced by the Court subject to the provisions contained in Section 11(2), Section 14 & Section 16.

Thus, in following cases contract cannot be enforced by the Court as a general rule:

(*i*) A contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced. [Section 11(2)]

Example: Ram is trustee of land with power to lease it for 7 years. He enters into a contract with Shyam to grant a lease of the land for 7 years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced because trustee has acted in excess of his power

(*ii*) Contracts mentioned in Section 14.

(*iii*) Specific performance of a contract that cannot be enforced in favour certain persons mentioned in Section 16.

Contracts not specifically enforceable [Section 14]: Following contracts cannot be specifically enforced:

(*a*) Where a party to the contract has obtained *substituted performance of contract* in accordance with the provisions of section 20.

(*b*) A contract, the performance of which involves the performance of a continuous duty which the Court cannot supervise.

(*c*) A contract which is so dependent on the personal qualifications of the parties that the Court cannot enforce specific performance of its material terms.

(*d*) A contract which is in its nature *determinable.

TAXMANN®

** Determinable = Capable of being brought to an end under given conditions; Liable to come to an end upon the happening of a certain contingency.*

2. A contracts to sell B a piece of land consisting of 100 bighas. It turns out that 98 bighas of the land belongs to A and the two remaining bighas to a stranger, who refuses to part with them. B files the suit for specific performance against A. Decide with the help of the legal provisions, whether the specific performance suit is maintainable.
[June 2008 (5 Marks)], [Dec. 2018 (5 Marks)]

Ans.: According to Section 12(*2*) of the Specific Relief Act, 1963, if the part which is left unperformed bears only a small proportion of the whole in value and admits of compensation in money, the Court may at the suit of *either party*, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

In given case part left unformed is small portion of whole *i.e.* 2 bighas of land, hence Court may at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

PERSONS FOR OR AGAINST WHOM SPECIFIC PERFORMANCE IS AVAILABLE

3. Who may obtain specific performance of contract?
[Dec. 2012 (4 Marks)]

Or

Against whom specific performance of a contract may be enforced under the Specific Relief Act, 1963? Explain. [June 2019 (3 Marks)]

Ans.: Who may obtain specific performance [Section 15]: The specific performance of a contract may be obtained by:

(1) Any party thereto.

(2) The **representative in interest** (*i.e.* agent) or the **principal**.

(3) Where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, **any person beneficially entitled** there under.

(4) **Remainder-man**.

(5) A **reversioner in possession**.

(6) A **reversioner in remainder**.

(7) The **new company which arising out of the amalgamation.**

(8) **Promoters** of a company, when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such a *contract is warranted by the terms of the incorporation* of the

company and the *company has accepted the contract* and has *communicated such acceptance* to the other party to the contract.

(9) When LLP has entered into a contract and subsequently becomes amalgamated with another LLP, the new LLP which arises out of the amalgamation.

Generally, only a party to the contract can get its specific performance. The section gives the list of persons who can sue for specific performance of a contract. The general principle is that in a suit for specific performance of a contract, all the parties to the contract should be parties to the suit and no one else.

4. Mention persons against whom specific performance cannot be enforced. [June 2012 (5 Marks)]

Or

Are there any personal bars for obtaining specific performance? [Dec. 2012 (4 Marks)]

Ans.: Personal bars to relief [Section 16]: Specific performance of a contract cannot be enforced in favour of a person:

(1) Who has obtained substituted performance of contract u/s 20.

(2) Who has became incapable of performing, or violates any essential term of the contract or acts in fraud or wilfully acts at variance in relation to contract.

(3) Who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him.

Contract to sell or let property by one who has no title, not specifically enforceable [Section 17]: A contract to sell or let any immovable property cannot be specifically enforced in favour of vendor or lessor –

(*a*) Who knowing himself not have any title to the property, has contracted to sell or let the property.

(*b*) Who cannot give the purchaser or lessee a title free from reasonable doubt.

Non-enforcement except with variation [Section 18]: Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up in the following cases, namely:

(*i*) Whereby fraud, mistake of fact or misrepresentation, the written contract of which performance is sought is in its terms or effect different from what the parties agreed to, or does not contain all the terms agreed to between the parties on the basis of which the defendant entered into the contract.

TAXMANN®

(*ii*) Where the object of the parties was to produce a certain legal result which the contract as framed is not calculated to produce.

(*iii*) Where the parties have subsequently to the execution of the contract, varied its terms.

RECTIFICATION, RESCISSION & CANCELLATION

5. Distinguish between – Rectification of Instrument and Cancellation of Instrument. [June 2022 (3 Marks)]

Ans.: When instrument may be rectified [Section 26]:

Rectification means correction of an error in an instrument.

Where a contract reduced into writing in pursuance of a previous agreement, but fails to express the real intension of the parties, the Court will rectify the instrument in accordance with their true intension.

Court allows rectifying the instrument if following conditions are satisfied.

(*a*) There must a complete agreement and it must be in writing.

(*b*) There must be clear evidence of mutual mistake or of fraud.

(*c*) It does not show the real intention of the parties.

However, this section doesn't apply to the Article of Association of company to which Companies Act, 2013 applies.

It should be noted that no relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed.

The only limitation placed on the Courts discretion is that the rectification can be done without prejudice to the right acquired by third persons in good faith and for value.

When cancellation may be ordered [Section 31]: *Please refer to answer of Question No. 6.*

6. State the grounds under which an instrument can be cancelled under the Specific Relief Act, 1963. [June 2014 (6 Marks)]

Ans.: When cancellation may be ordered [Section 31]: A written document which is void or voidable against a person may cause him in some cases a serious injury, if it is left outstanding. In such a case, if he has any such apprehension, he may file a suit to have the document adjudged void or voidable.

Example: X, the owner of a ship, by fraudulently representing it to be seaworthy, induces Y, an underwriter, to insurer ship, Y may obtain the cancellation of the policy.

TAXMANN®

Conditions for relief:

(*a*) The instrument sought to be cancelled is void or voidable against the plaintiff.

(*b*) He has reasonable apprehension of serious injury from the instrument if it is left outstanding.

(*c*) That the apprehended injury is serious and in view of the circumstances of the case the Court considers it reasonable and necessary to cancel the document.

If the instrument has been registered under the Registration Act, 1908 the Court shall also send a copy of its decree to the officer in whose office the instrument has been registered.

Instruments may be partially cancelled [Section 32]: Where an instrument is evidence of different rights or different obligations, the court may, in a proper case, cancel it in part and allow it to stand for the residue.

Example: X executes a deed of mortgage in favour of Y for loan of ₹ 1,20,000. A gets back the deed from Y by fraud and endorses on it a receipt for ₹ 1,20,000 purporting to be signed by Y. Y's signature is forged. Y is entitled to have the endorsement cancelled, leaving the deed to stand in other respects.

DECLARATORY DECREE & PREVENTIVE RELIEF

7. A, a Hindu, in a suit to which B, his alleged wife is the defendant, seeks a declaration that his marriage was duly solemnised and prays for the order of restitution of conjugal rights. The Court makes the declaration and order of restitution of conjugal rights. C, a third party claiming that B is his wife, sues A for the recovery of B. Decide whether the declaration made in the former suit is binding upon C. [Dec. 2014 (3 Marks)]

Ans.: According to Section 35 of the Specific Relief Act, 1963, a declaratory decree is binding only on the parties to the suit in which there decree is passed, or on persons claiming through such parties respectively.

Since, C was not party to the suit in which decree was passed, it is not binding against him.

8. Write a short note on: Temporary and perpetual injunction. [June 2011 (4 Marks)]

Or

Distinguish between: Temporary Injunction & Perpetual Injunction. [Dec. 2022 (3 Marks)]

Ans.: Following are main points of distinction between temporary and perpetual injunction:

TAXMANN®

Points	Temporary Injunction	Perpetual Injunction
Meaning	A temporary injunction is a Court Order prohibiting an action by a party to a lawsuit until there has been a trial or other Court action.	A perpetual or permanent injunction is a type of order issued by a Court after a full trial on the merits of a case has been conducted.
Nature	A temporary injunction is provisional in nature as it does not and cannot conclude or determine a right.	Perpetual injunction is permanent in nature as it concludes or determines rights upon the merits of the suit.
Governing statue	Temporary injunctions also known as interlocutory and are granted under the **Civil Procedure Code 1908.**	Perpetual injunctions are granted under **Section 38** of the **Specific Relief Act, 1963.**
Stage of granting	It is granted before plaintiff establishing his case at the trial and continues up to a specified time.	Perpetual injunction can be granted after hearing the defendant and upon the merits of the suit.
Replacement	Temporary injunction may be replaced by perpetual injunction on merits of the case.	Perpetual injunction cannot be replaced by temporary injunction.

9. Distinguish between: 'Remedies of specific performance' and 'remedies of injunction'. **[Dec. 2012 (4 Marks)]**

Or

Distinguish between: 'Specific performance' and 'injunction'. **[June 2013 (4 Marks)], [June 2019 (3 Marks)]**

Ans.: Following are main points of distinction between remedies of specific performance and remedies of injunction:

Points	Remedies of specific performance	Remedies of injunction
Meaning	Sometimes monetary compensation may not be adequate remedy, in that case the aggrieved may pray to Court and may get an order against other party to fulfil obligation it has undertaken. This is known as specific relief.	Where a party is in breach of a negative term of a contract *i.e.* where he is doing something which he promised not to do, the Court may by issuing an order, restrain him from doing what he promised not do so. Such an order of the Court is known as injunction.

TAXMANN®

Points	Remedies of specific performance	Remedies of injunction
Order	Orders of specific performance are issued to do specifically what party has agreed to do.	Orders of injunctions are issued from prohibiting a person from doing what he has promised not to do.
Coverage	Specific performances are issued for performance of *contracts*.	Injunctions can be issued for *contracts* as well for *torts*.

10. Explain 'mandatory injunction' under the Specific Relief Act, 1963. [Dec. 2014 (4 Marks)]

Ans.: Sometimes, to prevent the breach of an obligation and to compel the performance of certain acts, Court may at its discretion grant an injunction, such injunctions are known as mandatory injunction. The mandatory injunctions may be one of the following type –

(*i*) Restitutory

(*ii*) Prohibitory

Example 1: A, by new buildings, obstruct light to the access and use of which B has acquired a right under the Limitation Act, 1963. B may obtain an injunction not only to restrain A from going on with the buildings, but also to pull down so such of them as obstructs B's light.

Example 2: A threatens to publish statements concerning B which would be punishable under the Indian Penal Code, 1860. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B.

Example 3: A being's medical adviser, threatens to publish A's written communication with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

11. Enumerate the circumstances in which perpetual injunction can be granted under Specific Relief Act, 1963.
[Dec. 2020 (3 Marks)], [June 2021 (3 Marks)], [Dec. 2022 (3 Marks)]

Ans.: Perpetual injunctions [Section 37(2)]: A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

Perpetual injunction when granted [Section 38]: When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases, namely:

(1) Where the defendant is trustee of the property for the plaintiff.

(2) Where there exists no standard for ascertaining the actual damage caused or likely to be caused.

(3) Where compensation in money could not afford adequate relief.

(4) Where the injunction is necessary to prevent a multiplicity of judicial proceedings.

TAXMANN®

10 CHAPTER LAW RELATING TO LIMITATION

BAR OF LIMITATION & EXTENSION OF LIMITATION

1. Explain the 'doctrine of sufficient cause' for condonation of delay as provided in section 5 of the Limitation Act, 1963.
[June 2012 (5 Marks)]

Or

The test of 'Sufficient Cause' is purely an individualistic test, under the Limitation Act, 1963 Clarify. **[Dec. 2020 (4 Marks)]**

Ans.: Section 5 of the Limitation Act, 1963 allows the extension of prescribed period in certain cases on sufficient cause being shown for the delay. This is known as doctrine of "sufficient cause".

Section 5 provides that any appeal or application **(*not plaint or suit*)** may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Section 5 applies only to appeals or applications. The reason for non-applicability of the Section to suits is that, the period of limitation allowed in most of the suits extends from **3 to 12 years** whereas in appeals and application it does not exceed **6 months**.

Examples of sufficient cause: What is sufficient cause and what is not may be explained by the following judicial observations:

(*a*) **Wrong practice of High Court** which misled the appellant or his counsel in not filing the appeal should be regarded as sufficient cause under Section 5.

(*b*) In certain cases, **mistake of counsel** may be taken into consideration in condensation of delay, but such mistake must be *bona fide*.

(*c*) **Wrong advice given by advocate** can give rise to sufficient cause in certain cases.

(*d*) **Mistake of law** in establishing or exercising the right given by law may be considered as sufficient cause. However, ignorance of law is not excuse,

TAXMANN®

not the negligence of the party or the legal adviser constitutes a sufficient cause.

(*e*) **Imprisonment of the party or serious illness** of the party may be considered for condonation of delay.

(*f*) **Time taken for obtaining certified copies** of the decree of the judgment necessary to accompany the appeal or application was considered for condoning the delay.

(*g*) **Non-availability of** the file of the case to the **State Counselor Panel Lawyer** is no ground for condonation of inordinate delay.

(*h*) **Ailment of father** during which period the defendant was looking after him has been held to be a sufficient and genuine cause.

2. The decision of a Court allowing a suit which had been instituted after the period prescribed is not vitiated for want of jurisdiction. Discuss it in the light of provisions under section 3 relating to Bar of Limitation under Limitation Act, 1963. [June 2021 (4 Marks)]

Ans.: Bar of Limitation [Section 3]: Any *suit*, *appeal* or *application* if made beyond the prescribed period of limitation, it is the duty of the Court not to proceed with such suit, appeal and application.

This provision of Section 3 is known as 'Bar of Limitation'. The provisions of Section 3 are *mandatory*.

The Court can *suo motu* take note of the question of limitation. The question whether a suit is barred by limitation should be decided on the facts as they stood on the date of presentation of the plaint. It is a vital section upon which the whole Limitation Act depends for its efficacy.

The effect of Section 3 is not to deprive the Court of its jurisdiction.

Therefore, decision of a court allowing a suit which had been instituted after the period prescribed is not vitiated for want of jurisdiction. A decree passed in a time barred suit is not a nullity.

3. Discuss the provisions relating to persons under legal disability under the Limitation Act, 1963. [Dec. 2019 (4 Marks)]

Ans.: Legal disability [Section 6]: Law of limitation relating to legally disabled persons is explained below:

(1) If a person entitled to institute a suit or make an application is a minor, insane or idiot at the time of cause of action, the period of limitation to file a suit or to make an application will start when such disability ceases.

(2) Where one legal disability is followed by another legal disability, the disabilities are successive and the limitation period will run when all the legal disabilities are ceased.

TAXMANN®

(3) If a legal disability continues up to a death, then period of limitation will run for legal representative (who is not legally disabled) from the date of death.

(4) Where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died.

BARRING REMEDY NOT RIGHT

4. "Law of limitation bars the remedy in a court of law only when the period of limitation has expired, but it does not extinguish the right that it cannot be enforced by judicial process." Elaborate.
[Dec. 2014 (4 Marks)]

Or

The Law of Limitation under the Limitation Act, 1963 bars the remedy but it does not extinguish the right. Explain in brief.
[June 2019 (4 Marks)]

Ans.: Barring Remedy Not Right: The Law of limitation is based on equitable principle that *equity helps the diligent and not the indolent*. It induces the claimants to be prompt in claiming the relief.

The law of limitation bars the remedy only after the limitation period has expired, but it does not extinguish a right on which the suit has to be based. In all personal actions the right subsists although the remedy is no longer available. If, therefore, a creditor, whose debt becomes statute barred, has any means of realizing and enforcing claim by any method except by a suit, the Limitation Act does not prevent him from recovering his debt by such means. Thus, if a time barred debt is settled outside the Court, it is not illegal. If the debtor without being aware of bar of time pays debt, he cannot sue the creditor to refund the money paid to him on the ground of recovery being time barred.

Example: Ram owes Shyam a sum of ₹ 2,00,000. The debt is barred because of the law of limitation. The Court shall dismiss the suit if filed by Shyam for the recovery of the debt after the period of limitation (*i.e.* after 3 years). However, if Ram pays Shyam the amount even after the same has become time barred, the payment would be a valid one.

5. "Law of limitation bars the remedy, but does not extinguish the right." Explain the statement with its exceptions. [Dec. 2011 (4 Marks)]

Ans.: Barring Remedy Not Right: *Please refer to answer of Question No. 4.*

The Limitation Act, 1963 makes specific provisions for exclusion of certain time in some cases for computation of the prescribed period of limitation. These provisions are as under:

TAXMANN®

- Exclusion of time in legal proceedings. [Section 12]
- Exclusion of time during which leave to sue or appeal as a pauper is applied for. [Section 13]
- Exclusion of time *bona fide* taken in a court without jurisdiction. [Section 14]
- Exclusion of time in certain other cases. [Sections 15, 16 & 17].

CONTINUOUS RUNNING OF TIME

6. "Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it." Comment. [Dec. 2011 (4 Marks)], [Dec. 2014 (4 Marks)]

Or

Explain the meaning of continuous running of time under Section 9 of Limitation Act with exceptions and applicability. [Dec. 2022 (4 Marks)]

Ans.: Continuous running of time [Section 9]: Once a period of limitation starts no subsequent disability or inability can stop it. The applicability Section 9 is limited to suits and applications only and does not apply to appeals unless the case fell within any of the exceptions provided in the Act itself. Section 9 applies when the cause of action or right to move the Court continues to exist on the date of making the application. Thus, the time runs, when the cause of action accrues. Thus, once time has begun to run, no subsequent disability or inability stops it.

Exceptions: Time for limitation runs when the cause of action accrues. However, certain exceptions were provided in Sections 4 to 8.

(1) Section 4 provides that if the period prescribed expires on a day when the Court is closed, the application *etc.*, may be made on the day, the Court reopens.

(2) As per Section 5 condonation of delay is allowed on sufficient grounds.

(3) Sections 6, 7 & 8 allow extension of time in certain cases of disability.

7. Manoj died on 3rd August, 2016 before a right to institute a suit accrued, leaving behind a minor son (age of 15 years). Decide the time from where the period of limitation shall be calculated under Limitation Act, 1963. [Dec. 2018 (4 Marks)]

Ans.: Effect of death on or before the accrual of the right to sue [Section 16]: In case of death of a person before the right to institute a suit accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting such suit or making such application.

TAXMANN®

In the given case, the period of limitation shall be computed from the time when the minor son attain the age of majority and become eligible/capable of filing a suit or making such application as required under the Law.

COMPUTATION OF PERIOD OF LIMITATION

8. The law of limitation bars the remedy in a court of law when the period of limitation has expired. However, there are certain exclusions in the computation of the period of limitation. Explain. [June 2011 (4 Marks)]

Or

Computation of period of limitation for an appeal or an application for leave to appeal. Comment. [Dec. 2012 (4 Marks)]

Ans.: The Limitation Act, 1963 makes specific provisions for exclusion of certain time in some cases for computation of the prescribed period. These provisions are follows:

(1) In case of any suit, appeal or application, the period of limitation is to be computed exclusive of the day on which the time begins to run. **[Section 12(1)]**

(2) The day on which the judgment complained or was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded. **[Section 12(2)]**

(3) Time required for obtaining a copy of the judgment on which the decree or order is founded shall also be excluded. **[Section 12(3)]**

(4) Time required for obtaining a copy of the award shall be excluded. **[Section 12(4)]**

(5) Time during which the applicant has been prosecuting in good faith, his application for "leave to sue or appeal as a pauper is applied for", shall be excluded. **[Section 13]**

(6) Civil proceeding relating to the matter in issue had been initiated in a Court which is unable to entertain it, by lack of jurisdiction or by any other like cause shall be excluded. **[Section 14]**

(7) **Exclusion of time in certain other cases [Sections 15 & 16]:**

(*a*) If suit or application for the execution of a decree had been stayed by an injunction or order then such period of injunction shall be excluded.

(*b*) Time required obtaining the sanction/consent of the Government shall be excluded.

(*c*) The time during which the defendant has been absent from India and from the territories outside India but administered by the Central Government, shall be excluded.

TAXMANN®

(*d*) Where the suit or application is a based upon the fraud or mistake of the defendant or respondent or his agent or in other cases as mentioned in Section 17, the period of limitation shall not begin to run until the plaintiff or applicant has discovered fraud or mistake subject to certain exceptions.

9. Explain the importance of 'time requisite for obtaining a copy' under the Limitation Act, 1963 with the help of case law.
[June 2022 (4 Marks)]

Ans.: The Limitation Act, 1963 makes specific provisions for exclusion of certain time in some cases for computation of the prescribed period.

Following are the provisions relating to exclusion of time required to obtain copy:

(1) The day on which the judgment complained or was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded. [Section 12(*2*)]

(2) The time required for obtaining a copy of the judgment on which the decree or order is founded shall also be excluded. [Section 12(*3*)]

(3) The time required for obtaining a copy of the award shall be excluded. [Section 12(*4*)]

The term "time requisite for obtaining a copy" means the time which is reasonably required for obtaining such a copy. The Supreme Court in the case of *Udayan China Bhai* v. *R.C. Bali*, held that by reading section 12(2) with *Explanation* it is not possible to accept the submission that in computing the time requisite for obtaining copy of a decree by an application made after preparation of the decree, the time that elapsed between the pronouncement of the judgment and the signing of the decree should be excluded.

10. Indicate period of limitations for filing a suit in respect of the following:
(*i*) Wages to a seaman
(*ii*) Wages due to other employees
(*iii*) Price of food or drink sold by the keeper of a hotel, tavern or lodging house
(*iv*) Compensation for false imprisonment
(*v*) Compensation for malicious prosecution
(*vi*) To enforce payment of money secured by a mortgage
(*vii*) For possession of an immovable property
(*viii*) Suit by a mortgagor to redeem or recover the possession of immovable property mortgaged

TAXMANN®

Ans.: The limitation period prescribed for the various cases is as follows:

Cases	*Limitation*
Wages to a seaman	3 years
Wages due to other employees	3 years
Price of food or drink sold by the keeper of a hotel, tavern or lodging house	3 years
Compensation for false imprisonment	1 year
Compensation for malicious prosecution	1 year
To enforce payment of money secured by A mortgage	12 years
For possession of an immovable property	12 years
Suit by a mortgagor to redeem or recover the possession of immovable property mortgaged	30 years

11. What is maximum and minimum period of limitation prescribed by Limitation Act, 1963 and also state that in which kind of suits it is provided ? **[Dec. 2021 (4 Marks)]**

Ans.: Maximum period of limitation: The maximum period of limitation prescribed by the Limitation Act, 1963 is **30 years** and it is provided only for three kinds of suits:

1. Suits by mortgagors for the redemption or recovery of possession of immovable property Mortgaged.
2. Suits by mortgagee for foreclosure.
3. Suits by or on behalf of the Central Government or any State Government including the State of Jammu and Kashmir.

Minimum period of limitation: The minimum period of limitation of **10 days** is prescribed for application for leave to appear and defend a suit under summary procedure from the date of service of the summons.

12. Name the kind of suits for which period of limitation prescribed by the Limitation Act is 30 years and 12 years respectively. **[Dec. 2022 (4 Marks)]**

Ans.: Various suits for which limitation period is 30 years and 12 years under the Limitation Act, 1963 are as follows:

Suit by a mortgagor to redeem or recover the possession of immovable property mortgaged	30 years
Suit by a mortgagee for foreclosure	30 years
Other suits relating to immovable property	12 years
Suits relating to trusts and trust property	12 years

TAXMANN®

EFFECT OF ACKNOWLEDGEMENT AND OF PAYMENT OF DEBT/INTEREST

13. What is the effect of acknowledgement on the period of limitation under section 18 of the Limitation Act, 1963?
[June 2019 (4 Marks)], [June 2021 (4 Marks)]

Ans.: Effect of acknowledgement [Section 18]: Following are the requirements for a valid acknowledgement:

(*a*) There must be *admission* or *acknowledgement*.

(*b*) Such acknowledgement must be of an *existing liability in respect of a property or right*.

(*c*) It must be made in *writing and signed* by the party against whom such property or right is claimed, and

(*d*) It must be made *before the expiry of period of limitation*.

If all the above conditions are satisfied, a fresh period of limitation shall be computed from the time when the acknowledgement was signed.

14. State the effects of 'acknowledgement' and 'payment against debt' on the period of limitation.
[Dec. 2011 (4 Marks)]

Ans.: *Valid acknowledgement:* *Please refer to answer of Question No. 13.*

Effect of payment of debt or interest [Section 19]: Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made.

Thus, according to this Section *a fresh period of limitation becomes available to the creditor when part-payment of debt is made by the debtor before the expiration of the period of limitation.*

15. On 30th November, 2008, Mohan took a loan of ₹ 20,000 from Sohan. He paid ₹ 5,000 to him on 31st August, 2011, towards part-payment. After that, Sohan did not receive any amount from Mohan. Subsequently, Sohan instituted a suit for recovery of the dues from Mohan after the expiry of 2 years from the date of last part-payment. Advise, whether (*i*) the suit is maintainable; and (*ii*) the part-payment is an acknowledgment of payment.
[June 2014 (6 Marks)]

Ans.: Limitation period for the present case is 3 years from the date of loan. Thus limitation period will start from 1-12-2008 and will end on 30.11.2011.

According to Section 19 of the Limitation Act, 1963 *a fresh period of limitation becomes available to the creditor when part-payment of debt is made by the debtor before the expiration of the period of limitation.*

TAXMANN®

As per facts given in case Mohan has made part payment on 31-8-2011 *i.e.* before the expiry of original limitation period hence a fresh period of limitation of 3 years will start from 31-8-2011. Since, Mohan has made application after 2 years from the date of 31-8-2011, the suit is maintainable as limitation period will end at 3 years from the date of 31-8-2011.

LIMITATION & WRITS

16. Explain in brief the relationship between the statute of Limitation and Writs under the Constitution. [June 2023 (4 Marks)]

Ans.: 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 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. To put curbs in the way of enforcement of Fundamental Rights through legislative action might well be questioned under Article 13(*2*). It is against the State action that Fundamental Rights are claimed. [*Tilokchand Motichand* v. *H.P. Munshi*]

The Limitation Act, 1963 does not in terms apply to a proceeding 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*]

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.

If the right to property is extinguished by prescription under section 27 of the Limitation Act, 1963, there is no subsisting right to be enforced under Article 32 of the Constitution. In other case where the remedy only, not the right, is extinguished by limitation the Court will refuse to entertain stale claims on the ground of public policy. [*Tilokchand Motichand* v. *H.P. Munshi*]

LAXMANN®

11 CHAPTER
LAW RELATING TO ARBITRATION, MEDIATION & CONCILIATION

ALTERNATIVE DISPUTE RESOLUTION

1. What is meant by Alternative Dispute Resolution (ADR)? Which are the areas in which ADR works? [June 2016 (5 Marks)]

Or

Does the Alternate Dispute Resolution (ADR) processes provide procedural flexibility of a conventional trial? Explain. [June 2017 (5 Marks)]

Or

"Alternative Dispute Resolution is not an alternative to the court system but only meant to supplement the same aiming on less lawyering". Comment. [Dec. 2021 (4 Marks)]

Ans.: Alternative Dispute Resolution (ADR) refers to any means of settling disputes outside the courtroom. ADR typically includes early neutral evaluation, negotiation, conciliation, mediation, and arbitration. As burgeoning court queues, rising costs of litigation, and time delays continue to plague litigants, more states have begun experimenting with ADR programs.

While the two most common forms of ADR are arbitration and mediation, negotiation is almost always attempted first to resolve a dispute. It is the pre-eminent mode of dispute resolution. Negotiation allows the parties to meet in order to settle a dispute. The main advantage of this form of dispute settlement is that it allows the parties themselves to control the process and the solution.

In India we have system of 'Panchyat' where senior people from village would resolve dispute between people. Similarly in Arbitration two parties in dispute appoint third person to solve their dispute. Thus, dispute gets solved out of Court and hence it is known as Alternate Dispute Resolution (ADR).

Areas in which ADR works: Almost all disputes including commercial, civil labour and family disputes, in respect of which the parties are entitled to conclude a settlement, can be settled by an ADR procedure. ADR techniques have been proven to work in the business environment, especially in respect of resolution of disputes.

TAXMANN®

Importance of Alternative Dispute Resolution (ADR):

- ADR processes provide procedural flexibility, save valuable time and money and avoid the stress of a conventional trial.
- ADR can help in reducing the workload of regular Courts and in long run can pave way in solving the problem of judicial arrears before the Courts of law.
- ADR is not meant to supplant the court system because the conclusions arrived through these mechanisms are recognized by the Courts and there are provisions in law that allow for appeal against the ADR outcome in regular courts.
- Arbitration, mediation and conciliation are three of the most popular means of ADR.
- Arbitration is the means by which parties to a dispute get the same settled through the intervention of a third person but without recourse to a Court of Law. The parties repose confidence in the judgment of the arbitrator and show their willingness to abide by his decision.

2. What is *ad hoc* arbitration? [Dec. 2014 (5 Marks)]

Ans.: An *ad hoc* arbitration is one which is not administered by an institution and therefore, the parties are required to determine all aspects of the arbitration like the number of arbitrators, manner of their appointment, procedure for conducting the arbitration, etc.

Ad hoc arbitration is a proceeding that is not administered by others and requires the parties to make their own arrangements for selection of arbitrators and for designation of rules, applicable law, procedures and administrative support, provided the parties approach the arbitration in a spirit of cooperation. *Ad hoc* proceedings can be more flexible, cheaper and faster than an administered proceeding. The absence of administrative fees alone makes this a popular choice.

DEFINITIONS & APPLICABILITY

3. State the reason and purpose of Arbitration & Conciliation (Amendment) Act, 2015 passed by the Parliament. [Dec. 2022 (4 Marks)]

Ans.: The Arbitration & Conciliation Act, 1996 aims at streamlining the process of arbitration and facilitating conciliation in business matters. The Act recognizes the autonomy of parties in the conduct of arbitral proceedings by the arbitral tribunal and abolishes the scope of judicial review of the award and minimizes the supervisory role of Courts. The autonomy of the arbitral tribunal has further been strengthened by empowering them to decide on jurisdiction and to consider objections regarding the existence or validity of the arbitration agreement.

With the passage of time, some difficulties in the applicability of the Arbitration & Conciliation Act, 1996 have been noticed. Interpretation of the provisions of

the Act by Courts in some cases have resulted in delay of disposal of arbitration proceedings and increase in interference of Courts in arbitration matters, which tend to defeat the object of the Act.

With a view to overcome the difficulties, the Arbitration & Conciliation (Amendment) Act, 2015 passed by the Parliament:

- To improve legal framework.
- To facilitate and encourage Alternative Dispute Mechanism.
- To settle disputes in more user-friendly manner.
- To reduce the costs of litigations
- To save valuable time and money.

4. Explain: International Commercial Arbitration [Dec. 2009 (4 Marks)]

Or

Explain in brief the 'International Commercial Arbitration' under the Arbitration & Conciliation Act, 1996. [Dec. 2018 (4 Marks)]

Ans.: International Commercial Arbitration [Section 2(*f*)]: International commercial arbitration means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is:

(*a*) An individual who is a national of, or habitually resident in, any country other than India; *or*

(*b*) A body corporate which is incorporated in any country other than India; *or*

(*c*) An association or a body of individuals whose central management and control is exercised in any country other than India; *or*

(*d*) The Government of a foreign country.

5. Ram and Shyam entered into agreement to refer a dispute relating to genuineness of a will to an arbitral tribunal. In spite of this, Shyam commenced proceedings relating to this dispute in the district court of competent jurisdiction. Ram filed an application for stay of legal proceedings under the Arbitration & Conciliation Act, 1996. Will Ram succeed? Explain. [June 2011 (5 Marks)]

Ans.: Ram will not succeed. Section 2(3) of the Arbitration & Conciliation Act, 1996 provides that certain disputes relating to testamentary matters like validity of a will cannot be referred to the arbitration.

Where some special and specific law is enacted for the purpose of determination of a matter, such matter cannot be referred to arbitration. The question to the geniuses of a will can only decided in accordance with law dealing with probate as given in the India Succession Act.

TAXMANN®

Hence, such a dispute cannot be referred to arbitration. In this view of the matter, the arbitration agreement, the Court cannot grant the remedy of stay of legal proceeding to Ram.

6. How has the 'Court' been defined under the Arbitration and Conciliation Act, 1996? [Dec. 2014 (5 Marks)]

Ans.: Court means –

(1) The Principal Civil Court of original jurisdiction in a district.

It includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit.

However, the term court does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

(2) In the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit.

In other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court.

7. Define 'legal representative' under the Arbitration and Conciliation Act, 1996. [Dec. 2014 (3 Marks)]

Ans.: Legal Representative [Section 2(*1*)(*g*)]: Following are the persons who are legal representatives:

(1) A person who in law represents the estate of a deceased person.

(2) A person who intermeddles with the estate of the deceased.

(3) A person on whom the estate of a deceased person devolves on the death of the party acting in a representative capacity.

Following persons are generally included in the list of legal representatives:

(*a*) Executors and administrators properly appointed.

(*b*) Person who has taken on himself duties and responsibilities which belong to the executor or administrator though only in respect of a part of the estate.

(*c*) Heirs-at-law whether they take succession or by survivorship.

(*d*) Revisioners when the action has been brought by or against the widow representing her husband's estate.

(*e*) Universal legatee.

Following is the list of those who do not come within the meaning of legal representative, so far as the Act is concerned:

TAXMANN®

(*i*) An assignee from a deceased zamindar or to whom the holding reverts on the death of a tenant.

(*ii*) A trespasser or a person who claims adversely the estate of the deceased.

(*iii*) A new trustee appointed or elected on the death of the deceased trustee.

8. What is an 'arbitral award' under the Arbitration & Conciliation Act, 1996? Explain. [June 2015 (5 Marks)]

Or

Explain the basic features of Arbitral Award under the Arbitration & Conciliation Act, 1996. [June 2019 (4 Marks)]

Or

State the form and contents of Arbitral award. [Dec. 2013 (4 Marks)], [June 2022 (4 Marks)]

Or

Briefly state the essential features of an Arbitral Award under the Arbitration and Conciliation Act, 1996. [June 2023 (4 Marks)]

Ans.: Arbitral Award [Section 2(*1*)(*c*)]: Arbitral award includes an interim award. The definition does not give much detail of the ingredients of an arbitral award.

Essentials of arbitral award:

(1) Writing: An arbitral award shall be made in writing.

(2) Singing: An arbitral award shall be signed by the members of the arbitral tribunal. In arbitral proceedings with more than one arbitrator, the signatures of the **majority** members shall be sufficient so long as the reason for any omitted signature is stated.

(3) Reasons: The arbitral award shall state the reasons upon which it is based except for following two cases:

(*a*) Parties have agreed that no reasons are to be given.

(*b*) Award is an arbitral award on agreed terms u/s 30.

(4) Date & place of award: The arbitral award shall state its **date** and the **place** of arbitration and the award shall be deemed to have been made at that place.

(5) Delivery of copy: After the arbitral award is made, a signed copy shall be delivered to each party.

(6) Interim arbitral award: At any time during the arbitral proceedings, arbitral tribunal may make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

TAXMANN®

(7) **Interest:** If an arbitral award is for the payment of money, the arbitral tribunal may include interest in its award at such rate as it deems reasonable. Sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of **2% higher than the current rate of interest** prevalent on the date of award, from the date of award to the date of payment.

(8) **Costs of arbitration:** Unless otherwise agreed by the parties the costs of arbitration shall be fixed by the arbitral tribunal.

9. What is meant by 'arbitration agreement' under the Arbitration & Conciliation Act, 1996? Should the arbitration agreement be in writing and whether jurisdiction of civil court is barred?
[Dec. 2015 (5 Marks)], [Dec. 2019 (5 Marks)]

Ans.: Arbitration Agreement [Section 7]: Arbitration agreement means an agreement by the parties submit to arbitration all or certain dispute which have arisen or which may arise between them in respect of defined legal relationship whether contractual or not. An arbitration agreement must be in writing.

Power to refer back for arbitration [Section 8]: Jurisdiction of Civil Court is not barred due to arbitration agreement. However, if a party approaches Court despite the arbitration agreement, the other party can raise objection to Court along with certified copy of arbitration agreement. If Court is satisfied that dispute is subject to arbitration it must refuse to admit case and refer back for arbitration

Continuance of arbitration pending application: An application has been made as above and that the issue is pending before the Judicial Authority, arbitration may be commenced or continued and arbitral award is made.

INTERIM MEASURES BY COURT

10. Explain the provisions for obtaining interim relief from Court, when there exists arbitration agreement among parties.[June 2019 (4 Marks)]

Or

Explain the interim measures of protection for which a party during the arbitral proceedings may apply to the arbitral tribunal under section 17(1) of Arbitration and Conciliation Act, 1996. [June 2021 (4 Marks)]

Ans.: Interim measures by Court [Section 9]: Before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced, a party may, apply to a Court in following cases:

Appointment of a guardian: Appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings.

Interim Measures: An interim measure of protection in respect of following matters:

TAXMANN®

(a) The preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement.

(b) Securing the amount in dispute in the arbitration.

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorizing any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

(d) Interim injunction or the appointment of a receiver.

(e) Such other interim measure of protection as may appear to the Court to be just and convenient.

In all above cases, the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

APPOINTMENT OF ARBITRATORS

11. Discuss the provisions regarding the appointment of arbitrators under the Arbitration and Conciliation Act, 1996. [June 2017 (7 Marks)]

Ans.: Arbitrator: A person who is appointed to determine difference and disputes between two or more parties by their mutual consent is called an arbitrator. The parties may appoint whomsoever they please to arbitrate on their dispute. However, his appointment is not complete till he has accepted the reference.

Number of Arbitrators [Section 10]: The parties are free to determine the number of arbitrators provided that such number **shall not be an even number**. Thus, the Arbitral Tribunal can consist of 1, 3, 5, 7 or any number of persons, provided that number of arbitrators must be an **odd number**.

If the **parties fail** to make the determination, the arbitral tribunal shall consist of a **sole arbitrator** (*i.e.* only one).

Appointment of Arbitrators [Section 11]:

(a) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(b) The parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(c) If they are unable to agree in arbitration with three arbitrators each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(d) If a party fails to appoint an arbitrator within 30 days or if two appointed arbitrators fail to agree on the third arbitrator within 30 days, the party can request the Supreme Court or as the case may be, the High Court or

TAXMANN®

the person or institution designated by that Court for the appointment of arbitrator.

(*e*) The Supreme Court or High Court can authorize any person or institution to appoint an arbitrator *e.g.* **India Council for Arbitration** or **Indian Society of Arbitrators** *etc.*

(*f*) Decision on appointment of arbitrators by the Supreme Court or High Court or the person or institution designated by that Court, is final.

(*g*) The Supreme Court or High Court or the person or institution designated by that Court would have due regard to qualifications of arbitrators agreed between the parties, and considerations likely to secure an independent and impartial arbitrator.

12. Discuss in brief the provisions for challenging the arbitrator under the Arbitration & Conciliation Act, 1996. [Dec. 2018 (8 Marks)]

Ans.: Grounds for Challenge for appointment of Arbitrator [Section 12]: The person intended to be appointed as arbitrator must be independent and impartial.

When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances —

(*a*) Such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

(*b*) Which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of 12 months.

Further an arbitrator, from the time of his appointment and throughout the arbitral proceedings shall, without delay, disclose to the parties in writing any circumstances likely to affect independence or impartiality.

An appointment of arbitrator may be challenged only if:

- Circumstances exists that give rise to **justifiable doubts** as to his **independence** or **impartiality.**
- He does **not possess the qualification** agreed to by the parties.

Challenge Procedure [Section 13]:

(1) The parties are **free to agree** on a procedure for challenging an arbitrator.

(2) If parties are agreed upon a procedure and if challenge fails, then the arbitral tribunal shall continue the arbitral proceeding and make an arbitral award.

TAXMANN®

(3) Where an arbitral award is made, the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with Section 34.

(4) Sometimes parties may fails to agree upon the challenge procedure. Then also party is entitled to challenge an arbitrator, **within 15 days after becoming aware of the constitution** of the arbitral tribunal.

ARBITRAL PROCEEDINGS

13. State the provisions of Section 25 in Arbitration of Conciliation Act, 1996 regarding default of a party. [Dec. 2020 (4 Marks)]

Ans.: Proceedings [Section 25]:

(1) Failure to communicate claim: If claimant fails to communicate his claim within time then arbitral tribunal shall terminate the proceeding. However, if claimant shows a sufficient cause, proceedings cannot be terminated.

(2) Statement of defense: If the respondent fails to communicate his statement of defense within time limit, tribunal can continue the proceeding.

(3) Appearance of parties: If any party fails to appear at oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on evidence before it.

14. Write a short note on: Appointment of expert by an arbitral tribunal under the Arbitration & Conciliation Act, 1996 [Dec. 2010 (4 Marks)]

Ans.: Appointment of expert [Section 26]:

(*a*) The arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal.

(*b*) The arbitral tribunal may require a party to give relevant information or to produce, or to provide access to, any relevant documents, goods or other property for inspection of expert.

(*c*) If any party request, the expert may participate in oral hearings.

(*d*) On request of any party, the expert shall make available all documents, goods or other property in his possession.

15. Making of additional award by arbitral tribunal. Comment. [Dec. 2012 (4 Marks)]

Ans.: Additional Award: A party may also request the arbitral tribunal to make an additional award regarding the any claim presented in the proceeding but same is omitted from the arbitral award.

If the arbitral tribunal considers the above request and if it thinks fit, it may give additional award within **60 days** from the receipt of request.

TAXMANN®

CORRECTION, INTERPRETATION & SETTING ASIDE OF AWARD

16. Discuss the provision relating to correction and interpretation of an award under the Arbitration and conciliation Act, 1996.

Ans.: Correction and interpretation of award & additional award [Section 33]: After issuing the arbitral award, if any party feels that there is mistake in award or they require the interpretation on any matter, they may within **30 days** from the receipt of arbitral ward:

(*a*) Apply to arbitral tribunal to correct any **computation error**, any **clerical or typographical error** or any **other errors of similar nature** by giving to notice to other party.

(*b*) Apply to arbitral tribunal to give interpretation of specific point or part of the award.

If the arbitral tribunal think fit it shall correct the award or give the interpretation within 30 days from the receipt of request.

The arbitral tribunal may correct any above type of error within 30 days from the date of the arbitral award.

17. Enumerate the grounds on which an arbitral award may be challenged before Court. [Dec. 2013 (5 Marks)], [June 2016 (5 Marks)]

Or

Discuss in detail, the grounds for setting aside arbitral award with special reference to public policy doctrine under the Arbitration & Conciliation Act, 1996. [June 2018 (8 Marks)]

Or

Under the circumstances and arbitral award may be set aside by the Court under the provisions of Arbitration and Conciliation Act, Explain any four. [Dec. 2019 (4 Marks)]

Ans.: Application for setting aside arbitral award [Section 34]: When the party making the application furnishes proof to the Court regarding following circumstances, Court may set aside the award:

(1) A party was under some incapacity.

(2) Arbitration agreement is not valid under the law to which the parties have subjected it.

(3) Party making the application was not given proper notice.

(4) Award is not in accordance with the term of submission.

(5) Arbitral tribunal was not properly constituted.

(6) Arbitral procedure was not in accordance with the agreement of the parties.

TAXMANN®

(7) Subject matter of the dispute is not capable of settlement by arbitration.

(8) Arbitral award is in conflict with the public policy of India.

An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award. However, an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

Time limit: An application for setting aside may not be made after **3 months** have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made u/s 33, from the date on which that request had been disposed of by the arbitral tribunal.

If the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of 3 months it may entertain the application within a further period of **30 days**, but not thereafter.

On receipt of an for setting aside arbitral award the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

Notice to other party: An application shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

Time limit to dispose application: An application under this section shall be disposed of expeditiously, and in any event, within a period of **1 year** from the date on which the notice is served upon the other party.

18. Anil moves an application for setting aside the arbitral award on the ground that he was not given a proper notice of the arbitral proceedings and thereby not being able to present his case. He furnishes sufficient proof and pleads before the court that he received the arbitral award just 15 days back. Decide with reasons:

(*i*) Whether Anil will succeed in his prayer and

(*ii*) Whether the law of limitation will not be a bar in his case.

[Dec. 2010 (5 Marks)], [Dec. 2013 (5 Marks)] [June 2014 (5 Marks)]

Ans.: Section 34 of the Arbitration & Conciliation Act, 1996 provides various grounds on which an arbitral award may be set aside. If party making the application was not given proper notice of the application of an arbitrator or of the arbitral proceedings then it valid ground for setting arbitral award and hence Anil will succeed.

An application for setting aside award should be made within **3 months** from the date of receipt of arbitral award by the party making application. Anil has

TAXMANN®

made application within time. Hence, the law of limitation will not be a bar in his case.

FOREIGN AWARD

19. Discuss briefly the grounds for opposing the 'foreign award' made under the Arbitration and Conciliation Act, 1996. [Dec. 2018 (4 Marks)]

Or

The enforcement of Foreign Award is subject to certain conditions. Explain this statement. [Dec. 2022 (4 Marks)]

Ans.: Grounds for opposing the foreign award [Section 48]: The party, against whom the award is invoked, may use one or more of the following grounds for the purpose of opposing enforcement of a foreign award:

(1) **Incapacity of the parties/invalid agreement:** The parties to the agreement were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made.

(2) **No proper notice was given to the party:** The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case.

(3) **Arbitral award contains decisions on matters beyond the scope of arbitration:** The award deals with a difference not contemplated by or not failing within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration. However, if the decisions on matter submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced.

(4) **Composition of the arbitral authority was not proper:** The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place.

(5) **Award was set aside by a competent authority:** The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which or under the law of which, that award was made.

(6) **Subject-matter is not capable of settlement by arbitration:** The subject-matter of the difference is not capable of settlement by arbitration under the law of India.

TAXMANN®

(7) **Contrary to the public policy of India:** The enforcement of the award would be contrary to the public policy of India.

CONCILIATION

20. Distinguish between: Arbitration & Conciliation [Dec. 2012 (4 Marks)], [Dec. 2014 (5 Marks)], [June 2019 (4 Marks)]

Ans.: Following are the main points of difference between arbitration & conciliation:

Points	Arbitration	Conciliation
Meaning	Arbitration is an agreement by the parties to submit to arbitration all or certain dispute which have arisen or which may arise between them in respect of defined legal relationship whether contractual or not.	If the dispute between parties is settled by means of mediation or in a friendly manner and through use of goodwill, then it is known as conciliation.
Decision	In arbitration, the decision is known as arbitral award and is signed by the arbitral tribunal members.	While under conciliation, it is known as settlement and is signed by the parties concerned.
Number	In arbitration, parties cannot appoint even number of arbitrators.	In conciliation, the number of conciliators can be even.
Appointment	Arbitrators can be appointed even before the dispute arises.	A conciliator is appointed only after the dispute has arisen.
Evidence & examination of witnesses	An arbitrator has right to seek evidence or call witnesses.	A conciliator does not have such rights.

21. Explain briefly the terms 'conciliation' and 'mediation'. [Dec. 2016 (3 Marks)]

Ans.: Conciliation is the amicable settlement of dispute between the parties, with the help of a conciliator. In conciliation, there is **'win-win'** situation, as both parties agree to discuss among themselves and arrive at a mutually agreed compromise.

Mediation is a structured process in which the mediator assists the disputants to reach a negotiated settlement of their differences. Mediation is usually a voluntary process that results in a signed agreement which defines the future behaviour of the parties. The mediator uses a variety of skills and techniques to help the parties reach the settlement, but is not empowered to render a decision.

These processes can be successful only if the personality of the conciliator/ mediator is such that he is able to induce the parties to come to a settlement. The Act gives a formal recognition to conciliation in India. Conciliation forces

TAXMANN®

earlier and greater hold of the case. It can succeed only if the parties are willing to readjust. According to current thinking conciliation is not an alternative to arbitration or litigation, but rather complements arbitration or litigation.

22. "Conciliation is an informal process in which the conciliator (the third party) tries to bring the disputants to agreement." [Dec. 2011 (4 Marks)]

Or

State the provisions relating to appointment of conciliator under the Arbitration & Conciliation Act, 1996. State the role of conciliator to settle the dispute. [Dec. 2017 (5 Marks)]

Ans.: Conciliation is the amicable settlement of dispute between the parties, with the help of a conciliator. In conciliation, there is **'win-win'** situation, as both parties agree to discuss among themselves and arrive at a mutually agreed compromise.

Number of conciliators [Section 63]: There shall be 1 conciliator unless the parties agree that there shall be 2 or 3 conciliators.

Appointment of Conciliator [Section 64]: In conciliation proceedings with one conciliator, the parties may agree on name of sole conciliator. In conciliation with two conciliators, each party may appoint one conciliator. In conciliation proceeding with 3 conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall all as presiding conciliator.

The parties can also take the help of suitable institution or person in connection with the appointment of conciliators.

A party may request such an institution or person to recommend the names of suitable individuals to out as conciliators or

The parties may agree that the appointment of one or more conciliators be made directly by such an institution or person.

Role of Conciliator [Section 67]:

(*a*) The conciliator shall assist the parties in an independent and impartial manner to reach an amicable settlement of their dispute.

(*b*) The conciliator shall be guided by principles of objectivity, fairness and justice. He shall take into consideration the right and obligation of the parties the usage of the trade concerned and the circumstances surrounding the dispute.

(*c*) The conciliator may conduct the conciliation proceeding in such manner as he considers appropriate but after taking into consideration the request of the parties, if any.

(*d*) The conciliator may, at any stage of the conciliation make proposals for a settlement of the dispute. Such proposal need not be in writing.

TAXMANN®

23. What is Conciliation? Bring out some differences between Arbitration and Conciliation. [June 2018 (3 Marks)]

Ans.: Conciliation is the amicable settlement of dispute between the parties, with the help of a conciliator. In conciliation, there is **'win-win'** situation, as both parties agree to discuss among themselves and arrive at a mutually agreed compromise.

For distinction between 'arbitration' and 'conciliation' please refer to answer of Question No. 20.

24. Throw light on the role of Conciliator in a Conciliation Proceeding under the Arbitration & Conciliation Act, 1996. In what manner a Conciliation Proceeding may be terminated? [June 2023 (5 Marks)]

Ans.: Conciliation: If the dispute between parties is settled by means of mediation or in a friendly manner and through use of goodwill, then it is known as conciliation.

Role of Conciliator [Section 67]:

(1) **Assist parties in settlement of dispute:** The conciliator shall assist the parties in an independent and impartial manner to reach an amicable settlement of their dispute.

(2) **Procedure for conciliation:** The conciliator shall be guided by principles of objectivity, fairness and justice.

He shall take into consideration:

- Rights and obligations of the parties,
- Usage of the trade concerned
- Circumstances surrounding the dispute.

(3) **Conciliation proceeding:** The conciliator may conduct the conciliation proceeding in such manner as he considers appropriate but after taking into consideration the request of the parties.

(4) **Proposal for settlement of dispute:** The conciliator may, at any stage of the conciliation make proposals for a settlement of the dispute. Such proposal need not be in writing.

Termination of conciliation proceedings [Section 76]: The conciliation proceeding shall be terminated in following cases:

(*a*) **Settlement agreement:** If the settlement agreement is signed by the parties.

(*b*) **Written declaration by conciliator:** If the conciliator thinks that further effort of conciliation are no longer justified.

(*c*) **Written declaration by parties:** If a parties to a dispute makes a written declaration addressed to the conciliator to terminate the conciliation proceedings.

TAXMANN®

(*d*) **Written declaration by one of the party:** If one of the party to a dispute makes a written declaration to the other party and conciliator, the conciliation proceedings comes to an end on the date of such declaration.

TAXMANN®

12 CHAPTER INDIAN STAMP LAW

DEFINITIONS

1. Explain the meaning of 'Bill of Lading' under The Indian Stamp Act, 1899. [Dec. 2015 (5 Marks)], [June 2018 (5 Marks)]

Ans: Bill of Lading [Section 2(4)]: Bill of Lading includes a "through bill lading" but does not include a mate's receipt.

- A bill of lading is a receipt by the master of a ship for goods delivered to him for delivery to *X* (a person) or his assigns.
- Three copies are made, each signed by the master. One is kept by the consignor of the goods, one by the master of the ship and one is forwarded to the consignee, who, on receipt of it, acquires property in the goods.
- It is a written evidence of a contract for the carriage and delivery of goods by sea, for certain freight.
- When goods are delivered on board a ship, the receipt is given by the person in-charge. This receipt is known as the mate's receipt. The shipper of the goods returns this receipt to the master before the ship leaves and receives from him bill of lading for the goods, signed by the master.

2. Distinguish between executed and execution under the Indian Stamp Act, 1889. [June 2019 (4 Marks)]

Ans: Executed/Execution [Section 2(*12*)]: The words 'executed' and 'execution, used with reference to instruments mean 'signed' and 'signature' and includes attribution of electronic record within the meaning of Section 11 of the Information Technology Act, 2000.

Signature includes mark by an illiterate person. [Section 3(*52*), General Clauses Act, 1897]

An instrument which is chargeable with stamp duty only on being "executed" is not liable to stamp duty until it is signed.

3. Define 'Lease' under the Indian Stamp Act, 1889.
[Dec. 2018 (4 Marks)]

Or

Explain the terms *'Patta'* and *'Kabuliyat'*, under the Indian Stamp Act, 1899.
[Dec. 2020 (4 Marks)]

Ans: Lease [Section 2(*16*)]: Lease means a lease of immovable property and also includes:

(*a*) A patta.

(*b*) A kabuliyat or other undertaking in writing, not being a counterpart of a lease to cultivate, occupy or pay or deliver rent for, immovable property.

(*c*) Any instrument by which tolls of any description are let;

(*d*) Any writing on an application for a lease intended to signify that the application is granted.

A patta is an instrument given by the Collector of District or any other receiver of the revenue, to the cultivator, specifying the condition or conditions upon which the lands are to be held and the value or proportion of the produce to be paid therefore.

A Kabuliyat is executed by the lessee, accepting the terms of the lease and undertaking to abide by them. Although, it is not a lease u/s 105 of the Transfer of Property Act, it is expressly included in the definition for the purposes of the Stamp Act.

Toll is a tax paid for some liberty or privilege, such as for passage over a bridge, ferry, along a highway or for the sale of articles in a market or fair or the like. It does not include *octroi* or *chungi*.

4. It is the substance of the transaction as contained in the instrument that determines the stamp duty. Elucidate. [June 2022 (4 Marks)]

Ans: Instrument [Section 2(*14*)]: Instrument include every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

The definition is an inclusive definition, and is not necessarily restricted to those documents which are specifically mentioned in the definition. Briefly stated, an instrument includes conveyances, leases, mortgages, promissory notes and wills, but not ordinary letters or memoranda or accounts.

Following instances may be noted:

(1) An unsigned draft document is not an "instrument" (because it does not create or purport to create any right, *etc.*)

(2) An entry in a register, containing the terms of hiring of machinery is an "instrument", where it is authenticated by the thumb impression of the hirer. (Reason is, that it purports to create, a liability *etc.*)

TAXMANN®

(3) A letter which acknowledges receipt of a certain sum as having been borrowed at a particular rate of interest and for a *particular period and that it will be repaid with interest on the due date* is an 'instrument'.

These examples show, that the law looks to the substance and effect (or intended effect) of the text of the instrument and not the physical medium through which it is recorded.

Courts have invariably upheld the principle of substance of the transaction, over the form, in the matter of deciding the nature of the instrument. The substance of the transaction contained in the document may not necessarily embody the description given at the head thereof.

It is the substance of the transaction as contained in the instrument and not the form of the instrument that determines the stamp duty, though the duty is leviable on the instrument and not on the transaction. In determining whether a document comes within the description of a document upon which a stamp is required by the Act, one has to look at the entire document to find out whether it falls within the description. Where a single instrument contains several purposes, the instrument as a whole should be read to find out its dominant purpose. To determine whether a document is sufficiently stamped the Court must look at the document itself, as it stands.

5. What do you mean by 'promissory note'? State the requisites of a promissory note with the help of some illustrations. [June 2013 (5 Marks)]

Or

What is 'promissory note' under the Indian Stamp Act, 1899? [June 2014 (3 Marks)]

Ans: Promissory Note [Section 2(22)]: Promissory instrument is an instrument in writing (*not being a bank note or a currency note*) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument.

Requisites of a promissory note:

(1) A promissory note must be in writing, duly signed by its maker and properly stamped as per the Indian Stamp Act.

(2) It must contain an unconditional undertaking or promise to pay. Mere acknowledgement of indebtedness is not enough.

Example: If someone writes 'I owe ₹ 5,000 to Satya Prakash, it is not a promissory note.

(3) It must contain a promise to pay money only.

Example: If someone writes 'I promise to give Suresh a Maruti car it is not a promissory note.

(4) The parties (*i.e.* maker & payee) to a promissory note must be certain.

(5) A promissory note may be payable on demand or after a certain date.

TAXMANN®

Example: If it is written "three months after date I promise to pay Satinder or order a sum of rupees Five Thousand only" is a promissory note.

(6) The sum payable mentioned must be certain or capable of being made certain.

INSTRUMENT CHARGEABLE WITH DUTY

6. List any ten instruments which are chargeable with duty under the Indian Stamp Act, 1899. [Dec. 2010 (5 Marks)]

Ans: Ten instruments which are chargeable with duty under the Indian Stamp Act, 1899 are as follows:

- Administration Bond
- Agreement relating to Deposit of Title-deeds, Pawn or Pledge
- Bill of Exchange
- Bond
- Debenture
- Indemnity-bond
- Mortgage-deed
- Promissory-note
- Release
- Security Bond or Mortgage-deed
- Settlement.

7. State the instruments which are chargeable with duty under the Indian Stamp Act, 1899. [Dec. 2011 (4 Marks)]

Ans: Instruments chargeable with duty [Section 3]: Subject to the provisions of the Act and the exceptions contained in Schedule I, following instruments shall be chargeable with a duty of the amount indicated in that schedule as the proper duty, namely:

(1) Instrument mentioned in 1st Schedule executed in India

(2) Bill of exchange *except payable on demand* and promissory note

(3) Every instrument executed out of India but related to property in India.

However, no duty shall be chargeable in respect of:

(*a*) Instrument executed by and in favour of Government.

(*b*) Instrument related to sale or deposition of ship or vessels registered under Merchant Shipping Act, 1894 or the Indian Registration of Ships Act, 1841.

TAXMANN®

(c) Any instrument executed by, or, on behalf of, or in favour of, the Developer or Unit or in connection with the carrying out of purposes of the Special Economic Zone.

8. Abhay's agricultural land was purchased by the government for the purpose of construction of a factory but no duty was paid for this transfer by the government. Abhay wanted to take back his land on the ground that government has not paid the duty and, therefore, no sale deed was executed. Will Abhay succeed? Give reasons. [Dec. 2010 (4 Marks)]

Ans: As per Section 3 of the Indian Stamp Act, 1899, no duty shall be chargeable in respect of instrument executed by and in favour of Government.

Since, Abhay's agricultural land was purchased by the government no stamp duty is required to paid on it and instrument of transfer is valid. Thus, Abhay cannot take back his land on the ground that government has not paid the duty.

EXTENT OF LIABILITY OF INSTRUMENTS TO DUTY

9. What is the extent of liability of instruments to stamp duty where several instruments are executed in a single transaction? Explain with any one illustration. [Dec. 2019 (4 Marks)]

Ans: Several instruments used in single transaction of sale, mortgage or settlement [Section 4]: In case of sale, mortgage or settlement, if there are several instrument for one transaction, stamp duty is payable only on one instrument and on other instrument nominal stamp duty of ₹ 1 is payable.

Example: *P* executed a conveyance of immovable property. On the same deed his nephew (undivided in status) endorsed his consent to the sale, as such consent was considered to be necessary. It was held that the conveyance was the principal instrument. The consent was chargeable with only ₹ 1.

10. Ram executed a gift deed of certain immovable properties in favour of his brother Shyam. By another deed, Shyam made provision for the living expenses of Ram and created a charge in his favour on some properties included in the above mentioned gift deed in order to secure the payment of these living expenses. The government authority insists that deed executed by Shyam is liable to full duty. Decide with reasons. [Dec. 2003 (5 Marks)]

Ans: According to Section 4 of the Indian Stamp Act, 1899, if there are several instrument for one transaction, stamp duty is payable only on one instrument and on other instrument nominal stamp duty of Re. 1 is payable.

Facts of the case are similar to *Maharaj Someshar Dutt*, wherein it was held that, when two deeds (documents) are executed by 2 brothers, one document transferred all the property by way of gift and was stamped to it is full value,

TAXMANN®

second document provided expenses during the life time of transferor, the two documents were part of the same transaction. They amounted to a settlement and Section 4 applied and hence on second document nominal stamp duty of ₹ 1 is payable.

11. Arjun executed a power of attorney both in his personal capacity and in his capacity as an executor, trustee, manager and liquidator in favour of Bheem. Decide the liability of duty payable on the instrument. [Dec. 2005 (5 Marks)]

Ans: According to Section 5 of the Indian Stamp Act, 1899, if one instrument relates to several distinct matters, stamp duty payable is aggregate amount of stamp duty payable on separate instrument.

Where a person possessing a 'representative capacity' such as trustee and a personal capacity and if he delegates his powers under both the categories then Section 5 is attracted and stamp duty payable is aggregate amount of stamp duty payable on separate instrument.

12. Are securities dealt in depository liable to stamp duty under the provisions of Indian Stamp Act, 1899? [June 2017 (5 Marks)]

Ans: Securities dealt in depository not liable to stamp duty [Section 8A]: The *Finance Act, 2019* substituted Section 8A which reads as follows:

Notwithstanding anything contained in the Act or any other law for the time being in force –

(*a*) An issuer, by the issue of securities to one or more depositories, shall, in respect of such issue, be chargeable with duty on the total amount of securities issued by it and such securities need not be stamped.

(b) The transfer of registered ownership of securities from a person to a depository or from a depository to a beneficial owner shall not be liable to duty.

13. What are the provisions of reduction, remission & compounding of duties by Government under Indian Stamp Act, 1889?

Ans: Power to reduce, remit or compound duties [Section 9]: This Section empowers the government to reduce or remit whole or part of duties payable. Such reduction or remission can be in respect of whole or part of territories and also can be for particular class of persons.

Government can also compound or consolidate duties in case of issue of shares or debenture by companies.

'Government' means Central Government in respect of stamp duties on bills of exchange, cheque, receipts *etc.* and 'State Government' in case of stamp duties on other documents.

TAXMANN®

14. Discuss briefly how the stamp duty is chargeable in respect of instruments chargeable with duty for transactions in stock exchanges and depositories.

Ans: Instruments chargeable with duty for transactions in stock exchanges and depositories [Section 9A]:

(1) **Sale of securities through a stock exchange:** When the sale of any securities, whether delivery based or otherwise, is made through a stock exchange, the stamp-duty on each such sale in the clearance list shall be **collected** on behalf of the State Government **by the stock exchange** or a **clearing corporation** authorized by it, **from its buyer** on the **market value** of such securities at the **time of settlement of transactions** in securities of such buyer.

(2) **Transfer of securities by a depository, otherwise than on the basis of any transaction on stock exchange:** When any transfer of securities for a consideration, whether delivery based or otherwise, is made by a depository otherwise than on the basis of any transaction referred to in clause (*a*), the stamp-duty on such transfer shall be collected on behalf of the State Government by the depository from the transferor of such securities on the consideration amount specified therein.

(3) **Issue of securities, any creation or change in records of a depository:** When pursuant to issue of securities, any creation or change in the records of a depository is made, the stamp-duty on the allotment list shall be collected on behalf of the State Government by the depository from the issuer of securities on the total market value of the securities as contained in such list.

Rate & stamping: The instruments referred above shall be chargeable with duty as provided therein at the rate specified in Schedule I and such instruments need not be stamped.

State Governments cannot charge stamp duty: Stamp duty shall not be charged or collected by the State Government on any note or memorandum or any other document, electronic or otherwise, associated with the transactions mentioned in stock exchanges and depositories.

Transfer of stamp duty collected by stock exchange & depositories to State Governments:

(*a*) The stock exchange or a clearing corporation authorized by it or the depository shall, transfer the stamp-duty collected within 3 weeks of the end of each month to the State Government where the residence of the buyer is located.

(*b*) In case the buyer is located outside India, stamp duty shall be transferred to the State Government having the registered office of the trading member or broker of such buyer. If there is no such trading member of the buyer then stamp duty shall be transferred to the State Government having the registered office of the participant.

TAXMANN®

The stock exchange/clearing corporation or the depository shall be entitled to deduct specified percentage of stamp-duty towards facilitation charges.

Submission of details to Government: Every stock exchange/clearing corporation and depository shall submit to the Government details of the transactions in stock exchanges and depositories in prescribed manner.

Tabular presentation of provisions of Section 9A(1)

Nature of transaction	Stamp duty to be collected by	Stamp duty to be collected from	Value for stamp duty	When
Sale of securities through a stock exchange	Stock exchange or clearing corporation	Buyer	Market value	At the time of settlement of transactions
Transfer of securities by a depository, otherwise than on the basis of any transaction on stock exchange	Depository	Transferor	Consideration amount	At the time of transfer
Issue of securities, any creation or change in the records of a depository	Depository	Issuer of securities	Total market value	At the time of issue, creation/ any change in records of a depository

METHODS OF STAMPING & CANCELLATION

15. When the instruments may be stamped with adhesive stamps, under the Indian Stamp Act, 1899? When and by whom such adhesive stamps may be cancelled? [Dec. 2018 (5 Marks)]

Or

What are the modes of cancellation of adhesive stamps? [June 2012 (5 Marks), [Dec. 2014 (4 Marks)] [June 2015 (5 Marks)]

Or

What instruments may be stamped with adhesive stamps? Why and how affixed stamps are cancelled as per the Indian Stamp Act, 1899? [June 2023 (8 Marks)]

Ans: Use of adhesive stamps [Section 11]: Following instrument may be stamped with adhesive stamp.

(1) Instrument chargeable with duty up to 10 naya paise. (*except parts of bills of exchange payable otherwise than on demand and drawn in set*)

(2) Bill of exchange & promissory note drawn or made out of India.

(3) Entry as Advocate or Vakil on the roll of High Court.

(4) Notorial act.

(5) Transfer instrument of shares.

Cancellation of adhesive stamps [Section 12]: Any person affixing any adhesive stamp has to cancel it. If it is not cancelled as above then it should be cancelled by person executing it. A stamp has to be cancelled in such manner that it cannot be used again.

Effect of not cancelling the stamps: If stamps are not cancelled then instrument is treated as deemed to be unstamped.

Mode of cancellation of adhesive stamp: Cancellation of an adhesive stamp may be done by the person by writing.

(*a*) His name or initial *or*

(*b*) Name or initial of his firm *or*

(*c*) Any other *effectual manner*.

16. Four adhesive stamps were used on an instrument. First adhesive stamp had a single line drawn across the face of the stamp. On the second stamp, there were two parallel lines. The third stamp had three parallel lines, and the fourth stamp had two lines crossing each other. What are the provisions for cancellation of adhesive stamps and which adhesive stamps referred to above will be considered to have been properly cancelled? [Dec. 2009 (6 Marks)]

Ans: As per Section 12(3) of the Indian Stamp Act, 1899, cancellation of an adhesive stamp may be done by the person by writing:

(*a*) His name or initial *or*

(*b*) Name or initial of his firm *or*

(*c*) Any other *effectual manner*.

Stamps may be effectively cancelled by drawing a line across it. [*Mahadeo* v. *Sheroji Ram Teli*] Drawing a diagonal line across the stamp is effectual cancellation. [*Melaram* v. *Brijlal*] Where one of the four stamps used on an instrument had a single line drawn across the face of the stamp, the second had two parallel lines, the third three parallel lines and the fourth two lines crossing each other, it was held that the stamps must be regarded as having been cancelled in manner so that they could not be used again. [*In re. Tata Iron Steel Company*]

Thus keeping in view above, all the four stamps are effectively cancelled.

TAXMANN®

17. What is 'e-stamping'? Also, discuss its benefits.
[Dec. 2016 (3 Marks)]

Or

Describe the concept of 'e-Stamping' under Indian Stamp Act, 1899.
[Dec. 2020 (4 Marks)]

Or

What are the benefits of e-stamping? How do we verify e-stamping?
[June 2023 (4 Marks)]

Ans:

E-Stamping: E-Stamping is a computer based application and a secured way of paying Non-Judicial stamp duty to the Government.

The prevailing system of physical stamp paper/franking is being replaced by e-Stamping system. Stock Holding Corporation of India Limited (SHCIL) is the only Central Record Keeping Agency (CRKA) appointed by the Government of India. The CRKA is responsible for User Registration, Imprest Balance Administration and overall e-Stamping application operations and maintenance.

Benefits of E-Stamping:

- E-Stamp Certificate can be generated within minutes.
- E-Stamp Certificate generated is tamper proof.
- Authenticity of the e-Stamp certificate can be checked through the inquiry module.
- E-Stamp Certificate generated has a Unique Identification Number.
- Specific denomination is not required.
- E-stamp certificate can be checked by any person through recommended site.

Verification of E-Stamping: "www.shcilestamp.com" is the official web portal of the Stock Holding Corporation of India Ltd. that enables businesses to access, receive, download, and verify their e-Stamps online.

DENOTING DUTY

18. Write a short note on: Denoting Duty **[June 2008 (4 Marks)]**

Ans: Denoting Duty [Section 16]: Where the stamp duty to be paid on particular instrument or exemption of such instrument from duty depends upon another instrument, then if both are produced before Collector of Stamps he can denote & certify on first instrument that proper stamp duty is paid or no duty is required to be paid.

TAXMANN®

TIME OF STAMPING INSTRUMENTS

19. In respect of foreign instruments, other than bills and notes received in India, what is the time limit prescribed for stamping those instruments? [Dec. 2006 (4 Marks)]

Ans: Instruments executed out of India [Section 18]: Instrument executed out of India may be stamped within 3 months after it is 1st received in India.

Bills & Notes drawn out of India [Section 19]: It should be stamped by 1st holder in India before he presents for payment or endorses or negotiates in India.

20. A promissory note is executed by Suresh and Udit and stamp is afterwards affixed and cancelled by Suresh by again signing it. Explain whether the provisions of section 17 relating to time of stamping instruments have been complied with? [June 2019 (4 Marks)]

Ans: Instruments executed in India [Section 17]: Instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution.

Where a promissory note is executed by 'A' and 'B' and a stamp is afterwards affixed and cancelled by 'A' by again signing it, the stamping has taken place subsequent to the execution and hence, the provisions of Section 17 are not complied with. [*Rohini* v. *Fernandes*]

VALUATION OF DUTY

21. How is *ad valorem* duty calculated in respect of marketable security under the Indian Stamp Act, 1899? [Dec. 2001 (4 Marks)]

Ans: Stock and marketable securities how to be valued [Section 21]:

Value of marketable securities should be as per **average price** on the date of instrument.

(1) If shares are quoted on stock exchange, price in stock market can be taken for calculating average price.

(2) If shares are not quoted on stock exchange, price will be average of latest private transaction.

(3) If there are no private transactions also, then value should be taken at par.

22. Rajesh mortgages a building of the value of ₹ 70,000 to Suresh for ₹ 50,000. Rajesh, subsequently, sells the building to Suresh. An unpaid amount of ₹ 5,000 against interest is also outstanding at the time of sale. Determine the value on which the stamp duty is payable in this transfer of property. [Dec. 2004 (5 Marks)]

TAXMANN®

Ans: According to Section 24 of the Indian Stamp Act, 1899, if property is transferred in satisfaction of debt due, then it will be considered in valuation purpose. However, as the *Explanation* to Section 24, where property is subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer, the amount of any duty already paid in respect of the mortgage.

Considering above provision duty payable will be calculated as follows:

Sale price of building	70,000
Add: Interest accrued on loan	5,000
	75,000
Mortgage loan amount	(50,000)
Amount on which duty is payable	25,000

23. Amit mortgages a house of the value of ₹ 25,000 to Bimal for ₹ 10,000. Bimal afterwards buys the house from Amit. Whether the stamp duty already paid is deductible from the stamp duty payable on ₹ 25,000? [June 2012 (4 Marks)], [Dec. 2018 (4 Marks)]

Ans: According to Section 24 of the Indian Stamp Act, 1899, if property is transferred in satisfaction of debt due, then it will be considered in valuation purpose.

However, as the *Explanation* to Section 24, where property is subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer, the amount of any duty already paid in respect of the mortgage.

Considering above provision duty payable will be calculated as follows:

Sale price of building	25,000
(+) Interest accrued on loan	Nil
	25,000
Mortgage loan amount	(10,000)
Amount on which duty is payable	15,000

24. Discuss the provisions relating to valuation of instruments chargeable with *ad valorem* duty in cases where the value of the subject matter is indeterminate under the Indian Stamp Act, 1899. [June 2005 (6 Marks)]

Ans: Stamp where value of subject matter is indeterminate [Section 26]: When value of subject matter cannot be ascertained precisely on the date of execution, stamp should be fixed on estimated basis of valuation.

TAXMANN©

However, in such case, the maximum amount that can be claimed on such instrument will be only the value on which stamp duty has been paid, and nothing more.

PERSON LIABLE TO PAY DUTY

25. Who are the persons liable to pay the stamp duty under the Indian Stamp Act, 1899 in following cases?

(*i*) Mortgage deed

(*ii*) Policy of insurance other than fire Insurance

(*iii*) Sale of security through stock exchange

[June 2003 (5 Marks)]

Ans: Duties by whom payable [Section 29]:

Instrument/deed/document	Person liable to pay stamp duty
Mortgage-deed	A person drawing, making/executing such instrument
Policy of insurance other than fire Insurance	Person taking the policy
Sale of security through stock exchange	Buyer of such security

ADJUDICATION AS TO STAMPS

26. You are Company Secretary of Dowell Industries (India) Ltd. You are about to execute an agreement with third party on behalf of the company. However you are not sure as to correct stamp duty payable. State how will you go about to determine as to correct stamp duty with which the agreement is chargeable.

[June 2000 (8 Marks)]

Ans: Adjudication as to proper stamp [Section 31]: If any person is not sure about the duty payable on any instrument, then he can apply to the Collector of stamps for his opinion regarding duty payable.

Fee: Such application has to be made with a fee of ₹ 5.

Documents to be attached: While making application to the collector following documents should be attached:

(*a*) Abstract of the instrument

(*b*) Affidavit

(*c*) Other evidences as may be required by Collector

(*d*) Fee.

TAXMANN®

INSTRUMENTS NOT DULY STAMPED – TREATMENT & CONSEQUENCES

27. Explain the consequences of the instruments which are not duly stamped under the Indian Stamp Act, 1899.

[June 2010 (4 Marks)]

Or

Explain the consequences that follow where the instruments are not duly stamped under the Indian Stamp Act, 1899.

[June 2013 (6 Marks)], [Dec. 2014 (4 Marks)]

Ans: Following are the consequences of the instruments not duly stamped:

(1) Impounding of instrument not duly stamped [Section 33]: If any instrument is not duly stamped then it can be impounded under this section by:

(*a*) Arbitrator

(*b*) Court

(*c*) Public officer (Police officer is excluded *i.e.* to say he cannot impound the instrument)

(2) Impounding of unstamped receipt [Section 34]: Unstamped receipts can be impounded by public accountant or he may require the receipt to be stamped.

(3) Instruments not duly stamped inadmissible in evidence [Section 35]: Shortcomings of the instrument not duly stamped are as follows:

(*a*) Such instrument cannot be accepted as evidence by Civil Court or Arbitrators.

(*b*) No one can act upon it.

(*c*) It cannot be registered.

(*d*) Such instrument cannot be authenticated by public officer or public authorities.

However, if proper stamp duty & penalty is paid then above mentioned shortcomings go and it becomes valid.

(4) Admission of instrument – where not be questioned [Section 36]: Once a document is admitted in evidence (whether rightly or wrongly) it not permissible to the Court whether it is Court of appeal, revision or of first instance to go behind that order.

28. An instrument bears a stamp of sufficient amount, but of improper description. Can be certified as duly stamped? How the instrument can be rectified and what would be date of execution? [June 2013 (6 Marks)]

TAXMANN®

Ans: Admission of improperly stamped instrument [Section 37]: Opportunity is given under this section to a party for getting a mistake rectified when a stamp of proper amount, but of improper description has been used.

The State Government may make rules for instrument which bears a stamp of sufficient amount but of improper description. On payment of stamp duty of proper description any instrument so certified shall be deemed to have been duly stamped as from the date of its execution.

29. Achal gives an instrument to Basu which is unstamped. This instrument is also not registered.

(*i*) Will the instrument be admitted in evidence?

(*ii*) Will the situation change if the instrument is stamped but not registered before passing to Basu and Basu get it registered subsequently? [June 2013 (5 Marks)]

Or

State the law of inadmissibility in evidence of an instrument not duly stamped. [Dec. 2013 (3 Marks)]

Or

"Once the 'instrument' has been admitted in evidence, it shall not be questioned later on in the same suit on the ground that it does not bear the adequate stamp duty or no stamp." Discuss briefly. [June 2016 (5 Marks)]

Ans: Instruments not duly stamped inadmissible in evidence [Section 35]: Shortcomings of the instrument not duly stamped are as follows:

(*a*) Such instrument cannot be accepted as evidence by Civil Court or Arbitrators.

(*b*) No one can act upon it.

(*c*) It cannot be registered.

(*d*) Such instrument cannot be authenticated by public officer or public authorities.

However, if proper stamp duty & penalty is paid then above mentioned shortcomings go and it becomes valid.

An insufficiently stamped instrument is not invalid and it can be admitted in evidence on payment of penalty.

Instrument not duly stamped can be accepted as evidence in Criminal Court.

Instrument not duly stamped is also admissible if it is executed by government.

Keeping in view the above provisions, answer to given case is as follows:

(*i*) Instrument cannot be admitted in evidence since it is not stamped.

(*ii*) If instrument is stamped before registration then it can be registered subsequently.

30. Explain the difference between the powers of the Collector under Section 39 and the powers of the Controlling Revenue Authority under Section 45 of Indian Stamp Act, 1899. [Dec. 2022 (4 Marks)]

Ans: Collector's power to refund penalty paid u/s 38 [Section 39]: Collector has powers to refund penalty paid.

1. **If instrument is written in contravention of Section 13/14:** He can refund whole duty.
2. **In any other case:** He can refund any penalty in excess of ₹ 5.

Power to Revenue Authority to refund penalty or excess duty [Section 45]: Chief Controlling Revenue Authority (CCRA) has power to refund penalty and excess stamp duty:

(1) **Where any penalty is paid u/s 35 or 40:** CCRA may, upon application in writing made within 1 year from the date of the payment, refund such penalty wholly or in part.

(2) **Where excess stamp duty is charged and paid u/s 35 or 40:** CCRA may, upon application in writing made within 3 months of the order charging the same, refund the excess.

Differences between the powers of the Collector u/s 39 and the powers of the Controlling Revenue Authority u/s 45 are as follows:

Powers of the Collector [Section 39]	Powers of the Controlling Revenue Authority [Section 45]
Refund of penalty only.	Refund of Penalties and excess stamp duty.
Power to refund penalty is restricted only to two cases mentioned in Section 39.	Powers under Section 45 are not subject to any such limitation.
There is no time limit for the Collector to exercise his powers to refund.	Section 45 provides for the time limits.
The power under Section 39 is routine function of the Collector.	The power under Section 45 is to be exercised only when an application is made by a party.
The Collector may also use his discretion.	The power under Section 45 is a purely discretionary one and the Chief Controlling Revenue Authority cannot be compelled to exercise his power by any further proceedings.

31. Explain the Collector's power to stamp an instrument which is impounded. [June 2014 (4 Marks)]

Ans: Collector's power to stamp instruments impounded [Section 40]: When the Collector impounds any instrument, or receives any instrument sent to him u/s 38 he shall adopt the following procedure:

TAXMANN®

(*a*) **If he is of opinion that instrument is duly stamped, or is not chargeable with duty:** He shall certify by endorsement thereon that instrument is duly stamped, or that it is not so chargeable, as the case may be.

(*b*) **If he is of opinion that instrument is not duly stamped:** He shall require the payment of the proper duty together with a penalty of ₹ 5; or an amount up to 10 times of the proper duty or of the deficient portion of duty.

When such instrument has been impounded only because it has been written in contravention of Sections 13/14; the Collector may remit the whole penalty.

ALLOWANCES & REFUNDS FOR STAMPS IN CERTAIN CASES

32. Mention the circumstances under which refund of stamp duty or penalty may be made by the revenue authorities. [June 2011 (4 Marks)]

Ans: Sections 49 to 54 deals with the provisions relating to refund of stamp duty.

Allowance for spoiled stamps *before* document is executed [Section 49(*a*) to (*c*)]: If after purchase of stamp paper it becomes unfit because of it is spoiled, obliterated or there is error while writing on it, then application can be made for refund. However, such stamp paper should not be executed (*i.e.* signed).

Allowance for spoiled stamps *after* document is executed [Section 49(*d*)]: If bill of exchange (not payable on demand) or promissory note is signed but has not been accepted or made use in any manner and have not been delivered to any person, allowances for impressed stamp can be claimed.

If stamp paper is purchased and executed (*i.e.* signed) after writing, refund can be claimed in following circumstance.

(*a*) Document was found *void* under any law.

(*b*) Document found unfit for purpose for which it is purchased.

(*c*) One of the parties refuses to sign.

(*d*) Purpose fails as one of the party refuses to act on the same.

(*e*) If it is deficient in value.

(*f*) If it is inadvertently spoiled.

Allowance in case of printed forms no longer required by corporations [Section 51]: If some companies, banks or incorporated bodies purchase stamp papers and print their forms on such paper and if there are unable to use the same for any reason, they can claim refund.

Time limit: No time limit has been prescribed.

Who can allow such refund?

1. Chief Controlling Revenue Authority.
2. Collector, if authorized by Chief Controlling Revenue Authority.

TAXMANN®

Allowance for misused stamps [Section 52]: If wrong types of stamps are inadvertently used or in advertently higher duty stamps are used, then refund/ allowance can be claimed.

Procedure: Application has to be made to Collector within 6 months from the date of purchase.

Allowance for spoiled or misused stamps how to be made [Section 53]: In any case in which allowance is made for spoiled or misused stamps, any one of following course may be adopted by Collector.

(1) Collector may give other stamps of the same description and value.

(2) Collector may give stamps of any other description to the same amount in value.

(3) Collector may give same value in money, deducting 10 naya paisa for each rupee or fraction of a rupee. (*Money will be given after deducting 10% of value of stamps*)

Allowance for stamps not required for use [Section 54]: If a person does not need stamps brought by him for immediate use, he can claim allowance/refund.

Conditions: Stamps should not be spoiled or rendered unfit.

Procedure: Application has to be made to Collector within 6 months from the date of purchase.

How much amount is refunded: Collector can repay to the person applied the value of such stamp deducting 10 naya paisa for each rupee or portion of rupee. (*Thus, effectively 90% amount can be refunded*)

Where the person is a licensed vendor of stamps, the Collector may refund whole amount.

33. Explain the time limit set up under the Indian Stamp Act, 1899 for making an application for relief in respect of impressed spoiled stamps. [Dec. 2022 (4 Marks)]

Ans: Section 49 of the Indian Stamp Act, 1899 makes provisions relating to 'allowance for spoiled stamps'. As per this section application can be made for refund if the stamps are spoiled.

Time limit for making application [Section 50]: Application for refund of spoiled stamps shall be made within the following periods:

In the cases mentioned in 49(*d*)(*5*)	Within 2 months of the date of the instrument
In the case of a stamped paper on which no instrument has been executed by any of the parties	Within 6 months after the stamp has been spoiled

TAXMANN®

In the case of a stamped paper in which an instrument has been executed by any of the parties	Within 6 months after the date of the instrument. If it is not dated, within 6 months after the execution by the person by whom it was first or alone executed.
When the spoiled instrument has been sent out of India, the application may be made	Within 6 months after it has been received back in India
When from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period; the application may be made	Within 6 months after the date of execution of the substituted instrument.

34. State the provisions of Indian Stamp Act, 1899 regarding the payment of stamp duty for renewing debentures. [Dec. 2017 (5 Marks)]

Ans: Allowance on renewal of certain debentures [Section 55]: If old debenture is renewed and on both stamp duty is paid then stamp duty on old debenture is refundable.

Condition: Old debenture should be produced before cancellation to Collector.

Explanation to Section 55 says that provisions are also applicable in following cases:

(*i*) Issue of 2 or more debenture in place 1 old debenture. [*Sub-division*]

(*ii*) Issue of 1 new debenture in place 2 or more old debentures. [*Consolidation*]

(*iii*) Substitution of the name of the holder at the time of renewal for the name of the original holder.

(*iv*) Alteration of rate of interest or the dates of payment.

REFERENCE, REVISION & OFFENCES

35. Write a short note on: Reference and Revision under the Indian Stamp Act, 1899.

Ans: Reference by Collector to CCRA [Section 56]: Collector of stamps is main authority under the Act. His powers are subject to control of Chief Controlling Revenue Authority (CCRA). If Collector feels doubt as to the amount of duty with which any instrument is chargeable, he may refer it for the decision of CCRA. The CCRA shall consider the case and send a copy of its decision to the Collector who shall proceed to assess and charge the duty in conformity with such decision.

TAXMANN®

Reference by CCRA to High Court [Section 57]: If CCRA cannot decide a case then it may refer such case to High Court. Similarly, if any other Court feels doubt about the amount of duty payable, can make a reference to High Court.

36. Name of the officers of the Company who can be held liable in case the Company has issued share warrant without proper stamp duty. What shall be the penalty under Section 62(2) of the Indian Stamp Act, 1899? [Dec. 2019 (4 Marks)]

Ans: Section 62 of the Indian Stamp Act, 1899 provides that if a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, its managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to ₹ 500.

TAXMANN®

13 CHAPTER LAW RELATING TO REGISTRATION OF DOCUMENTS

OBJECTS

1. What are the objects of registration of documents under the Registration Act, 1908? [Dec. 2021 (4 Marks)]

Ans.: The Registration Act, 1908 is the law relating to registration of *documents* and not of transactions. Following are the objectives of registration of documents under the Registration Act, 1908:

(1) To provide a method of public registration of documents.

(2) To give information to people regarding legal rights and obligations arising or affecting a particular property.

(3) To perpetuate documents which may afterwards be of legal importance

(4) To prevent fraud.

(5) To ensure that correct land records could be maintained.

REGISTRABLE DOCUMENTS

2. State the documents of which registration is compulsory under the Registration Act, 1908. [Dec. 2011 (4 Marks)], [June 2014(6 Marks)] [Dec. 2014 (5 Marks)], [Dec. 2017 (5 Marks)]

Ans.: Documents of which registration is compulsory [Section 17(*1*)]: Following documents *shall* be registered namely:

(1) Instruments of gift of immovable property.

(2) Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immovable property.

(3) Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest.

TAXMANN®

(4) Leases of immovable property from *year to year*, or for any term *exceeding one year*, or *reserving a yearly rent*.

(5) Non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of ₹ 100 and upwards, to or in immovable property.

3. When lease of immovable property is compulsorily registrable? [June 2022 (4 marks)]

Or

Advise in the matter of the following, the provisions of registration of documents under the Registration Act, 1908 with reference to section applicable:

(*i*) Lease agreement for eleven months with rent payable monthly, having an option to the tenant to renew for further for the same period and so on.

(*ii*) Lease agreement is only for a year with a reserved rent for the period granted *viz.* one year.

(*iii*) Lease agreement for one with reserving yearly rent.

(*iv*) Lease agreement for a fixed term of five years with yearly rent payable. [June 2019 (1 + 1 + 1 + 2 = 5 Marks)]

Ans.: Registration of leases of immovable property [Section 17(*1*)(*d*)]: A lease of immovable property is compulsory registrable in below mentioned situations:

(*a*) If it is from year to year.

(*b*) If it is for a term exceeding one year.

(*c*) If it reserves a yearly rent.

If a lease is of a very high value but is neither from year to year, nor for any term exceeding one year, nor reserving a yearly rent, it does not require registration under Section 17(*1*)(*d*).

Considering the provisions of the Section 17(*1*)(*d*) of the Registration Act, 1908, answer to given case is as follows:

(*i*) Registration of lease agreement for eleven months is not compulsory.

(*ii*) Registration of lease agreement for one year with an annual reserve rent is not compulsory.

(*iii*) Registration of lease agreement reserving a yearly rent is compulsory.

(*iv*) Registration of lease agreement for a fixed term of five years is compulsory.

TAXMANN®

4. State the documents of which registration is optional under the Registration Act, 1908. [June 2011 (4 Marks)], [Dec. 2014 (4 Marks)] [Dec. 2018 (5 Marks)]

Or

Enumerate the documents, registration of which is optional under the provisions of the Registration Act, 1908. [Dec. 2015 (5 Marks)], [June 2019 (4 Marks)]

Ans.: Documents of which registration is optional [Section 18]: Any of the following documents *may be* registered, namely:

(1) Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than ₹ 100, to or in immovable property.

(2) Instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest.

(3) Leases of immovable property for any term not exceeding one year and leases exempted u/s 17.

(4) Instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than ₹ 100, to or in immovable property.

(5) Instruments (*other than wills*) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property.

(6) Wills.

(7) All other documents not required by Section 17 to be registered.

5. Mention the documents which are not required to be registered compulsorily under the Registration Act, 1908. [Dec. 2011 (4 Marks)], [Dec. 2019 (4 Marks)]

Or

Write any four exceptions to the registration of non-testamentary documents under Sub-section (*2*) of Section 17 of Registration Act. [Dec. 2022 (4 Marks)]

Ans.: Documents not requiring registration [Section 17(2)]: Section 17(*1*)(*b*) & (*c*) provides that the non-testamentary documents therein must be registered but subject to the exceptions as provided under Section 17(*2*). Hence, the following instruments do not require registration:

TAXMANN®

(*a*) Any composition deeds. [*Every deed the essence of which is composition*]

(*b*) Any instrument relating to share in Joint Stock Company.

(*c*) Any debenture issued by any company.

(*d*) Any endorsement upon or transfer of any debenture.

(*e*) Any document other than document specified in Section 17(*1A*) creating merely a right to obtain another document which will, when executed create declare, assign, limit or extinguish any such right, title or interest.

(*f*) Any decree or order of a Court.

(*g*) Any grant of immovable property by the Government.

(*h*) Any instrument of partition made by Revenue Officer.

(*i*) Any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883.

(*j*) Any order granting loan made under the Agriculturists Loans Act, 1884 or instrument for securing the repayment of a loan made under that Act.

(*k*) Any order made under the Charitable Endowments Act, vesting any property in a Treasurer of charitable endowments or diverting any such Treasurer of any property.

(*l*) Any endorsement on a mortgage deed acknowledging the payment of the whole or any part of the mortgage money, and any other receipt for payment of money, due under a mortgage when the receipt does not purport to extinguish the mortgage.

(*m*) Any certificate of sale granted to the purchaser of any property sold by public auction by Civil or Revenue Officer.

TIME OF PRESENTATION

6. A document was executed outside India and it was presented for registration after a lapse of four months from the date of its arrival in India. Whether the document may be accepted for registration by the Registrar? Decide. [June 2010 (5 Marks)]

Ans.: As per Section 26 of the Registration Act, 1908, when a document have been executed out of India is not presented for registration within 4 months from the date of execution then registering officer may register within 4 months after its arrival in India on payment of the proper registration fee.

Section 25 gives the power to Registrar to give extra time for 4 months for a fine up to 10 times the normal registration fee. This provision is not applicable for documents executed outside India.

Thus, the Registrar has the right to refuse registration of document presented for registration after a lapse of four months from the date of its arrival in India.

TAXMANN®

7. A document was executed by several persons at different times. The person in whose favour such execution was made, presented the documents for re-registration after expiry of 3 months. Whether such documents can be registered and if yes, within what period? [June 2011 (5 Marks)]

Ans.: As per Section 23 of the Registration Act, 1908, document other than a will shall be accepted for registration within **4 months** from the **date of its execution.**

Section 25 provides a further period of 4 months in cases of urgent necessity and unavoidable accident on payment of a fine up to 10 time of normal fee. Thus, a maximum period for presenting a document for registration is 8 months under Section 23 read with Section 25.

As per Section 23A, if any person finds that, a document has been filled for registration by a person who is not empowered to do so, then such person can present the document for re-registration within 4 months from the date he become aware of the fact that registration of document is invalid.

In given case, the document was executed by several persons at different times. The person in whose favour such execution was made presented the document for re-registration after the expiry of 3 months. Thus, period of 4 months has not been expired from the date he become aware of the fact that registration of document is invalid. Hence, document is presented within statutory time limit and hence can be registered by Registrar on payment of normal fees.

PLACE OF REGISTRATION

8. State the places where documents effecting immovable property may be presented for registration under the Registration Act, 1908. [June 2012 (5 Marks)]

Or

"Is it necessary that registration of documents should be done only where the property is situated"? Discuss the provision of the Registration Act, 1908 dealing with the matter. [June 2018 (5 Marks)]

Or

Discuss the provisions related to the place of registration of documents affecting immovable property as per the Registration Act, 1908. [June 2023 (4 Marks)]

Ans.: Place for registering documents relating to land [Section 28]: Document relating to immovable property should be registered in the office of Sub-registrar of Sub-district under whose jurisdiction whole or some property is situated.

Place for registering other documents [Section 29]: Other document can be registered in the office of such sub-registrar, where all the persons executing the document desire it to be registered.

TAXMANN®

9. Shyam executes a sale deed of a house in favour of Krishna. The house is situated in Faridabad, but the transferor and the transferee want the sale deed to be registered at Gurgaon, which has also a District Court of Haryana State. Can they do so? Give reasons. [June 2012 (5 Marks)]

Ans.: As per Section 28 of the Registration Act, 1908, document relating to immovable property should be registered in the office of Sub-registrar of Sub-district under whose jurisdiction whole or some property is situated. In a given case house is situated at Faridabad, hence documents can be registered at Faridabad and not at Gurgaon.

PRESENTING DOCUMENTS FOR REGISTRATION

10. Who can present the document for registration? [Dec. 2018 (5 Marks)]

Or

"Section 32 of the Registration Act, 1908 specifies the persons who can present documents for registration". Narrate them. [Dec. 2020 (4 Marks)], [June 2021 (4 Marks)]

Ans.: Persons to present documents for registration [Section 32]: Every document to be registered shall be presented at the proper registration office:

(*a*) By some person **executing** or **claiming** under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(*b*) By the **representative** or **assignee** of such a person, or

(*c*) By the **agent** of such a person duly authorized by power-of-attorney.

It is to be noted that, for the purpose of Section 32 **special power of attorney** is required, a general power of attorney will not do.

It is immaterial whether the registration is compulsory or optional but if document is presented for registration by a person other than a party mentioned in Section 32, such presentation is wholly inoperative and the registration of such a document is void. [*Kishore Chandra Singh* v. *Ganesh Prashad Singh*]

11. Bijoy executed a contract for purchasing a piece of land in Delhi from Ajoy. Just after the execution of contract, Bijoy proceeded to England and he is not expected to return to India before six months. Chirag, a good friend of Ajoy who has general power of attorney to act on behalf of Bijoy, gets the said sale deed registered. Is this registration valid? [June 2007 (5 Marks)]

Ans.: As per Section 32 of the Registration Act, 1908, document for registration can be presented at the proper registration office by the agent duly authorized by power of attorney of a person executing document. It is to be noted that,

TAXMANN®

for the purpose of Section 32 **special power of attorney** is required, a general power of attorney will not do.

As per facts given in case Ajoy has general power of attorney to act on behalf of Bijoy and hence registration effected by Ajoy is not valid.

WILLS

12. Is the registration of a will optional under the Registration Act, 1908? Explain the manner in which it may be presented for registration. [Dec. 2013 (3 Marks)]

Ans.: As per Section 18 of the Registration Act, 1908, registration of will is optional. In *Celestine Silva Bai* v. *Josphin Noronh Bai* Madras HC held that the mere fact that a will is not registered is not much a circumstances as must *ispo facto* fell against its genuineness. For non-registration may be due to a dislike for publicity of the agreement that one may make or to avoid expense and trouble. Hence, the registration of will is optional.

Persons entitled to present Wills and authorities to adopt [Section 40]:

(*a*) The **testator**, or after his death **executor** may present it for registration.

(*b*) The donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to for registration.

Registration of Wills and authorities to adopt [Section 41]:

(1) A will or an authority to adopt may be registered in the same manner as any other document.

(2) A will or authority to adopt presented for registration by any other person it shall be registered if the registering officer is satisfied that –

(*i*) The will or authority was executed by the testator or donor.

(*ii*) The testator or donor is dead.

(*iii*) The person presenting the will or authority is entitled to present the same.

EFFECT OF REGISTRATION & NON-REGISTRATION

13. Gautam executed a document on 20th October, 2023 in favour of Thomas. Thereafter, Gautam executed another document on 1st December, 2023 in favour of Peter in respect of the same property. The document between Gautam and Thomas was registered on 15th January, 2024 whereas the document between Gautam and Peter was registered on 15th December, 2024. Which document gets priority and why? [Dec. 2009 (5 Marks)]

Ans.: Effect of registration can be stated as follows:

- A registered document has priority over unregistered document.

TAXMANN®

- A document when registered takes effect from the date of execution and not from the time of its registration. **[Section 47]**

As between two registered documents, the date of execution determines the priority of the two registered documents executed by same persons in respect of the same property to two different persons at two different times, the one which is executed first under Section 47 gets priority over the other. This is the position even though the former deed is registered subsequently to the later one. [*K.J. Nathan* v. *S.V. Maruthi Rai*]

Therefore, the document executed on 15-1-2024 gets priority over the document executed on 1-12-2023 even though the first document was registered subsequently.

14. State the effect of non-registration of documents required to be registered under the Registration Act, 1908. [June 2014 (4 Marks)]

Or

What are cases in which compulsorily registrable documents can be used in evidence, even if it has not been registered? [Dec. 2014 (4 Marks)]

Or

What are the effect of the non-registration of documents that need to be registered under the Registration Act, 1908? [June 2023 (4 Marks)]

Ans.: Effect of non-registration of documents [Section 49]: Documents not registered u/s 17 or under the Transfer of Property Act, 1882 –

(*a*) Does not affect any immovable property comprised therein.

(*b*) Does not confer any power to adopt (*a son*).

(*c*) Cannot be received as evidence of any transaction affecting such property or conferring such power.

Exceptions: An unregistered document affecting immovable property may be received –

(*a*) As evidence in a suit for specific performance under the Specific Relief Act, 1877.

(*b*) As evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882.

(*c*) As evidence of any collateral transaction.

15. What do you understand by registration of documents? State the effect of non-registration of documents required to be registered. [Dec. 2016 (5 Marks)]

Ans.: The main purpose of registration of documents is to provide a method of public registration of documents so as to give information to people regarding legal rights and obligations arising or affecting a particular property and to perpetuate documents which may afterwards be of legal importance, and also to

TAXMANN®

prevent fraud. Registration ensures and safeguards the interest of an intending purchaser.

Thus, the Registration Act, 1908 was designed to ensure that correct land records could be maintained. The Act is also used for proper recording of transactions relating to other immovable property. The Act provides for registration of other documents also, which can give these documents more authenticity. Registering authorities have been provided in all the districts for this purpose.

Effect of non-registration of documents [Section 49]: *Please refer to answer of Question No. 14.*

Exception: *Please refer to answer of Question No. 14.*

16. Amrit executed a gift deed in his life time in favour of Bhanu. The gift deed was not registered during the life time of Amrit. Bhanu, after death of Amrit, presented the gift deed before the Registrar for its registration. Rakshit, brother of Amrit, raised an objection for the registration of gift deed on the ground of fake signature of Amrit. Both the witnesses to the gift deed contended that the signatures were made in their presence by the donor at the time of execution of gift deed. Whether the gift deed will be treated valid for registration under the Registration Act, 1908?

[Dec. 2014 (5 Marks)]

Or

Yash signed a deed of gift in favour of Raja. If Yash does not agree to its registration, will the gift deed be registered? Explain, whether delay in registration of a gift deed will postpone its operation?

[June 2019 (4 Marks)]

Ans.: In the case the donor dies before registration of a document, the document may be presented for registration after his death and if registered will have the same effect as it was registered in his life time.

It was held by the Privy Council in *Kalyana Sundram* v. *Karuppa,* that while registration is a necessary solemnity for the enforcement of a gift of immovable property, it does not suspend the gift until registration actually takes place, when the instrument of gift has been handed over by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective and if it is presented by a person having necessary interest within the prescribed period the Registrar must register it.

Neither death nor the express revocation by the donor, is a ground for refusing registration, provided other conditions are complied with.

In case the donor dies before registration of a document, the document may be presented for registration after his death and if registered will have the same effect as it was registered in his life time.

TAXMANN®

DUTIES & POWERS OF REGISTERING OFFICERS

17. Discuss the remedies available to a person who has been refused to register a document by a Sub-Registrar. Can registration of documents be refused on the ground of under valuation for stamp duty?
[Dec. 2011 (5 Marks)]

Or

Under what circumstances a Sub-Registrar can refuse to register a document under the Registration Act, 1908? [June 2017 (3 Marks)]

Ans.:

(1) **Reasons for refusal to register to be recorded [Section 71]:** When Sub-Registrar refuses to register a document then he has to record the reason for refusing in **Book No. 2**. He also has to endorse the words **'Registration Refused'** on documents. If party makes application for getting the reasons of refusal, the Sub-Registrar has to give it without payment.

(2) **Appeal to Registrar from orders of Sub-Registrar refusing registration [Section 72]:** Appeal can be made to Registrar **within 30 days** against the order of Sub-Registrar and on receiving such appeal Registrar can also refuse or order the Sub-Registrar to get the document registered.

If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered. **[Section 75]**

(3) **Suit in case of order of refusal by Registrar [Section 77]:** If Registrar also refuses to register the document then appeal can be filed in Civil Court **within 30 days** from the date of refusal by Registrar.

TAXMANN®

14 CHAPTER RIGHT TO INFORMATION LAW

RIGHT TO INFORMATION

1. Explain: State the salient features of the Right to Information Act, 2005. [June 2012 (4 Marks)]

Ans.: Salient features of the Right to Information Act, 2005 are as under:

- Any citizen may request information from a 'public authority' which is required to reply expeditiously or within 30 days.
- Citizens have a right to – request any information (as defined); take copies of documents; inspect documents, works and records; take certified samples of materials of work; and obtain information in the form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode.
- The Act relaxes the Official Secrets Act, 1889 and various other special laws that restricted information disclosure in India. In other words, the Act explicitly overrides the Official Secrets Act and other laws to the extent of any inconsistency.
- Applicant can obtain Information within 30 days from the date of request in a normal case. In matter of life or liberty of a person, information can be obtained within 48 hours from time of request.
- The Act also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally.
- The Act, in particular, requires every public authority to publish 16 categories of information. This includes the particulars of its organization, functions and duties; powers and duties of its officers and employees; procedure followed in the decision making process; norms set for discharge of its functions; rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; etc.

TAXMANN®

- The Act enumerates the types of information that are exempted from disclosure. However, these exempted information or those exempted under the Official Secrets Act can be disclosed if public interest in disclosure overweighs the harm to the protected interest. Also, the exempted information(s) would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates.
- Penalty for refusal to receive an application for information or for not providing information is ₹250 per day but the total amount of penalty should not exceed ₹25,000.
- If an applicant is not supplied information within the prescribed time of 30 days or 48 hours, as the case may be, or is not satisfied with the information furnished to him, he may prefer an appeal to the first appellate authority who is an officer senior in rank to the PIO. If still not satisfied the applicant may prefer a second appeal with the Central Information Commission/State Information Commission within 90 days from the date on which the decision should have been made by the first appellate authority or was actually received by the appellant.

2. In *R. P. Ltd.* v. *Indian Express Newspapers*, the Supreme Court read into Article 21 – the right to know. Discuss how right to know is related to Right to Information under the Right to Information Act, 2005. [June 2021 (4 Marks)]

Ans.:

- In *R.P. Limited* v. *Indian Express Newspapers*, the Supreme Court read into Article 21 of the Constitution the right to know.
- The Supreme Court held that right to know is a necessary ingredient of participatory democracy.
- In view of transnational developments when distances are shrinking, international communities are coming together for cooperation in various spheres and they are moving towards global perspective in various fields including Human Rights, the expression "liberty" must receive an expanded meaning.
- The expression cannot be limited to mere absence of bodily restraint. It is wide enough to expand to full range of rights including right to hold a particular opinion and right to sustain and nurture that opinion.
- For sustaining and nurturing that opinion it becomes necessary to receive information.
- Article 21 of the Constitution of India confers on all persons a right to know which include a right to receive information.

3. State *any four* obligations of Public Authority prescribed under section 4(*1*)(*b*) of the Right to Information Act, 2005. [Dec. 2020 (4 Marks)]

TAXMANN®

Ans.: Obligations to publish information [Section 4(*1*)(*b*)]: Every public authority shall publish following information's within 120 days from the enactment of the Act:

(*a*) The particulars of its organization, functions and duties.

(*b*) The powers and duties of its officers and employees.

(*c*) The procedure followed in the decision making process, including channels of supervision and accountability.

(*d*) The norms set by it for the discharge of its functions.

(*e*) The rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions.

(*f*) A statement of the categories of documents that are held by it or under its control.

(*g*) The particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof.

(*h*) A statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public.

(*i*) A directory of its officers and employees.

(*j*) The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations.

(*k*) The budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made.

(*l*) The manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes.

(*m*) Particulars of recipients of concessions, permits or authorizations granted by it.

(*n*) Details in respect of the information, available to or held by it, reduced in an electronic form.

(*o*) The particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use.

(*p*) The names, designations and other particulars of the Public Information Officers.

(*q*) Such other information as may be prescribed and thereafter update these publications every year.

TAXMANN®

4. Section 4 of the Right to Information Act, 2005 has entrusted certain obligations on the public authorities. Discuss any eight obligations. [Dec. 2022 (4 Marks)]

Ans.: Obligations of public authorities [Section 4]:

Obligations to maintain records which facilitates right to information [Section 4(*1*)(*a*)]: Every public authority shall maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated.

Obligations to publish information [Section 4(*1*)(*b*)]: *Please refer to answer of Question No. 3.*

Obligations to publish relevant facts [Section 4(*1*)(*c*)]: Every public authority shall publish all relevant facts while formulating important policies or announcing the decisions which affect public.

Obligations to provide reasons for administrative or quasi judicial decisions [Section 4(*1*)(*d*)]: Every public authority shall provide reasons for its administrative or quasi judicial decisions to affected persons.

Obligation to provide information *suo motu* on internet [Section 4(*2*) & (*3*)]: It shall be a constant endeavour of every public authority to take steps to provide as much information *suo motu* to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of the Act to obtain information.

Every such information shall be disseminated widely and in such form and manner which is easily accessible to the public.

Obligation to make available information at minimum cost [Section 4(*5*)]: All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

5. Specify the manner in which requests may be made by a citizen to the authority for obtaining information under the Right to Information Act, 2005. [Dec. 2008 (4 Marks)]

Ans.: Request for information [Section 6(*1*)]: A person, who desires to obtain any information shall make a request in **writing** or through electronic means in English or Hindi or in the official language of the area in which the application is being made, *accompanying such fee as may be prescribed*, to –

TAXMANN®

- The Central PIO or State PIO of the concerned public authority;
- The Central Assistant PIO or State Assistant PIO specifying the particulars of the information sought.

However, where such request cannot be made in writing, the Central Public Information Officer (PIO) or State PIO, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

Reason for obtaining information is not required to be given [Section 6(2)]: An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

Procedure for obtaining information held by two or more public authorities [Section 6(3)]: Where an application is made to a public authority requesting for an information –

- which is held by another public authority or
- the subject matter of which is more closely connected with the functions of another public authority

the public authority, to which such application is made shall transfer the application and inform the applicant immediately about such transfer.

The transfer of an application shall be made as soon as practicable but in no case later than **5 days** from the date of receipt of the application.

6. Specify the categories of information that have been exempted from disclosure under the Right to Information Act, 2005.
[June 2009 (4 Marks)], [June 2014 (5 Marks)]

Or

Explain any four categories of 'information' which have been exempted from disclosure under the Right to Information Act, 2005.
[Dec. 2019 (4 Marks)]

Ans.: Exemption from disclosure of information [Section 8]: There shall be no obligation to give any citizen following types of information:

(1) **Sovereignty and integrity of India:** Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence.

(2) **Information expressly forbidden:** Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court.

(3) **Breach of privilege of Parliament:** Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature.

TAXMANN®

(4) **Intellectual property:** Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.

(5) **Fiduciary relationship:** Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.

(6) **Information received from foreign Government:** Information received in confidence from foreign Government.

(7) **Information which would endanger life or safety of any person:** Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes.

(8) **Information relating to investigation or prosecution:** Information which would impede the process of investigation or apprehension or prosecution of offenders.

(9) **Cabinet papers:** Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers. However, the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over. Those matters which come under the exemptions specified in this section shall not be disclosed.

(10) **Personal information:** Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central or State PIO or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information. However, the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

7. Amar is a citizen of India and lives in Delhi with his family. He makes an application to the Public Information Officer (PIO) under the Right to Information Act, 2005 and completes all the formalities. The information sought relates to Cabinet papers including records of deliberations of the Council of Ministers. The PIO rejects the application. Has Amar any right to go to the court or to the Central Information Commission against the decision of the PIO? Give your answer quoting the relevant provisions of law. [Dec. 2013 (6 Marks)]

Ans.: As per Section 8 of the Right to Information Act, 2005 information relating to "cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers" is exempted *i.e.* to say such information cannot

TAXMANN®

be supplied. However, the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over.

As per facts given in case, Amar had made an application to supply information which cannot be supplied u/s 8 of the Act and hence the Public Information Officer (PIO) has right to reject such application. Since application is liable to be rejected, Amar cannot file appeal against lawful rejection of application.

8. State the types of information, other than those exempted information in section 8, a public authority is not under an obligation to furnish to an applicant under Right to Information Act, 2005. [June 2022 (4 Marks)]

Ans.: The Right to Information Act, 2005 provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under section 2(*f*) and section 2(*j*).

If a public authority has any information in the form of data or analyzed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8.

But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations then there is no obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant.

A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant.

9. Certain organizations have been exempted from the ambit of the Right to Information Act, 2005, subject to certain conditions. Which are those organizations? What type of information these organizations are bound to provide? [Dec. 2014 (6 Marks)]

Ans.: As per Section 24(*1*) of the Right to Information Act, 2005, the Act shall not apply to the intelligence and security organizations specified in the **2nd Schedule**, being organizations established by the Central Government or any information furnished by such organizations to that Government.

However, exclusion is not absolute and these organizations have to provide information pertaining to the allegations of corruption and human rights violations.

In case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and such information shall be provided within **45 days** from the date of the receipt of request.

PIO & CENTRAL INFORMATION COMMISSION

10. What do you understand by 'Public Information Officer' (PIO) under the Right to Information Act, 2005? What are the duties of PIO under the said Act? [Dec. 2011 (4 Marks)]

Ans.: Public Information Officers: Public Information Officers (PIOs) are officers designated by the public authorities in all administrative units or offices under it to provide information to the citizens requesting for information under the Act.

Any officer, whose assistance has been sought by the PIO for the proper discharge of his or her duties, shall render all assistance and for the purpose of contraventions of the provisions of this Act, such other officer shall be treated as a PIO.

Duties of a PIO: PIO shall deal with requests from persons seeking information and where the request cannot be made in writing, to render reasonable assistance to the person to reduce the same in writing. If the information requested for is held by or its subject matter is closely connected with the function of another public authority, the PIO shall transfer, within 5 days, the request to that other public authority and inform the applicant immediately.

PIO may seek the assistance of any other officer for the proper discharge of his/her duties. PIO, on receipt of a request, shall as expeditiously as possible, and in any case within 30 days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in Section 8 or Section 9.

Where the information requested for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request. If the PIO fails to give decision on the request within the period specified, he shall be deemed to have refused the request.

Where a request has been rejected, the PIO shall communicate to the requester –

(*i*) the reasons for such rejection,

(*ii*) the period within which an appeal against such rejection may be preferred, and

(*iii*) the particulars of the Appellate Authority.

PIO shall provide information in the form in which it is sought unless it would disproportionately divert the resources of the Public Authority or would be detrimental to the safety or preservation of the record in question.

If allowing partial access, the PIO shall give a notice to the applicant, informing:

(*a*) That only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;

TAXMANN®

(*b*) The reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;

(*c*) The name and designation of the person giving the decision;

(*d*) The details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and

(*e*) His or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided.

If information sought has been supplied by third party or is treated as confidential by that third party, the PIO shall give a written notice to the third party within 5 days from the receipt of the request. Third party must be given a chance to make a representation before the PIO within 10 days from the date of receipt of such notice.

11. Discuss in brief the composition and the powers of Central Information Commission (CIC) given under the Right to Information Act, 2005. [Dec. 2018 (4 Marks)]

Ans.: Central Information Commission [Section 12]:

Constitution of Central Information Commission: The Central Government shall, by notification in the Official Gazette constitute a body to be known as the Central Information Commission (CIC) to exercise the powers conferred on, and to perform the functions assigned to, it under the Act.

Composition of Central Information Commission: The CIC shall consist of –

(*a*) The Chief Information Commissioner.

(*b*) Such number of Central Information Commissioners, not exceeding 10, as may be deemed necessary.

Powers: The general superintendence, direction and management of the affairs of the CIS shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the CIC autonomously without being subjected to directions by any other authority under the Act.

12. Discuss the term of office and conditions of service of Chief Information Commissioner and Information Commissioner under the Right to Information Act, 2005. [Dec. 2021 (8 Marks)]

Ans.: Term of office and conditions of service [Section 13]:

(1) Term of office & conditions of service of the CIC: The Chief Information Commissioner shall hold office for such term as may be prescribed by the Central Government and shall not be eligible for reappointment.

However, no Chief Information Commissioner shall hold office as such after he has attained the age of **65 years**.

(2) **Term of office & conditions of service of the Information Commissioner:** Every Information Commissioner shall hold office for such term as may be prescribed by the Central Government or till he attains the age of **65 years**, *whichever is earlier*, and shall not be eligible for reappointment as such Information Commissioner.

However, every Information Commissioner shall be eligible for appointment as the Chief Information Commissioner on vacating his office.

Where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than 5 years in aggregate as the Information Commissioner and the Chief Information Commissioner.

(3) **Oath by CIC & Information Commissioner:** The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(4) **Resignation:** The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office. However, they may be removed in the manner specified in Section 14.

(5) **Salaries and allowances:** The salaries and allowances payable to and other terms and conditions of service of –

(*a*) The Chief Information Commissioner shall be the same as that of the Chief Election Commissioner;

(*b*) An Information Commissioner shall be the same as that of an Election Commissioner.

It is also provided that salaries and allowances will not be varied to the disadvantage of the CIC during service.

TAXMANN®

POWERS & FUNCTIONS OF THE INFORMATION COMMISSIONS, APPEAL & PENALTIES

13. Section 20 of the Right to Information Act, 2005 deals with the penalties imposed on a Public Information Officer (PIO). Explain.
[June 2011 (4 Marks)], [Dec. 2020 (4 Marks)]

Or

State the acts for which Public Information Officer may be punished under section 20 of Right to Information Act, 2005.
[June 2022 (4 Marks)]

Ans.: Penalty [Section 20]: The RTI Act imposes stringent penalty on a Public Information Officer (PIO) for failing to provide information. Every PIO will be liable for fine of **₹250 per day**, up to a maximum of **₹25,000** for –

(*a*) Not accepting an application.

(*b*) Delaying information release without reasonable cause.

(*c*) *Malafidely* denying information.

(*d*) Knowingly giving incomplete, incorrect, misleading information.

(*e*) Destroying information that has been requested.

(*f*) Obstructing furnishing of information in any manner.

The Central or State Information Commission will have the power to impose this penalty. They can also recommend disciplinary action for violation of the law against the PIO for persistently failing to provide information without any reasonable cause within the specified period.

14. Bimal made an application in writing with prescribed fee to the Public Information Officer (PIO) for obtaining the information which is permissible under the relevant statute. The PIO neither provided the required information nor rejected the application of Bimal for providing the required information although a period of 45 days elapsed from the date of submitting the aforesaid application to the PIO. Bimal wants to file a suit in the civil court for not providing the required information to him. Advise Bimal. [Dec. 2012 (5 Marks)]

Ans.: As per Section 19 of the Right to Information Act, 2005, any person who, does not receive a decision within the time specified in Section 7, or is aggrieved by a decision of the Central or State Public Information Officer may within **30 days** from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central or State Public Information Officer in each public authority.

However, such officer may admit the appeal after the expiry of the period of 30 days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

As per Section 23 of the Right to Information Act, 2005, no Court shall entertain any suit, application or other proceeding in respect of any order made under the Act and no such order shall be called in question otherwise than by way of an appeal under the Act.

Considering above provisions, Bimal cannot file a suit in civil court for not providing the required information to him. He is advised to file the appeal before to officer senior in rank to the Central or State Public Information Officer who refused or failed to give required information.

TAXMANN®

15. When is the Central Information Commission/State Information Commission duty bound to receive complaints from any person?
[Dec. 2013 (4 Marks)]

Ans.: Duty of the Central or State Information Commission: It shall be the duty of the Central or State Information Commission to receive inquire into a complaint from any person –

(*a*) Who has been unable to submit a request either by reason that no such officer has been appointed or because the Central or State Assistant Public Information Officer has refused to accept his application or appeal under the Act.

(*b*) Who has been refused access to any information requested under the Act.

(*c*) Who has not been given a response to a request for information or access to information within the time limit specified under the Act.

(*d*) Who has been required to pay an amount of fee which is unreasonable.

(*e*) Who believes that incomplete, misleading or false information has been given.

(*f*) In respect of any other matter relating to requesting or obtaining access to records under the Act.

16. State in brief the powers of Information Commission under the Right to Information Act, 2005.
[June 2014 (4 Marks)]

Ans.: Information Commission has following powers under section 18 of the Right to Information Act, 2005:

Power to make inquiry: Where the Central or State Information Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

Powers of Civil Court: The Central or State Information Commission while inquiring into any matter shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters:

(1) Summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things.

(2) Requiring the discovery and inspection of documents.

(3) Receiving evidence on affidavit.

(4) Requisitioning any public record or copies thereof from any court or office.

(5) Issuing summons for examination of witnesses or documents.

(6) Any other matter which may be prescribed.

TAXMANN®

Power to examine the records: The Central or State Information Commission may examine any record to which the Act applies which is under the control of the public authority and no such record may be withheld from it on any grounds.

17. Explain the provisions for appeal under the Right to Information Act, 2005.

Or

What are the appellate authorities and time limit to file an appeal against the decision under the Right to Information Act, 2005?

[June 2023 (4 Marks)]

Ans.: Appeal [Section 19]:

(1) **Who can Appeal:** Any person who, does not receive a decision within the time specified in Section 7, or is aggrieved by a decision of the Central or State Public Information Officer may within **30 days** from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central or State Public Information Officer in each public authority.

However, such officer may admit the appeal after the expiry of the period of 30 days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) **Appeal by third party:** Where an appeal is preferred against an order made by a Central or State Public Information Officer u/s 11 to disclose third party information, the appeal by the concerned third party shall be made within **30 days** from the date of the order.

(3) **Second Appeal:** A second appeal against the decision shall lie within **90 days** from the date on which the decision should have been made or was actually received, with the Central or State Information Commission.

However, the Central or State Information Commission may admit the appeal after the expiry of the period of 90 days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) **Opportunity of being heard to third party:** If the decision of the Central or State Public Information Officer, against which an appeal is preferred relates to information of a third party, the Central or State Information Commission shall give a reasonable opportunity of being heard to that third party.

(5) **Burden of proof:** In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central or State Public Information Officer, who denied the request.

(6) **Time limit for disposal of appeal:** An appeal shall be disposed of within **30 days** of the receipt of the appeal or within such extended period not exceeding a total of **45 days** from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

TAXMANN®

(7) **Decision:** The decision of the Central or State Information Commission shall be binding.

Bar of jurisdiction of Courts [Section 23]: No Court shall entertain any suit, application or other proceeding in respect of any order made under the Act and no such order shall be called in question otherwise than by way of an appeal under the Act.

TAXMANN®

15 CHAPTER

LAW RELATING TO INFORMATION TECHNOLOGY

OBJECTS & APPLICABILITY

1. Explain the three fundamental provisions to which the Information Technology Act, 2000 is made applicable. [Dec. 2022 (4 Marks)]

Ans.: Fundamental reasons for which the Information Technology Act, 2000, was enacted to make following kinds of provisions:

(1) To grant legal recognition for electronic data interchange and other means of electronic communication commonly referred to as e-commerce in place of paper based methods of communication.

(2) To give legal recognition to digital signatures.

(3) To facilitate electronic filing of documents with Government.

(4) To facilitate electronic storage of data.

(5) To facilitate and give legal sanction to electronic fund transfers.

(6) To give legal recognition for keeping of books of account by banker's in electronic form.

(7) To amend:

- Indian Penal Code, 1860
- Indian Evidence Act, 1872
- Banker's Book Evidence Act, 1891
- Reserve Bank of India Act, 1934.

2. Describe the documents or transactions to which the Information Technology Act, 2000 shall not apply.
[Dec. 2019 (4 Marks), [Dec. 2020 (4 Marks)]

Or

Discuss the types and importance of document or transactions mentioned in the first schedule of Information Technology Act, 2000.
[Dec. 2022 (4 Marks)]

TAXMANN®

Ans.: Non-applicability [Section 1(4)]: The Information Technology Act, 2000 shall not apply to documents or transactions specified in First Schedule.

Following documents/transactions are specified in First Schedule to the Act:

(*a*) A **negotiable instrument** (*other than a cheque*) as defined in Section 13 of the Negotiable Instruments Act, 1881.

(*b*) A **power of attorney** as defined in Section 1A of the Powers of Attorney Act, 1882.

(*c*) A **trust** as defined in Section 3 of the Indian Trusts Act, 1882.

(*d*) A **will** as defined in Section 2(*h*) of the Indian Succession Act, 1925 including any other testamentary disposition by whatever name called.

(*e*) Any **contract** for the sale or conveyance of **immovable property** or any interest in such property.

OBJECTIVES & DEFINITIONS

3. Distinguish between: 'Public Key' and 'Private Key'.
[June 2009 (4 Marks)], [June 2012 (4 Marks)]

Ans.: Private Key: Private key means the key of a key pair used to ***create a digital signature***.

Public Key: Public key means the key of a **key pair** used to ***verify a digital signature*** and listed in the Digital Signature Certificate.

Key Pair: Key pair, in an asymmetric crypto system, means a private key and its mathematically related public key, which are so related that the public key can verify a digital signature created by the private key.

4. Distinguish between: Computer & Computer Network.
[June 2009 (4 Marks)]

Ans.: Computer: Computer means any electronic magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network.

Computer Network: Computer network means the *interconnection of one or more computers* through –

(*a*) the use of satellite, microwave, terrestrial line, wire, wireless or other communication media *and*

(*b*) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained.

TAXMANN®

5. Distinguish between: 'Electronic Form' & 'Electronic Record'.
[Dec. 2010 (4 Marks)], [Dec. 2014 (4 Marks)]

Ans.: Electronic Form: Electronic form with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device.

Electronic Record: Electronic record means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.

6. Distinguish between: 'Computer network' and 'computer system'.
[June 2011 (4 Marks)], [Dec. 2011 (4 Marks)]

Ans.: Following are the main point of distinctions between computer network & computer system:

Points	Computer Network	Computer System
Meaning	Computer network means the interconnection of one or more computers.	Computer system means a device or collection of devices, including input and output support devices which contain computer programmes, electronic instructions, input data and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions.
What it is	Computer network is the interconnection of one or more computers.	Computer system means a device or collection of devices including input and output support devices.
What it does	Computer network helps to connect with other computer or computer systems.	Computer system helps to process and analyze data with its input and output device.
Example	Internet, intranet and extranet are the examples of computer network.	Desktop computer, laptop and other devices connected with it like keyboard, speakers, printer is together is known as computer system.

DIGITAL/ELECTRONIC SIGNATURE & ELECTRONIC GOVERNANCE

7. Explain: Digital signature.
[Dec. 2008 (4 Marks)], [June 2012 (4 Marks)]

Ans.: Digital Signature: Digital Signature means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of Section 3.

TAXMANN®

Authentication of electronic records [Section 3]:

(*a*) Any subscriber may authenticate an electronic record by affixing his digital signature.

(*b*) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

(*c*) Any person by the use of a public key of the subscriber can verify the electronic record.

(*d*) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

8. Write a short note on: E-governance.
[June 2009 (4 Marks)], [June 2010 (4 Marks)]

Ans.: Provisions relating to 'E-governance' are contained in Sections 4 and 6 of the Information Technology Act, 2000.

Legal recognition of electronic records [Section 4]: Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is –

(*a*) rendered or made available in an electronic form and

(*b*) accessible so as to be usable for a subsequent reference.

Use of electronic records and digital signatures in Government and its agencies [Section 6]: Where any law provides for –

(1) The filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(2) The issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(3) The receipt or payment of money in a particular manner,

then, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

The appropriate Government may by rules prescribe –

(*a*) The manner and format in which such electronic records shall be filed, created or issued;

(*b*) The manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (*a*).

TAXMANN®

In simple words Section 6 states that – where any form or application is required to be filed with any authority then such form and application can be filed electronically.

Example: Income-tax Act, 1961 provides that every assessee having income more than basic exemption limit has to file return of income. Thus, if any person files his return electronically then it is equivalent to filing of physical return with the income tax department.

9. Discuss 'Digital Signature' and 'Electronic Signature' under the Information Technology Act, 2000. [Dec. 2018 (4 Marks)]

Ans.: Digital Signature: Digital signature means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of Section 3.

Electronic Signature: Digital signature is a *sub set* of electronic signature. The Information Technology (Amendment) Act, 2008, in order to maintain continuity with the regime of the digital signature has introduced the concept of 'electronic signature'.

Example: Electronic signatures may include biometric signatures, passwords, PINs, encryption applications *etc.*

A subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which –

(*a*) is considered reliable and

(*b*) may be specified in the **Second Schedule**.

10. Discuss the provisions of Sections 14 and 15 of the Information Technology Act, 2000, on secure electronic records. [Dec. 2020 (4 Marks)]

Ans.: Secure electronic record [Section 14]: Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.

Secure digital signature [Section 15]: Digital signature shall be deemed to be a secure digital signature if, by application of a security procedure agreed to by the parties concerned, it can be verified at the time it was affixation that –

(*a*) Digital signature is unique to the subscriber affixing it.

(*b*) Digital signature is capable of identifying such subscriber.

Digital signature is created in a manner or using a means under the exclusive control of the subscriber and is linked to the electronic record to which it relates in such a manner that if the electronic record was altered the digital signature would be invalidated.

TAXMANN®

11. Explain the procedure for obtaining 'Electronic Signature Certificate' under the Information Technology Act, 2000. [June 2021 (4 Marks)]

Ans.: Sections 35 to 39 of the Information Technology Act, 2000 deal with Electronic Signature Certificates. As per Section 35, Certifying Authority issues Electronic Signature Certificate.

Procedure of obtaining Electronic Signature Certificate:

(1) Any person may make an application in prescribed form to the Certifying Authority for the issue of electronic signature Certificate in such form as may be prescribed by the Central Government.

(2) Every such application shall be accompanied by the prescribed fees.

(3) Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.

(4) On receipt of an application, the Certifying Authority may, after consideration of the certification practice statement or the other statement and after making such enquiries as it may deem fit, grant the electronic signature Certificate or for reasons to be recorded in writing, reject the application.

Opportunity of showing cause: No application shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against the proposed rejection.

TAXMANN®

CONTROLLER & CERTIFYING AUTHORITIES

12. Who is controller? What are the functions of Controller as per the Information Technology Act, 2000? [June 2014 (4 Marks)]

Ans.: Controller means the Controller of Certifying Authorities appointed under Section 17(*1*).

Appointment of Controller and other officers [Section 17]: The Central Government has a power to appoint a Controller of Certifying Authorities by issuing notification in the Official Gazette. Deputy & Assistant Controllers can also be appointed by the Central Government.

The Controller shall discharge his functions under the Act subject to the general control and directions of the Central Government.

Functions of Controller [Section 18]: Controller may perform following functions –

(*a*) Exercising supervision over the activities of the Certifying Authorities.

(*b*) Certifying public keys of the Certifying Authorities.

(*c*) Laying down the standards to be maintained by the Certifying Authorities.

(*d*) Specifying the qualifications and experience which employees of the Certifying Authorities should possess.

(*e*) Specifying the conditions subject to which the Certifying Authorities shall conduct their business.

(*f*) Specifying the contents of written, printed or visual materials and advertisements that may be distributed or used in respect of a Digital Signature Certificate and the public key.

(*g*) Specifying the form and content of a Digital Signature Certificate and the key.

(*h*) Specifying the form and manner in which accounts shall be maintained by the Certifying Authorities.

(*i*) Specifying the terms and conditions subject to which auditors may be appointed and the remuneration to be paid to them.

(*j*) Facilitating the establishment of any electronic system by a Certifying Authority either solely or jointly with other Certifying Authorities and regulation of such systems.

(*k*) Specifying the manner in which the Certifying Authorities shall conduct their dealings with the subscribers.

(*l*) Resolving any conflict of interests between the Certifying Authorities and the subscribers.

(*m*) Laying down the duties of the Certifying Authorities.

(*n*) Maintaining a data base containing the disclosure record of every Certifying Authority containing such particulars as may be specified by regulations, which shall be accessible to public.

13. Explain the duties of certifying authorities under the Information Technology Act, 2000 in respect of digital signatures.
[June 2014 (4 Marks)]

Ans.: Certifying Authority to follow certain procedures [Section 30]: Every Certifying Authority shall follow certain procedures in respect of Digital Signatures.

Every Certifying Authority shall –

(1) Make use of hardware, software, and procedures that are secure from intrusion and misuse.

(2) Provide a reasonable level of reliability in its services which are reasonably suited to the performance of intended functions.

(3) Adhere to security procedures to ensure that the secrecy and privacy of the Electronic Signatures are assured.

(4) Observe such other standards as may be specified by regulations.

TAXMANN®

14. Under what conditions digital signatures may be suspended by the certifying authority? [June 2016 (3 Marks)]

Ans.: Suspension of digital signature certificate [Section 37]: The Certifying Authority which has issued a digital signature certificate may suspend such Digital Signature Certificate –

(*a*) On receipt of a request to that effect from –

(*i*) The subscriber listed in the digital signature certificate or

(*ii*) Any person duly authorized to act on behalf of that subscriber.

(*b*) If it is of opinion that the digital signature certificate should be suspended in public interest.

Opportunity of being heard: A digital signature certificate shall not be suspended for a period **exceeding 15** days unless the subscriber has been given an opportunity of being heard in the matter.

Communication to subscriber on suspension: On suspension of a digital signature certificate, the Certifying Authority shall communicate the same to the subscriber.

15. Under what conditions digital signatures may be revoked by the issuing authority? [Dec. 2014 (2 Marks)]

Ans.: Revocation of digital signature certificate [Section 38]: A Certifying Authority may revoke a digital signature certificate issued by it –

(*a*) Where the subscriber or any other person authorized by him makes a request to that effect.

(*b*) Upon the death of the subscriber.

(*c*) Upon the dissolution of the firm or winding-up of the company where the subscriber is a firm or a company.

A Certifying Authority may revoke a digital signature certificate which has been issued by it at any time, if it is of opinion that –

(1) A material fact represented in the digital signature certificate is false or has been concealed.

(2) A requirement for issuance of the digital signature certificate was not satisfied.

(3) The certifying authority's private key or security system was compromised in a manner materially affecting the digital signature certificate's reliability.

(4) The subscriber has been declared insolvent or dead or where a subscriber is a firm or a company, which has been dissolved, wound-up or otherwise ceased to exist.

Opportunity of being heard: A digital signature certificate shall not be revoked unless the subscriber has been given an opportunity of being heard in the matter.

TAXMANN®

Communication to subscriber on revocation: On revocation of a digital signature certificate, the Certifying Authority shall communicate the same to the subscriber.

PENALTIES, COMPENSATION & ADJUDICATION

16. Describe the offence of 'hacking' with computer system as provided under the Information Technology Act, 2000.
[Dec. 2008 (4 Marks)], [June 2013 (4 Marks)]

Or

One morning, scientists at an atomic research centre found a rude-nuclear message splashed across their computer screens. Someone had breached the atomic research centre's advanced security system and sensitive mail. What offence has been committed in the atomic research centre?
[June 2006 (6 Marks)], [Dec 2012 (6 Marks)]

Ans.: 'Hacking' is a term used to describe the act of destroying or deleting or altering any information residing in a computer resource or diminishing its value or utility, or affecting it injuriously in spite of knowing that such action is likely to cause wrongful loss or damage to the public or that person.

As per Section 43(*i*) of the Information Technology Act, 2000, if any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means then he shall be liable to pay compensation to the person so affected.

Computer Related Offences [Section 66]: If any person, dishonestly, or fraudulently, does any act referred to in Section 43, he shall be punishable –

- With imprisonment for a term which may extend to **3 years** *or*
- With fine which may extend to ₹ **5 lakh** *or*
- With **both**.

Power to investigate offences [Section 78]: A police officer not below the rank of Inspector shall investigate any offence under the Act.

Thus, the offence of hacking is covered by Section 43(*i*) and person committing offence of hacking is liable to pay compensation the person so affected by such offence. The person committing offence of hacking can also be penalized as per Section 66 of the said Act.

APPELLATE TRIBUNAL

17. Explain: 'Cyber Regulations Appellate Tribunal' under the Information Technology Act, 2000. **[June 2012 (4 Marks)]**

TAXMANN®

Ans.: Appellate Tribunal [Section 48]: The **Telecom Disputes Settlement & Appellate Tribunal** established u/s 14 of the Telecom Regulatory Authority of India Act, 1997 shall be the Appellate Tribunal for the purposes of the Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under the Act.

Due to amendment in the Information Technology Act, 2000 'Cyber Regulations Appellate Tribunal' does not exist. Now all the powers are transferred to Telecom Disputes Settlement & Appellate Tribunal established u/s 14 of the Telecom Regulatory Authority of India Act, 1997.

18. What is the objective of establishing Appellate Tribunal under the Information Technology Act, 2000. [June 2015 (4 Marks)]

Ans.: The Appellate Tribunal has been established with the objective to listen the appeal of any person aggrieved by the order of controller or adjudicating officer.

Appellate Tribunal exercises the jurisdiction, powers and authority conferred on it by or under the Information Technology Act, 2000.

Thus, Appellate Tribunal acts as forum to seek redressal.

OFFENCES

19. What are the cyber offences under the Information Technology Act, 2000? [June 2009 (4 Marks)], [June 2010 (4 Marks)] [June 2014 (4 Marks)]

Or

Elaborate the offences relating to computers and connected matters therein. [June 2021 (8 Marks)]

Ans.: The Information Technology Act, 2000 contemplates a dual scheme in regard to wrongful acts concerning computers etc. Certain act mentioned in Section 43 creates liability to pay damages to the person affected by such acts.

Chapter XI, covering Sections 65 to 78 deals with offences relating to computers etc. and connected matters which are as follows:

(*a*) Tampering with computer source documents.

(*b*) Dishonestly or fraudulently doing any act referred to in section 43.

(*c*) Sending offensive messages.

(*d*) Dishonestly receiving stolen computer resource or communication device

(*e*) Identity theft

(*f*) Cheating by personation by using computer resource.

(*g*) Violation of privacy.

(*h*) Cyber terrorism

(*i*) Publishing or transmitting obscene material in electronic form

TAXMANN®

(*j*) Publishing or transmitting of material containing sexually explicit act, etc. in electronic form

(*k*) Publishing or transmitting of material depicting children in sexually explicit act in electronic form.

All above offence liable to penalty as described in respective sections. Such offences are punishable by imprisonment or fine or both.

20. 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. [June 2023 (4 Marks)]

Ans.: Penalty for damage to computer, computer system, etc. [Section 43]: If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network commits any of the following acts then *he shall be liable to pay compensation to the person so affected*:

(*a*) Accesses or secures access to such computer, computer system or computer network.

(*b*) Downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium.

(*c*) Introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network.

(*d*) Damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network.

(*e*) Disrupts or causes disruption of any computer, computer system or computer network.

(*f*) Denies or causes the denial of access to any person authorized to access any computer, computer system or computer network by any means.

(*g*) Provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder.

(*h*) Charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network.

(*i*) Destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means. (*Thus, offence of hacking is covered by this clause*)

(*j*) Steal, conceal, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage.

NOTE: ***Student's are expected write any eight points out of the above as required by the question.***

21. Discuss the liability of Corporate body for data protection under Information Technology Act, 2000. [Dec. 2018 (4 Marks)]

Ans.: Compensation for failure to protect data [Section 43A]: Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to **pay damages by way of compensation** to the person so affected.

22. If any person dishonestly or fraudulently does any act under section 43 of Information Technology Act, 2000 without the permission of the owner or any other person, who is in-charge of a computer, computer system network, he shall be punished. What is the punishment for this offence? In brief, discuss the offences listed in The IT Act relating to computer and computer system network. [June 2019 (4 Marks)]

Ans.: As per Section 43 of the Information Technology Act, 2000, if any person dishonestly or fraudulently does any act without permission of the owner or any other person who is in charge of a computer, computer system or computer network then he shall be liable to pay compensation to the person so affected.

Computer Related Offences [Section 66]: If any person, dishonestly, or fraudulently, does any act referred to in Section 43, he shall be punishable –

- With imprisonment for a term which may extend to **3 years** *or*
- With fine which may extend to ₹ **5 lakh** *or*
- With **both**.

23. State the penalty provisions for failure to furnish information, return and to maintain records under the Information Technology Act, 2000. [June 2023 (4 Marks)]

Answer:

Penalty for failure to furnish information return etc. [Section 44]: If any person who is required under the Information Technology Act, 2000 or any Rules or Regulations made thereunder to –

(*a*) Fails to furnish any document, return or report to the Controller or the Certifying Authority, he shall be liable to a penalty not exceeding ₹ **1,50,000** for each such failure.

(*b*) Fails to file any return or do not furnish any information, books or other documents within the specified time, he shall be liable to a penalty not exceeding ₹ **5,000** for every day during which such failure continues.

TAXMANN®

(c) Fails to maintain books of account or records, he shall be liable to a penalty not exceeding ₹ **10,000** for every day during which the failure continues.

LIABILITY OF NETWORK SERVICE PROVIDERS

24. Liability of network service provider under section 79 of the Information Technology Act, 2000. Discuss. [Dec. 2013 (4 Marks)]

Ans.: As per Section 79 of the Information Technology Act, 2000, network service provider is not liable if the offence was committed without his knowledge and he had taken care to prevent commission of offence.

The Internet system depends, for its working, on network service providers *i.e.* intermediaries. An "intermediary" with respect to any particular electronic message, means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that massage.

In his capacity as an intermediary, a network service provider may have to handle matter which may contravene the Act. To avoid such a consequence, the Act declares that network service provider shall not be liable "under this Act, rule or regulation made thereunder", for any third party information or data made available by him, if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.

MISCELLANEOUS

25. Distinguish between: 'Hacking' and 'Passing off'. [June 2011 (4 Marks)]

Ans.: *'Hacking' is a term used to describe the act of destroying or deleting or altering any information residing in a computer resource or diminishing its value or utility, or affecting it injuriously in spite of knowing that such action is likely to cause wrongful loss or damage to the public or that person.*

The Information Technology Act, 2000 does not contain a specific provision, declaring illegal any fraudulent use, by one person, of other person's domain name. However, even in the absence of specific legislation on the subject such conduct can become actionable under the law of torts. In fact, judicial decisions, both in India and elsewhere, amply demonstrate the potency of the law of torts in this context. The tort of "passing off" is wide enough to afford legal redress (in damages) to a person who is the holder of a particular domain name and who suffers harm as a result of the fraudulent use of his domain name by another person. Such conduct has been regarded as falling under the tort of "passing off". The crux of the action of passing of lies in actual or possible or probable deception.

EXAMINA®

The principles relating to "passing off" were held to be applicable to domain names in ***Rediff Communication Limited v. Cyberbooth & Another.***

The domain name 'Rediff' (of the plaintiff) and the domain name 'Radiff' (of the defendant) were held to be deceptively similar and capable of causing deception, as the fields of business activity of both the parties were similar. The grant of a temporary injunction, restraining the defendant from using the name in question, was held to be proper.

26. Majority of legal problems in the information technology relate to the machine, the medium and the message. Discuss. [Dec. 2012 (4 Marks)]

Ans.: It is true that majority of the legal problems arising in the sphere of information technology relate to the machine, the medium and the message.

Machine: This includes the hardware used to send the message, data and information. If these are not secured by some means like password etc. the data, message and information contained in it is likely to be tampered, stolen or damaged.

Message: There are copyright and hacking issues. Different countries address such type of issue differently, so there are less chance that dispute will be properly addressed.

Medium: The medium through which data, message, documents or information is being sent must be properly secured otherwise such data, message, documents or information can be easily stolen or hacked.

TAXMANN®

16 CHAPTER

CONTRACT LAW

CONTRACT – MEANING

1. Ram employed in Mumbai promised to pay ₹ 8,000 per month to his wife Sunita. She was living in Delhi. On receiving information that she has become unfaithful to him, Ram stopped the payment of ₹ 8,000 to Sunita. Sunita approaches to file a case against Ram. Advise her with reference to the Indian Contract Act, 1872.
[Dec. 2013 (5 Marks)], [June 2019 (4 Marks)]

Ans.: An agreement may be a social agreement. A social agreement is that which does not give rise to legal consequences. In case of its breach the parties cannot go to the Law Court to enforce a right.

Agreement between husband and wife is social agreement and do not create any binding legal relations. Hence, Sunita cannot file suit against her husband Ram for non-payment of ₹ 8,000 per month.

2. Write a short note on: e-Contract **[June 2014 (3 Marks)]**

Ans.:

- Electronic contracts are not paper based but rather in electronic form are born out of the need for speed, convenience and efficiency.
- In the electronic age, the whole transaction can be completed in seconds, with both parties simply affixing their digital signatures to an electronic copy of the contract.
- The conventional law relating to contracts is not sufficient to address all the issues that arise in electronic contracts.
- The Information Technology Act, 2000 solves some of the peculiar issues that arise in the formation and authentication of electronic contracts.
- As in every other contract, an electronic contract also requires to fulfil the essential element of contract laid down in Section of the Indian Contract, 1872.

TAXMANN®

3. Discuss the essential elements of valid contract?
[Dec. 2013 (5 Marks)]

Ans.: What agreements are contracts [Section 10]: All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void.

Essential elements of a valid contract:

- There must be an agreement. This involves two parties, one party making the offer and the other party accepting it.
- The parties must intend to create legal relationship.
- The parties must be capable of entering into an agreement as regards age and understanding. Thus, person making contract should not be minor, idiot or lunatic..
- The agreement must be supported by consideration on both sides.
- The consent of the parties must be free and genuine.
- The object of the agreement must be lawful.
- The terms of the agreement must be certain and capable of performance.
- The agreement must not have been expressly declared as void.

OFFER & ACCEPTANCE

4. Distinguish between: Offer & An invitation to offer
[Dec. 2011 (5 Marks)]

Ans.: Following are the main points of distinction between offer & an invitation to offer

Points	Offer	An invitation to offer
Meaning	A person is said to have made a proposal, when he signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence.	Something by which a person is invited to make an offer is known as invitation to make an offer.
Defined	'Offer' is defined in Section 2(*a*) of the Contract Act, 1872.	'An invitation to offer' is not defined in the Contract Act, 1872.
Effect	Offer when accepted become agreement.	An invitation to offer when responded results into offer.
Example	Kiran say to Gopal, "Will you purchase my motor bike for ₹ 15,000". In this case Kiran is making offer to Gopal as Kiran signifies his willingness to Gopal to sell his motor bike for ₹ 15,000.	Display of goods by a shopkeeper in his window, with prices marked on them, is not offer but merely an invitation to the public to make an offer.

TAXMANN©

5. What are the various modes of revocation of offer as per the Contract, 1872? **[Dec. 2014 (3 Marks)]**

Ans.: Various modes of revocation of offer: Offer may lapse or come to an end by various modes as given below:

(1) Offer may come to an end by communication of notice of revocation by the offeror at any time before acceptance.

(2) If the offeree does not accept the offer within given time or if no time is given, then within reasonable time.

(3) If condition precedent is not fulfilled then offer may come to an end.

(4) Offer may come to an end by death or insanity of the offeror.

(5) When counter offer is made original offers come to an end.

(6) If an offer is not accepted according to the prescribed mode.

(7) Offer may come to an end due to change in law.

6. State the difference in rules of making offer and acceptance when the mode of making the same varies from post to telephone and e-mail as governed by the Information Technology Act, 2000. **[Dec. 2016 (3 Marks)]**

Ans.: Contracts by Post: Contracts by post are subject to the same rules as others, but because of their importance, these are stated below separately:

- An offer by post may be accepted by post, unless the offeror indicates anything to the contrary.
- An offer is made only when it actually reaches the offered and not before, *i.e.*, when the letter containing the offer is delivered to the offeree.
- An acceptance is made as far as the offeror is concerned, as soon as the letter containing the acceptance is posted, to offerors correct address; it binds the offeror, but not the acceptor. An acceptance binds the acceptor only when the letter containing the acceptance reaches the offeror. The result is that the acceptor can revoke his acceptance before it reaches the offeror.
- An offer may be revoked before the letter containing the acceptance is posted. An acceptance can be revoked before it reaches the offeror.

Contracts over the Telephone: Contracts over the telephone are regarded the same in principle as those negotiated by the parties in the actual presence of each other. In both cases an oral offer is made and an oral acceptance is expected. It is important that the acceptance must be audible, heard and understood by the offeror. If during the conversation the telephone lines go 'dead' and the offeror does not hear the offerees word of acceptance, there is no contract at the moment. If the whole conversation is repeated and the offeror hears and understands the words of acceptance, the contract is complete. *[Kanhaiyalal* v. *Dineshwarchandra]*

7. A young boy ran away from his father's home. His father issued a pamphlet offering a reward of ₹ 5 lakh to anybody who would bring the boy home. Arun saw the boy at a railway station and sent an e-mail to the boy's father.

(*i*) Is Arun entitled for reward?

(*ii*) In the light of the above case, explain the rules governing offer.

[Dec. 2016 (5 Marks)]

Ans.: The communication of the offer may be general or specific. Where an offer is made to a specific person it is called specific offer and it can be accepted only by that person. But when an offer is addressed to an uncertain body of individuals *i.e.* the world at large, it is a general offer and can be accepted by any member of the general public by fulfilling the condition laid down in the offer.

In *Harbhajan Lal* v. *Harcharan Lal*, a young boy ran away from his father's home. The father issued a pamphlet offering a reward of ₹ 500 to anybody who would bring the boy home. The plaintiff saw the boy at a railway station and sent a telegram to the boy's father. It was held that the handbill was an offer open to the world at large and was capable to acceptance by any person who fulfilled the conditions contained in the offer. The plaintiff substantially performed the conditions and was entitled to the reward offered.

Same rule will also apply for reply through e-mail.

8. A invites B to stay with him during winter vacation at his residence. B accepts the invitation and informs A accordingly. When B reaches A's house, he finds it locked and he has to stay in a hotel. Can B claim damages from A?

[June 2017 (3 Marks)]

Ans.: As per Section 2(*b*) of the Contract Act, 1872, when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted and a proposal when accepted becomes a promise. In broad sense, therefore, a contract is an exchange of promises by two or more persons, resulting in an obligation to do or abstain from doing a particular act, where such obligation is recognized and enforced by law.

An agreement between two persons to go together to the cinema, or for a walk, does not create a legal obligation on their part to abide by it. Similarly, if I promise to buy you a dinner and break that promise, I do not expect to be liable to legal penalties. There cannot be any offer and acceptance to hospitality.

Keeping in view of above discussion, it can be concluded that there is no contract if Mr. A invites to Mr. B to stay with him during winter vacation at his residence as it is a social contract and offer and acceptance to hospitality does not create contract.

TAXMANN®

9. Aman hired a room in a hotel and paid a week's rent in advance. After registering, he went up to occupy the room. Aman found a notice on the wall that "The proprietor will not be responsible for articles lost or stolen, unless handed over to the manager of the hotel for safe custody." Owing to the negligence of the hotel staff, a thief gained access to the room and stole some goods of Aman. State whether the proprietor of the hotel is liable for the loss caused to Aman? State also which type of contract it is? [June 2017 (5 Marks)]

Ans.: Where any special terms are to be included in a contract, these must be duly brought to the notice of the offeree at the time when the proposal is made. If it is not done and if the contracts subsequently entered into, the offeree will not be bound by them. Also these terms should be presented in such a manner that a reasonable man can become aware of them before he enters into a contract.

Example: A hotel put a notice in bed room, exempting the proprietor from liability for the loss of client's goods. Held, the notice was not effective as it came to the knowledge of the client only when the contract to take a room had already been entered into. [*Olley* v. *Marlborough Court Ltd.*]

As per facts given in case, hotel has failed to brought to the notice of Aman special term that hotel will not be responsible for article lost or stolen in hotel at the time of entering into contract and hence hotel cannot escape its liability as special terms in contract should be presented in such a manner that a reasonable man can become aware of them before he enters into a contract.

10. Gamaxo Ltd. offered a reward of ₹ 10,000 by advertisement to anyone who infected influenza after using their smoke ball in the specified manner. Mr. Upma uses smoke ball in the specified manner, but still infected by influenza. She claims the reward. Decide the case with the help of leading case laws and related sections of the Contract Act, 1872. [June 2018 (5 Marks)], [Dec. 2018 (5 Marks)]

In pandemic of Covid-19 a drug company made an offer by advertisement, a reward of ₹ 10,000 to anyone suffering from Covid-19 after using their drug in prescribed manner. Mrs. Romila having taken the drug as per prescription could not be cured. She claimed for the money. Will she succeed? [June 2022 (4 Marks)]

Ans.:

- The communication of the offer may be general or specific.
- Where an offer is made to a specific person it is called specific offer and it can be accepted only by that person. But when an offer is addressed to an uncertain body of individuals *i.e.* the world at large, it is a general offer and can be accepted by any member of the general public by fulfilling the condition laid down in the offer.
- The leading case on the subject is *Carlill* v. *Carbolic Smoke Ball Co.* The company offered by advertisement, a reward of £100 to anyone who

TAXMANN®

contacted influenza after using their smoke ball in the specified manner. Mrs. Carlill did use smoke ball in the specified manner, but was attacked by influenza. She claimed the reward and it was held that she could recover the reward as general offer can be accepted by anybody. Since this offer is of a continuing nature, more than one person can accept it and can even claim the reward. But if the offer of reward is for seeking some information or seeking the restoration of missing thing, then the offer can be accepted by one individual who does it first of all. The condition is that the claimant must have prior knowledge of the reward before doing that act or providing that information.

11. Amit's son absconded. He sent Suresh, his servant in search of the boy. When Suresh had left, Amit, by hand bills, offered to pay ₹ 5,001 to anyone finding his son. Suresh found the son and after coming to know about the offer, claimed the amount. Examine the validity of claim raised by Suresh. [Dec. 2019 (4 Marks)], [Dec. 2020 (4 Marks)]

Ans.: An acceptance never precedes an offer.

There can be no acceptance of an offer which is not communicated. Similarly, performance of conditions of an offer without the knowledge of the offer, is no acceptance.

It was held in the case of *Lalman Shukla* v.*Gauri Dutt* that where a servant brought the boy without knowing of the reward, he was held not entitled to reward because he did not know about the offer and therefore could not have accepted it.

Suresh brought the boy without knowing of the reward and hence he cannot claim the reward because he did not know about the offer.

CONSIDERATION

12. No Consideration, no contract; subject to certain exceptions. Explain briefly. [Dec. 2015 (3 Marks)]

Ans.: Consideration is one of essential element of valid contract. Without consideration there is contract. Contract without consideration is known as *nudum pactum.*

No consideration, no contract [Section 25]: In following cases even if there is no consideration contracts are valid.

(1) Agreement made on account of natural love and affection. If they are written & duly registered.

(2) Compensation for voluntary services.

(3) Promise to pay time barred debt made in writing and signed by the person liable to pay the amount.

TAXMANN®

(4) Completed gifts.

(5) No consideration is required to make an agency.

(6) In case of charitable subscription, if a person (promisor) promises to pay certain amount and on the basis of that promise, other person (promise) incurs liability, then promisor is bound to pay the amount promised, even if there is absence of consideration.

13. X and Y are husband and wife, respectively. X, by a registered document, after referring to quarrels and disagreement between himself and his wife Y, promised to pay his wife, a sum of money for her maintenance and separate residence.

Whether this document is a contract enforceable by law? Give reasons with reference to decided case law, if any. [Dec. 2015 (5 Marks)]

Ans.: Consideration is one of essential element of valid contract. Without consideration there is contract. Contract without consideration is known as *nudum pactum*. However, there are certain exception to the rule that "no consideration, no contract".

Once of the exception is "agreement made on account of natural love and affection which are written & duly registered".

As per facts given in case husband had promised to pay wife a sum of money for her maintenance and separate residence which is duly registered but frequent quarrels between them show absence of natural love and affection and hence it is not valid contract enforceable by law.

14. What is meant by 'privity of contract'? Discuss briefly State the exception to privity of contract. [Dec. 2015 (5 Marks)]

Ans.: Privity of contract means only party to contract can sue each other or only party to contract impose obligation on each other. In other words as per doctrine of privity of contract third party *i.e.* stranger to a contract cannot sue to a party to a contract.

Exception to the rule that a stranger to a contract cannot sue: In following cases stranger to contract can sue to the parties to the contract.

(1) **Beneficiary in a trust:** A beneficiary under an agreement to create a trust can sue upon the agreement, though not a party to it, for the enforcement of the trust so as to get the trust executed for his benefit.

(2) **Assignee:** An assignee under an assignment made by the parties, or by the operation of law (*e.g.* in case of death or insolvency), can sue upon the contract for the enforcement of his rights, title and interest. But a mere nominee (*i.e.* the person for whose benefit another has insured his own life) cannot sue on the policy because the nominee is not an assignee.

(3) **Beneficiary in case of family arrangements or settlements:** In cases of family arrangements or settlements between male members of a Hindu

family which provide for the maintenance or expenses for marriages of female members, the latter though not parties to the contract, possess an actual beneficial right which place them in the position of beneficiaries under the contract, and can therefore, sue.

(4) **Agency:** Principal can sue in case of contract entered through agent.

15. "Contract cannot confer rights or impose obligations arising under it on any person or agent except the parties to the contract". Critically analyze this statement. [June 2018 (5 Marks)]

Ans.: When a contract is created between two or more person it confers rights or impose obligation under it on the person executing the contract. A contract never bins third party. It is binding only party to contract.

A stranger to a contract cannot sue both under the English and Indian law for want of privity of contract.

In *Dunlop Pneumatic Tyre Co.* v. *Selfridge Ltd.*, D supplied tyres to a wholesaler X, on condition that any retailer to whom X resupplied the tyres should promise X, not to sell them to the public below Ds list price. X supplied tyres to S upon this condition, but nevertheless S sold the tyres below the list price.

Held: There was a contract between D and X and a contract between X and S. Therefore, D could not obtain damages from S, as D had not given any consideration for Ss promise to X nor was he party to the contract between D and X.

Thus, a person who is not a party to a contract cannot sue upon it even though the contract is for his benefit.

A, who is indebted to B, sells his property to C, and C the purchaser of the property, promises to pay off the debt to B. In case C fails to pay B, B has no right to sue C for there is no privity of contract between B and C. The leading English case on the point is *Tweddle* v. *Atkinson*. In this case, the father of a boy and the father of a girl who was to be married to the boy, agreed that each of them shall pay a sum of money to the boy who was to take up the new responsibilities of married life. After the demise of both the contracting parties, the boy (the husband) sued the executors of his father-in-law upon the agreement between his father-in-law and his father.

Held: The suit was not maintainable as the boy was not a party to the contract.

16. E, for natural love and affection, promises to give her daughter D ₹ 1,00,000. But after some time F refuses to fulfil his promise. Advice D what she should do? [Dec. 2021 (4 Marks)]

Ans.: Consideration is one of essential element of valid contract. Without consideration there is contract. Contract without consideration is known as *nudum pactum*.

TAXMANN®

Section 25 lays down exception to this rule which read as if an agreement is expressed in writing and registered and is made out of natural love and affection between parties standing in a near relation of each other, the agreement is valid and enforceable and requires no consideration.

Though in the present problem F promises to give her daughter ₹ 1,00,000 out of natural love and affection and the parties are standing in near relation to each other but his promise is not in writing and registered, so daughter D is not entitled to get the promise by her father enforced *i.e.* Oral promise without consideration is not legally enforceable.

Thus, D is not entitled to get the promise of her father enforced in the court of law.

CAPACITY TO CONTRACT

17. John, who is a known minor, fraudulently overstates his age and takes delivery of a motor car after executing a promissory note in favour of the dealer for its price. He does not knowingly honour his promissory note; that is to say he does not pay the price of the said motor car. What is the remedy available to the motor car dealer in the above situation? Advise. [June 2018 (5 Marks)], [Dec. 2022 (4 Marks)]

Ans.: An agreement with or by a minor is void and in-operative *ab initio.*

Where the loan was obtained by fraudulent representation by the minor or some property was sold by him and the transactions are set aside as being void, the Court may direct the minor to restore the property to the other party. For example, a minor fraudulently overstates his age and takes delivery of a motor car after executing a promissory note in favour of the trader for its price. The minor cannot be compelled to pay the amount to the promissory note, but the Court on equitable grounds may order the minor to return the car to the trader, if it is still with the minor.

18. A minor fraudulently overstated his age and purchased a motor car after executing a promissory note in favour of the owner of the motor car for its price. The car owner compelled the minor to pay the amount of the promissory note. Whether the car owner will succeed? Examine it with reference to Indian Contract Act, 1872 and Specific Relief Act, 1963. [June 2019 (4 Marks)]

Ans.: An agreement with or by a minor is void and in-operative *ab initio.*

Where the loan was obtained by fraudulent representation by the minor or some property was sold by him and the transactions are set aside as being void, the Court may direct the minor to restore the property to the other party. For example, a minor fraudulently overstates his age and takes delivery of a motor car after executing a promissory note in favour of the trader for its price. The minor cannot be compelled to pay the amount to the promissory note, but the

Court on equitable grounds may order the minor to return the car to the trader, if it is still with the minor.

Thus, motor car dealer cannot recover the amount of promissory note but can recover the motor car if is still with the minor.

FREE CONSENT

19. Mention the main flaws in a contract. [June 2015 (3 Marks)]

Ans.: There may be the circumstances under which a contract made under these rules may still be bad, because there is a flaw or error somewhere. The chief flaws in contract are:

(*a*) Incapacity
(*b*) Mistake
(*c*) Misrepresentation
(*d*) Fraud
(*e*) Undue Influence
(*f*) Coercion
(*g*) Illegality
(*h*) Impossibility.

20. Discuss the concept of *ignorantia juris non-excusat*. [Dec. 2016 (5 Marks)]

Ans.: A mistake in the nature of miscalculation or error of judgment by one or both the parties has no effect on the validity of the contract. To be operative so as to render the contract void, the mistake must be:

(*a*) of fact, and not of law or opinion;
(*b*) the fact must be essential to agreement *i.e.* so fundamental as to negative the agreement;
(*c*) must be on the part of both the parties. Thus, where both the parties to an agreement are under a mistake as to a matter of fact essential to agreement, the agreement is void. [Section 20]

Mistakes are of two kinds: (*i*) mistake of law, and (*ii*) mistake of fact. If there is a mistake of law of the land, the contract is binding because everyone is deemed to have knowledge of law of the land and ignorance of law is no excuse (*ignorantia juris non-excusat*).

21. Distinguish between: Fraud & Innocent misrepresentation [Dec. 2022 (3 Marks)]

TAXMANN®

Ans.: Following are the main points of difference between Fraud & Misrepresentation:

Points	Fraud	Misrepresentation
Meaning	Fraud means and includes any of the following acts committed by a party to a contract with intent to deceive other party or induce him to enter into the contract. ◆ When person knowingly suggests a fact, which is not true. ◆ Active concealment of fact. ◆ A promise made without any intention of performing it. ◆ Any such act or omission as to law specially declared to be fraudulent.	Misrepresentation is a false statement which the person making it honestly believes to be true.
Intention to deceive	Fraud is deliberate or wilful. There is clear intention to deceive the other party.	It is an innocent wrong, without any intention to deceive.
Belief	The person making the false statement does not believe it to be true.	The person making the statement believes it to be true or does not know that it is false.
Remedy	It entitles the aggrieved party to claim damages in addition to the right of rescinding the contract.	It only gives a right to avoid the contract without any claim for damages.
Punishment	In certain cases, it may lead to prosecution for an offence of cheating under the **Indian Penal Code, 1860.**	It is not a criminal act, and hence not punishable.

AGREEMENTS OPPOSED TO PUBLIC POLICY

22. Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. Discuss. [June 2014 (5 Marks)]

"Every agreement in which anyone is restrained from exercising a lawful profession, trade or business of any kind is, to that extent, *void*." Discuss. [June 2016 (5 Marks)]

Ans.: Agreement in restraint of trade, void [Section 27]: Every agreement, by which, anyone is retrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

TAXMANN®

Exception to agreement in restraint of trade: That is to say in following cases agreement even though in restraint of trade are valid:

(1) **Employment Agreement:** An agreement of employment under which, employee agrees to serve a certain employer for certain duration, and that he will not serve anybody else during such period is a valid agreement.

(2) **Sale of goodwill:** Where the seller of the goodwill of a business undertakes not to compete with the purchaser of the goodwill, the contract is enforceable provided the restraint appears to be:

- Reasonable as to territorial limits and
- The length of time.

Example: N was inventor and a manufacturer of guns and ammunition. He sold his world-wide business to M and promised not to manufacture guns anywhere in the world for 25 years. The House of Lords held that the restraint was reasonable as it was necessary for the protection of company. [*Nordenfelt* v. *Maxim Nordenfelt Guns & Co.*]

(3) **Restriction on existing partner:** Section 11(2) of the Partnership Act, 1932 provides that a partner shall not carry on any business other than that of the firm while he is a partner.

Restriction on outgoing partner: Section 36(2) and Section 54 of the Partnership Act, 1932 provide that a partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within specified period or within specified limits. Such agreements are valid if the restrictions are reasonable.

TAXMANN®

VOID AGREEMENT

23. An agreement to do an act impossible itself is void". Explain. [June 2015 (3 Marks)]

Ans.: Agreement to do impossible acts [Section 56]: An agreement to do an act impossible in itself is void.

A contract to do an act which becomes impossible after the contract is made by reason of some event which the promisor could not prevent then such contract becomes void when the act.

Where one person has promised to be something which he knew to be impossible and the promisee did not know to be impossible, such promisor must make compensation to such promise for any loss which the promisee may sustains through the non-performance of the promise.

Illustrations:

- A agrees with B to discover treasure by magic. The agreement is void.
- A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

24. Distinguish between: Illegal Agreement & Void Agreement [Dec. 2019 (3 Marks)]

Ans.: Following are the main points of distinctions between illegal agreement & void agreement:

Points	Illegal Agreement	Void Agreement
Meaning	An agreement, which involves the transgression of, some rule of basic public policy and is criminal in nature or immoral.	A void agreement is one, which is not enforceable by law. Such agreement does not give rise to any legal consequences and is void *ab initio*.
Collateral transaction	Collateral transactions to an illegal agreement are not enforceable.	Collateral transactions to void agreement are enforceable.
Punishment	Parties may be punished for making illegal agreement.	Being void does not make a contract punishable.

DISCHARGE OF CONTRACT

25. What are the ways of discharging a contract? [Dec. 2014 (5 Marks)]

Ans.: Termination of contractual relationship between the parties is known as discharge of contract. A contract may be discharged by:

(*a*) Performance
(*b*) Agreement or consent
(*c*) Impossibility
(*d*) Lapse of time
(*e*) Operation of law
(*f*) Breach of contract.

26. How does a valid contract get discharged by impossibility of performance? [June 2016 (5 Marks)]

Ans.: Impossibility which arises subsequent to the formation of a contract is called as post-contractual or supervening impossibility. In England the doctrine of frustration is the parallel concept of "supervening impossibility". A contract is discharged by supervening impossibility in the following cases:

(1) Accidental destruction of subject matter of contract: After formation of contract if subject matter is destroyed without any fault of the either party, the contract is discharged.

TAXMANN®

(2) Change in particular state of things.

Example: Anil promises to marry Madhuri. Before marriage, Madhuri becomes mad. The contract is discharged, as it becomes void due to change in particular state of thing.

(3) Serious illness or death or incapacity of party: Where a contract depends on the personal skill or qualification of a party.

Example: A agreed with B to perform a dance show on a particular date. Before the date of show A was seriously ill. Here contract between A & B is discharged.

(4) Change in law or stepping in of a person with statutory authority.

Example: A agreed to sale certain land to B. Before the sale is effected, the land was compulsorily acquired by the Government. Here, contract is discharged due to Government action.

(5) The contract becomes void when war is declared and hence discharged.

In the following cases, a contract is not discharged on the ground of supervening impossibility:

(*a*) **Difficulty of performance:** A contract is not discharged by the mere fact that it has become more difficult of performance due to some un-contemplated events or delays.

(*b*) **Commercial impossibility:** A contract is not discharged merely because expectation of higher profits is not realised, or the necessary raw material is available at a higher price because of the outbreak of war, or there is a sudden depreciation of currency.

(*c*) **Impossibility due to failure of a third person:** Where a contract could not be performed because of the default by a third person on whose work the promisor relied, it is not discharged.

(*d*) **Strikes, lock-outs & civil disturbances:** Such events do not discharge a contract unless the parties have specifically agreed in this regard at the time of formation of the contract.

(*e*) **Failure of one of the objects:** When a contract is entered into for several objects, the failure of one of them does not discharge the contract.

27. A agreed to supply B certain goods to be produced from Indonesia. The goods could not be produced due to riots and civil disturbances in Indonesia. Decide, whether the non-performance of the contract may be excused? [Dec. 2017 (5 Marks)]

Ans.: Impossibility of performance is not an excuse for non-performance. Ordinarily when a person undertakes to do something, he must do it unless its performance becomes absolutely impossible. However, events like strikes,

TAXMANN®

lock-outs & civil disturbances do not discharge a contract unless the parties have specifically agreed in this regard at the time of formation of the contract.

As per facts given in case, A agreed to supply B certain goods to be produced from Indonesia. However, goods could not be produced due to riots and civil disturbances in Indonesia. As discussed above such events do not discharge a contract unless the parties have specifically agreed in this regard at the time of formation of the contract. Thus, non-performance of contract by A cannot be excused and he will have to perform the contract as agreed otherwise B may claim damages/compensation from A for non-performance of contract.

DISCHARGE OF CONTRACT

28. How does a valid contract get discharged by impossibility of performance? [June 2016 (5 Marks)]

Ans.: Discharge by supervening impossibility: Impossibility which arises subsequent to the formation of a contract is called as post-contractual or supervening impossibility. In England the doctrine of frustration is the parallel concept of "supervening impossibility".

A contract is discharged by supervening impossibility in following cases:

(1) **Accidental destruction of subject matter of contract:** After formation of contract if subject matter is destroyed without any fault of the either party, the contract is discharged.

Example: Ram owns a big hall which can be used for multi-purpose. Lata, a singer, takes the hall on hire for a show to be performed on next Sunday. Before the show is performed, the hall was completely destroyed by a fire. Contract between Ram and Lata becomes void, due destruction of subject matter. As per Section 65, if any person receives any benefit under such contract he is bound to restore such benefit to the person from whom he had received it. Thus, if Ram had received any benefit from Lata, in form of advance, he is bound to repay it to Lata.

(2) **Change in particular state of things.**

Example: Anil promises to marry Madhuri. Before marriage, Madhuri becomes mad. The contract is discharged, as it becomes void due to change in particular state of thing.

(3) **Serious illness or death or incapacity of party:** Where a contract depends on the personal skill or qualification of a party.

Example: A agreed with B to perform a dance show on a particular date. Before the date of show A was seriously ill. Here contract between A & B is discharged.

TAXMANN®

(4) Change in law or stepping in of a person with statutory authority.

Example: A agreed to sale certain land to B. Before the sale is effected, the land was compulsorily acquired by the Government. Here, contract is discharged due to Government action.

(5) The contract becomes void when war is declared and hence discharged.

29. A agreed to supply to B certain goods to be produced from Indonesia. The goods could not be produced due to riots and civil disturbances in Indonesia. Decide, whether the non-performance of the contract may be excused? [Dec. 2017 (3 Marks)]

Ans.: Events like strikes, lock-outs & civil disturbances do not discharge a contract unless the parties have specifically agreed in this regard at the time of formation of the contract.

As per facts given in case, A agreed to supply B certain goods to be produced from Indonesia. However, goods could not be produced due to riots and civil disturbances in Indonesia. As discussed above such events do not discharge a contract unless the parties have specifically agreed in this regard at the time of formation of the contract. Thus, non-performance of contract by A cannot be excused and he will have to perform the contract as agreed otherwise B may claim damages/compensation from A for non-performance of contract.

REMEDIES FOR BREACH OF CONTRACT

30. Raman borrows ₹ 5,000 from Boman and promises to pay ₹ 10,000, if he fails to pay on a stipulated date. Is on Raman's failure to repay on stipulated date, Boman is entitled to recover ₹ 10,000 from Raman? Examine the validity of claim of stipulated damages. [June 2022 (3 Marks)]

Ans.: Sometimes parties to the contract fix the damages that would be payable in case of breach of contract. Such damages, which are agreed upon in advance by the parties may be of following two types.

(*a*) **Liquidated damages:** If the specified amount represents *fair & genuine pre-estimate of probable loss*, such specified sum is called as liquidated damages.

(*b*) **Penalty:** If the specified *sum is disproportionate to the damages* which are likely to result as a result of breach, such specified sum is called as penalty.

In Indian law, there is no such difference between liquidated damages and penalty. As per Section 74, when a contract has been broken, if a sum is named in the contract as the amount be paid in case of such breach, the party complaining

TAXMANN®

of the breach is entitled to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named.

Thus, if Raman borrows ₹ 5,000 from Boman and promise to pay ₹ 10,000 if he fails to repay on the given date. Boman is entitled to recover such compensation, as the Court may consider reasonable. However, in no case the total amount including compensation can exceed ₹ 10,000.

31. Distinguish between – Quantum Meruit & Anticipatory Breach [June 2022 (3 Marks)]

Ans.: Quantum Meruit: Quantum meruit literally means *'as much earned' i.e.* in proportion to the extent of work done. Sometime contract cannot be completed; in that case if one party has already executed some work, then he is entitled to get a proportional amount to extent of work done. In case of breach of contract aggrieved party can claim 'Quantum Meruit' plus damages. Quantum meruit is available only if original contract has discharged.

Anticipatory Breach: When a party to executory contract declares his intention of not performing the contract, it is known as anticipatory breach of contract.

Following remedies are available to aggrieved party in case of anticipatory breach of contract.

- The aggrieved party may decide not to wait till the due date. It may rescind the contract immediately and claim damages for breach.
- The aggrieved party may decide not to immediately rescind the contract. He can treat the contract alive and wait for the due date of performance.

  Consequences of treating the contract alive are as follows:

  - The promisor may perform his promise when the time for its performance comes and the promisee will be bound to accept the performance.
  - If aggrieved party decides not to immediately rescind the contract and wait for the due date of performance and meanwhile if government imposes a ban, then contract becomes void and aggrieved party cannot claim damages.

32. *A* tendered to supply goods to *B* up to ₹ 50,000 for a period of one year. *B* ordered the goods up to ₹ 30,000 only. *A* wants to sue *B* for breach of contract as order did not come up to the amount expected. Discuss with reasons whether *A* can sue *B* under the Indian Contract Act, 1872. [June 2023 (4 Marks)]

Ans.: Where a person offers to another to supply specific goods, up to a stated quantity or in any quantity which may be required, at a certain rate, during a fixed period, he makes a standing offer. Thus, a tender to supply goods as and when required, amounts to a standing offer.

TAXMANN®

A standing offer or a tender is of the nature of a continuing offer. An acceptance of such an offer merely amounts to intimation that the offer will be considered to remain open during the period specified and that it will be accepted from time to time by placing order for specified quantities. Each successive order given, while the offer remains in force, is an acceptance of the standing offer as to the quantity ordered, and creates a separate contract. It does not bind either party unless and until such orders are given.

Where *P* tendered to supply goods to *L* up to a certain amount and over a certain period, *L*'s order did not come up to the amount expected and *P* sued for breach of contract. It was held that each order made was a separate contract and *P* was bound to fulfil orders made, but there was no obligation on L to make any order to all. [*Percival* Ltd. v. *L.C.C.*]

Thus, when *A* tendered to supply to *B* up to ₹ 50,000 for a period of one year it amount to a standing offer. If orders goods up to ₹ 30,000 then there is breach of contract by *B* as each order made was a separate contract and *A* was bound to fulfil orders made, but there was no obligation on B to make any order to all. Hence, *A* cannot file any suit against B.

QUASI CONTRACTS

33. The position of finder of lost goods is that of bailee.
[June 2014 (5 Marks)]

Ans.: Finder of goods [Section 71]: A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee. He is bound to take care of such goods as man of ordinary prudence. He is treated as owner against whole world except true owner.

Example: A finds diamond on B's shop. He hands it to B to keep until true owner is found. True owner did not appear even advertisement in news paper. A claims the diamond from B, who refuses to return. B is bound to return diamond to A as A is owner against whole world except true owner.

34. Mohit finds a ring of Shardha and sells it to a third person Prachi who purchases it for value and in good faith. Whether Shardha can file a suit to recover the ring? Advise with cogent reasons.
[Dec. 2018 (5 Marks)]

Ans.: As per Section 71 of the Contract Act, 1872, a person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee. He is bound to take care of such goods as man of ordinary prudence. He is treated as owner against whole world except true owner.

In given case sale by Mohit to third person Prachi is not valid as Mohit has no title. Shardha can recover ring from Prachi and Prachi can recover damages from Mohit for breach of "implied condition as to title" as per the Sales of Goods Act, 1930.

TAXMANN®

INDEMNITY & GUARANTEE

35. Distinguish between: Contract of indemnity & contract of guarantee [Dec. 2018 (3 Marks)], [Dec. 2021 (3 Marks)]

Ans.: Following are the main points of distinction between indemnity & contract of guarantee:

Points	Contract of Indemnity	Contract of Guarantee
Meaning	A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or the conduct of any other person is called a contract of indemnity. It is contingent contract.	A contract of guarantee is a contract to perform the promise made or discharge liability incurred by a third person in case of his default.
Parties	There are two parties to the contract of indemnity *viz.* - Indemnifier - Indemnity holder	There are three parties to the contract of guarantee *viz.* - Principal debtor, - Surety, - Creditor
No. of contracts	There is only one contract in case of indemnity.	There are three contracts in contract of guarantee.
Liability	The liability of indemnifier is primary and independent.	The liability of surety is collateral or secondary. Primary liability is that of principal debtor.
Nature of liability	The promise of the indemnifier is to save the person indemnified from a contingent risk.	The surety undertakes to discharge the liability of the principal debtor, which is not contingent, but is subsisting.
Example	A and B go into a shop. A says to the shopkeeper, "Let B have the goods, I will see you paid.	A and B go into a shop. A says to the shopkeeper, "Let B have the goods and if he does not pay, I will."

36. What is meant by contracts *'uberrimae fidei'*? Which contracts are in general may be treated as contracts *'uberrimae fidei'*? [June 2017 (5 Marks)]

Ans.: *Uberrimae fidei* means 'utmost good faith'/'disclosure of all material facts'.

The creditor is under obligation to disclose all the material facts in respect of creditworthiness of principal debtor to surety even if surety does not specifically ask.

Example: C engaged P as a clerk to collect money. P misappropriated some of C's receipt. This sum was made good by P's relation and C agreed to retain

TAXMANN®

P in his employment on fidelity guarantee. S gave his guarantee for P's duly accounting. C did not inform S with P's previous dishonesty. Guarantee could not be enforced against S owing to non-disclosure of P's previous dishonesty.

Contracts *Uberrimae fidei*: There are contracts which require the utmost good faith. There is a special duty to disclose all the material facts and the failure to disclose such information give a right to rescind the contract at the option of the other party. The following contracts are contracts *uberrimae fidei*:

(*a*) **Contracts of insurance of all kinds:** It is the duty of the assured person to disclose all the material information or fact to the insurance company, affecting the risk covered. A concealment of a material fact will render the contract void.

(*b*) **Company prospectus:** It is the duty on the part of every company to disclose each and every material information in the prospectus. When it invites public to subscribe for its shares in or debentures of. The contract to buy shares or debentures is voidable at the option of purchaser where there is a false statement or non-disclosure in the prospectus.

(*c*) **Contracts of family arrangements:** It is the duty of every member of the family to make full disclosure of every material fact within his knowledge. Such a contract is not binding if either party has been misled by any concealment of material facts,

(*d*) **Contract for sale of land:** It is the duty of vendor to show good title to the land that he has contracted to sell to the purchaser.

37. Mr. X in consideration, that Mr. Y will employ Mr. Z in collecting the rent of Zamindari, promises to Mr. B to be responsible to the amount of ₹ 10,000 for the due collection and payment by Mr. Z of these rents. Decide, whether it is a contract of guarantee? Which type of guarantee it is? When such guarantee may be revoked?

Dec. 2017 (5 Marks)]

Ans.: As per Section 129 of the Contract Act, 1872, when guarantee extents to a series of transaction it is called as a continuing guarantee. The liability of the surety in case of a continuing guarantee extends to all the transaction until the revocation of the guarantee.

Example: C employs P for collecting rent of C's Zamindari. S gives guarantee for good work and honesty of P. This is continuing guarantee.

Example: S guarantees payment to C for ₹ 10,000 for any goods C may supply to P from time to time. This is continuing guarantee.

Revocation of a continuing guarantee [Section130]: Surety may revoke at any time, a continuing guarantee as to future transactions, by giving a notice to the creditor. A continuing guarantee cannot be revoked for transaction which has already taken place.

TAXMANN®

As per facts given in case, Mr. X in consideration, that Mr. Y will employ Mr. Z in collecting rent of Zamindari, promises to Mr. Y to be responsible to the amount of ₹ 10,000 for due collection and payment by Mr. Z of these rent is a continuing guarantee as it extends to series of transaction. Thus, Mr. X will be liable to Mr. Y if Mr. Z makes any default up to amount of ₹ 10,000. Mr. X may revoke such continuing guarantee as to future transactions, by giving a notice to the Mr. Y.

38. *C* agrees to appoint *B* as his clerk to sell goods at a yearly salary upon *A*'s becoming surety to *C* for *B* for his conduct of duly accounting for money received by him as such clerk. Afterwards, without *A*'s knowledge or consent, *C* and *B* agree that *B* should be paid commission on the goods to be sold by him and not by a fixed salary. *B* later misappropriated funds. Discuss the liability of *A*. [June 2023 (4 Marks)]

Ans.: Discharge of surety by variance in terms of contract [Section 133]: Any variance made in the terms of contract between principal debtor and creditor, without the surety's consent, discharges the surety as to transaction subsequent to variance.

C agrees to appoint *B* as his clerk to sell goods at a yearly salary, upon *A*'s becoming surety to *C* for *B*'s duly accounting for moneys received by him as such clerk. Afterwards, without *A*'s knowledge or consent, *C* and *B* agree that *B* should be paid by a commission on the goods sold by him and not by a fixed salary.

A is not liable for subsequent misconduct of *B* as due to variation by *C* and *B*, *A* has discharged as to transaction subsequent to variance.

39. A puts M as apprentice to B, and gives a guarantee to B for his fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised and M embezzles. State whether A is liable to B under the Contract Act, 1872? [June 2021 (3 Marks)]

Ans.: Section 139 of the Contract Act, 1872 provides that surety is discharge, when the creditor does any act which is inconsistent with the right of Surety, or omits to do any act which his duty to the Surety requires him to do, and the eventual remedy of the Surety against principal debtor is thereby impaired.

As per facts given in case, B (Creditor) promises on his part that he will, at least once a month, see M make up the cash and B omits to see this done as promised. This amount to omit of duty by C (Creditor) towards A (Surety) and hence A (Surety) is discharged and not liable to B (Creditor).

BAILMENT & PLEDGE

40. Distinguish between: General Lien & Particular Lien [June 2011 (5 Marks)]

TAXMANN®

Ans.: Following are the main points of distinction between general & particular lien:

Points	General Lien	Particular Lien
Meaning	It is a right to retain all the goods or any property of another until all the claims of holder are satisfied. This is a right to retain the property of another for a general balance of accounts.	It is a right to retain those goods in respect of which bailee have rendered some service involving the exercise of labour or skill.
Persons entitled	Right of general lien can be exercised by bankers, factor, wharfingers, attorneys of High Court and policy brokers.	Right of particular lien can be exercised by any bailee who has rendered some service by exercise of his skill and labour in respect of the goods bailed.
Condition	Bailee is unpaid and Bailee need not have worked upon the goods bailed.	Bailee has worked upon the goods and remuneration remains unpaid.

41. 'A' was going out of station so he kept his goods with 'B'. Later on 'B' without consent of 'A' mixed his goods with A's goods and the mixture cannot be separated. In the light of above case suggest what is remedy available for 'A'. [Dec 2022 (5 Marks)]

Ans.: It is duty of the bailee that he shall not to mix goods bailed with his own goods.

Section 157 of the Contact Act, 1872 provides that where the bailee, mixes the goods bailed with his own goods, without the bailor's consent and mixed goods cannot be separated, bailee shall compensate the bailor for the loss of his goods.

Thus, if 'B' mixes the goods of 'A' without his consent, 'B' shall compensate 'A' for the loss of his goods.

TAXMANN®

CHAPTER 17 LAW RELATING TO SALE OF GOODS

APPLICABILITY & MEANING OF VARIOUS TERMS

1. Define 'Goods' as per the Sale of Goods Act, 1930.

Ans.: As per Section 6 of the Sale of Goods Act, 1930, goods form the subject matter of a contract of sale. Hence, it is necessary to know the meaning of the term 'goods'.

Goods [Section 2(7)]: Goods mean every kind of movable property other than actionable claim and money. It includes stocks & shares, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale.

Goods includes:

- Movable property
- Stocks
- Shares
- Growing crops
- Grass
- Steam
- Electrical energy
- Trees which are agreed to be served before sale
- Animals & birds
- Computer software
- Lottery tickets
- Advance license
- Coins of antiquity
- Jubilee coins

Goods do not include:

- Actionable claims
- Current money
- Land
- Standing trees
- Immovable property

TAXMANN®

2. Write a short note on: Contingent goods

Ans.: Contingent Goods [Section 6(2)]: When acquisition of the goods depends upon happening or non-happening of future uncertain event such goods are known as contingent goods.

In case of contingent goods, the contract operates as "contract for sale" of goods.

Example: X, a fisherman agrees to sell fish to Y that may be caught in sea. Getting fish in sea is uncertain future event. Here fish is contingent goods.

3. Distinguish between: Future Goods & Contingent Goods

Ans.: Following are main points of distinction between future goods and contingent goods.

Points	Future Goods	Contingent Goods
Meaning	Goods which are not possessed by seller at the time of contract of sale but will be manufactured or produced or acquired by the seller, after the contract of sale are known as future goods.	When acquisition of the goods depends upon happening or non-happening of future uncertain event such goods are known as contingent goods.
Uncertainty	There is no uncertainty in case of acquisition of future goods.	There is uncertainty in case of acquisition of contingent goods.
Scope	Future goods do not include contingent goods.	Contingent goods include future goods.
Effect of contract	In case of future goods, the contract operates as an "agreement to sell' the goods.	In case of contingent goods, the contract operates as "contract for sale" of goods.
Example	X makes a contract with Y, a farmer to purchase all wheat produced in his field during a season. At the time of making contract, Y was not in possession of wheat, so it is future goods.	X, a fisherman agrees to sell fish to Y that may be caught in sea. Getting fish in sea is uncertain future event; hence fish in this case is contingent goods.

FORMATION OF CONTRACT OF SALE

4. State briefly the essential element of a contract of sale under the Sale of Goods Act, 1930.

Ans.: Essentials of contract of sale:

(1) **Two parties:** There must be two parties; seller & buyer. A person cannot buy his own goods. The sale has to be made to another person. However, there may be a contract of sale between one part-owner and another.

Example 1: X and Y are part-owner. X renouncing his right give the whole property to Y for a consideration. This is sale by X & Y to Y.

TAXMANN®

Example 2: Distribution of goods among partners on dissolution is not a sale because they are undivided joint owners of the goods.

Example 3: Partner can buy goods from the firm or sell goods to the firm.

(2) **Transfer of ownership:** In case of 'sale' property in goods is immediately transferred from seller to buyer. In case of 'agreement to sell', the transfer of property is to take place in future.

(3) **Subject matter:** The subject matter of a contract of sale must be goods.

(4) **Consideration:** Consideration in a contract of sale should be 'money' to seller and 'goods' to buyer. However, the consideration may be partly in money and partly in goods.

Example 1: X contract to sell 100 mobile to Y for ₹ 3,500 per mobile. This is contract of 'sale'.

Example 2: X contract to sell 100 mobile to Y, if Y gives 100 calculators and ₹ 3,000 per mobile. This is contract of 'sale'.

Example 3: X contract to sell 100 mobile to Y, if Y gives 700 calculators. This is 'barter' or 'exchange' and not a contract of 'sale', because goods are offered in return for goods.

(5) **Other essentials of a valid contract:** All other essential elements of a valid contract viz. free consent, legality of object, competency of parties should also be present.

5. Distinguish between: Sale & Agreement to sell [Dec. 2018 (3 Marks)], [June 2023 (4 Marks)]

Ans.: Following are the main points of distinction between sale and agreement to sell:

Points	Sale	Agreement to sell
Meaning	If the property in the goods is immediately transferred from the seller to the buyer, it is called a sale.	If property in the goods is to take place at a future time or subject to fulfilment of some condition it is called an agreement to sell.
Type of contract	It is **executed** contract.	It is **executory** contract.
Type of goods	In 'sale' goods are specific & ascertained.	In 'agreement to sell' goods are future & contingent.
Rights	Sale creates a **right in rem.** (right against whole word)	Agreement to sell creates a **right in personam.** (right against a specific person)
Risk	In 'sale' property in goods transferred to buyer, so buyer bears the risk of loss, even if.	In 'agreement to sell' property in the goods is to take place at a future time or subject to fulfilment of some condition, so seller continues to bear the risk.

TAXMANN®

Points	Sale	Agreement to sell
Example	X agrees to sale 100 bags of wheat to Y which are ready for delivery. This is contract of 'sale'.	X, a farmer makes a contract with Y to sell all wheat produced in his field during a season. This is contract of 'agreement to sell'.
Sales tax	A 'sale' is liable to sales tax.	An 'agreement to sell' is not liable to sales tax.
Rights of buyer	In 'sale' if buyer has paid price, he can sue the seller for non-delivery of goods.	In 'agreement to sell' if buyer has paid price, he cannot sue the seller for non-delivery of goods. He can sue for damages only.
Breach of Contract by buyer	In 'sale' if there is breach of contract by buyer, seller can: (*a*) Sue for price of goods even if goods are in his own possession (*b*) Resell the goods (*c*) Exercise right of lien (*d*) Exercise right of stoppage in transit.	In 'agreement to sell' if there is breach of contract by buyer, seller can sue only for damages and not for price.
Breach of contract by seller	In 'sale' if there is breach of contract by seller, buyer can: (*a*) File a suit for damages against seller. (*b*) File a suit for delivery of goods.	In 'agreement to sell' if there is breach of contract by seller, buyer can sue only for damages.
Insolvency of buyer	In a 'sale' if buyer become insolvent seller must give the goods to Official Assignee/Receiver. Seller can claim only rateable dividend for the price of goods.	In 'agreement to sell' if buyer becomes insolvent, seller is not under obligation to give the goods to Official Assignee/Receiver.
Insolvency of seller	In a 'sale' if seller become insolvent Buyer can claim the goods from the Official Assignee/Receiver.	In 'agreement to sell' if seller becomes insolvent buyer can claim only a rateable dividend for price paid from the Official Assignee/Receiver.

6. Distinguish between: Sale & Contract for work and labour

Ans.: Following are the main points of distinction between sale & contract for work and labour:

TAXMANN®

Points	Sale	Contract for work and labour
Meaning	If the property in the goods is immediately transferred from the seller to the buyer, it is called a sale.	It is a contract for executing certain work and involves exercise of skill.
Effect	In 'sale' there is delivery and transfer of ownership of goods by seller to buyer.	Contract for work and labour involves transfer of some material and exercise of skill and labour in goods belonging to other person.
Examples	(1) X agrees to sale 100 bags of wheat to Y which are ready for delivery. This is contract of 'sale'. (2) A dentist agreed to supply a set of artificial teeth to a patient. The entire material found by dentist. It was held that it contract of 'sale'. (3) X contracted for sale of a fur coat of special design and colour as per customer's requirement. This is contract of 'sale'.	(1) X gives his old car to Y for repair and also request to replace some old parts. This is contract for work and labour. (2) X, an artist, agreed to paint a picture of Y. Y supply canvas and other material. This is contract for work and labour. (3) X gives gold biscuit to Y, a goldsmith, to make ornaments and deliver back to Y for ₹2,000. This contract for work and labour.

7. Distinguish between: Sale & Hire purchase [June 2022 (3 Marks)]

Ans.: Following are the main points of distinction between sale & hire purchase:

Points	Sale	Hire Purchase
Meaning	If the property in the goods is immediately transferred from the seller to the buyer, it is called a sale. If price is allowed to be paid in instalment, but property (ownership) in goods is transferred immediately, it is 'sale'.	Hire purchase is a contract in which goods are delivered and the price is allowed to be paid in instalments on the condition that property (ownership) in goods will be passed only on payment of all the instalments.
Act	The Sale of Goods Act, 1930	The Hire Purchase Act, 1972 (Repealed)
Position	In 'sale' buyer becomes owner of the goods.	Hire purchaser is only a bailee until pays all the instalments.
Termination	Buyer cannot terminate contract.	Hire purchaser has an option to terminate the contract.

TAXMANN®

Points	Sale	Hire Purchase
Resale buyer/ hire purchaser	If buyer had not paid full price and sells the goods to third party for a value, who are acting in good faith, will get good title	If hire purchaser had not paid all the instalments sells the goods to third party contract, then the third party would not get a good title, since the hirer himself had not title to goods.
Default by buyer/hire purchaser	If buyer makes default seller can (*a*) Sue for the price of goods and (*b*) Exercise right of lien.	If hire purchaser makes default the seller can take repossession of the goods.

8. Distinguish between: Sale & Bailment
[June 2011 (5 Marks)], [Dec. 2019 (3 Marks)]

Ans. Following are the main points of difference between sale and bailment:

Points	Sale	Bailment
Meaning	If the property in the goods is immediately transferred from the seller to the buyer, it is called a sale.	Bailment is the delivery of goods, by one person to another, for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of, according to the instructions of the person delivering them.
Consideration	In contract of sale there is consideration to both the parties.	A contract of bailment may be entered without consideration. This happens in gratuitous bailment.
Return of goods	In contract of sale buyer is not required to return the goods.	In contract of bailment, the bailee has to return the goods after the purpose is over.
Risk	Risk follows ownership and hence in case of contract of sale risk of goods with buyer.	In contract of goods ownership is with bailor as only possession is transferred to bailee and hence risk of goods is with bailor.
Act	Contract of sale is governed by the Sale of Goods Act, 1930	Contract of bailment is governed by the Contract Act, 1872.

CONDITION & WARRANTIES

9. Distinguish between: Conditions & Warranties
[June 2019 (3 Marks)], [Dec. 2021 (3 Marks)]

TAXMANN®

Ans.: Following are the main points of difference between condition and warranty:

Points	Condition	Warranty
Meaning	A condition is a stipulation **essential** to the **main purpose** of the contract.	A warranty is a stipulation **collateral** to the **main purpose** of the contract.
Effect of breach	Breach of condition gives rise to right to claim damages as well as to treat the contract as **repudiated**.	Breach of which gives rise to a **claim for damages** but not to a right to reject the goods and treat the contract as repudiated.
Depth	Condition goes directly to the root of the contract.	Warranty does not go directly to the root of the contract.
Inter-changeability	Breach of condition may be treated as a breach of warranty in certain situation.	Breach of warranty cannot be treated as a breach of condition.
Example	X places an order to Y for some Lorries to be used for heavy traffic in a hilly area. The Lorries supplied were unfit. There is breach of condition and Y can repudiate the contract.	X sells car to Y and also promises to replace or repair some part, if any defect occur within 1 year. Stipulation to replace or repair some part is a warranty.

10. When does a 'condition' become a 'warranty'?

Ans.: When condition to be treated as warranty [Section 13]: In following cases, a breach of condition can be treated as a breach of warranty.

(1) **Buyer's discretion:** Buyer instead of repudiating contract can treat breach of condition as breach of warranty and claim damages.

(2) **Acceptance of goods by buyer:** Where the contract of sale is not severable (divisible) and the buyer has accepted the goods the breach of condition can only be treated as a breach of warranty.

Example: X sells some goods to Y. After delivery Y intimates the seller that he has accepted the goods. For a long time Y didn't see whether goods are proper or not. Know if contract of sale is not severable, the breach of condition can only be treated as a breach of warranty. Thus, Y can claim damages but cannot repudiate contract.

However, where there is a term in the contract, that the buyer can reject the goods and repudiate the contract, the buyer can still exercise his right as the breach of condition.

11. State the implied condition 'as to title' and 'as to sample' in a contract of sale of specific goods.

Ans.: Condition as to title [Section 14]: In a contract of sale there is an implied condition on the part of the seller that:

TAXMANN®

(*a*) In the case of a sale, he has a right to sell the goods and

(*b*) In the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

In other words, in 'contract of sale', seller should have good and valid title, so that he can transfer good and valid title to buyer. If it turns out that seller's title is defective, then buyer can repudiate the contract.

Example: X brought a bike from Y. Y had no title to the bike. He had stolen bike from Z. X had to hand over it true owner, Z. There is breach of implied condition as to title from Y and X can recover the price of bike as well as can claim damages from Y.

Sale by sample [Section 17]: In the case of a contract for sale by sample there is an implied condition that:

(*a*) The bulk shall correspond with the sample.

(*b*) Buyer shall have a reasonable opportunity of comparing the bulk with the sample.

(*c*) The goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

12. Ramesh buys a second-hand car from Suresh for ₹ 4 Lakh. The car is a stolen property of Dinesh. After two months of use Dinesh claims the car and deprives Ramesh of the car. Can Ramesh claim compensation from Suresh? [June 2022 (4 Marks)]

Ans.: As per Section 14 of the Sale of Goods Act, 1930, in 'contract of sale', seller should have good and valid title, so that he can transfer good and valid title to buyer. If it turns out that seller's title is defective, then buyer can repudiate the contract.

In given case, "implied condition as to title" is violated by Suresh. Ramesh can recover the price of the car as well as can claim damages from Suresh.

13. A hot water bottle was bought by Shreya, who could not be expected to have special skill knowledge with regard to hot water bottles, from a chemist, who sold such articles stating that the bottle will not stand boiling water but was intended to hold hot water. While being used by Shreya, the bottle bursted and injured her. Whether seller is responsible for damages? Give reasons in support of your answer. [June 2021 (3 Marks)]

Ans.: As per Section 16(*2*) of the Sale of Goods Act, 1930, where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality.

The term 'merchantable quality' is not defined in the Sale of Goods Act, 1930. For the present case it means, the bottle must be properly sealed. In other words, if the goods are purchased for self-use, they should be reasonably fit for

TAXMANN®

a purpose for which it is being used. In the instant case, on an examination of the hot water bottle, it exploded and injured the buyer.

Applying the provision of Section 16(*2*), Shreya would succeed in claiming damage from the owner of the shop.

14. Write a short note on: Implied Warranties

Ans.: Implied warranties in a contract of sale are as follows:

(1) **Warranty of quiet possession:** In a contract of sale, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.

(2) **Warranty from freedom from encumbrances [Section 14]:** In a contract of sale, there is an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

(3) **Warranty as to quality or fitness [Section 16]:** An implied warranty or condition as to quality or fitness for particular goods may be annexed by usage of trade and customs.

(4) **Warranty to disclosure of dangerous nature of goods:** If goods are of hazardous or dangerous nature, seller must disclose this fact to buyer otherwise he will be liable in damages.

15. State the rule of caveat emptor and explain the exception to this rule. [June 1997 (5 Marks)], [Dec. 2020 (3 Marks)]

Ans.: *Caveat emptor* means "let the buyer beware". Generally, it is no part of the seller's duty in a contract of sale of goods to give to the buyer an article suitable for a particular purpose, or of a particular quality. Also, the seller is under no obligation to point out the defects in the goods. It is the duty of the buyer to thoroughly examine the goods or to make known to seller the purpose for which goods are required, before he buys. If he makes wrong choice, he cannot blame seller.

Example: Where dogs were sold 'subject to all faults', and these dogs, being infected, caused typhoid to other healthy dogs of the buyer. Seller was not bound to disclose that the dogs were unhealthy.

Exceptions: The doctrine of *caveat emptor* will not applicable in the following situations.

(This means buyer can repudiate the contract and sue the seller for damages)

- Where buyer **makes known to seller the exact purpose** for which goods are required or buyer has indicated to the seller that he relies on seller's skill or judgment and seller's business is to sell goods of such description.
- Where goods are bought by description and goods are **not merchantable quality**.

- Where the seller makes a **misrepresentation or fraud** and buyer relies on it.
- Where the **seller actively conceals a defect** in the goods.
- An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the **usage of trade**. In such cases, the principle of *caveat emptor* will not apply.

16. A goes to B shop and purchase a silk-saree thinking that it is made of Banarsi silk. The shopkeeper knows that A thinking is wrong. He however does not correct A impression. Later on when A discover that the saree is not made of Banarsi silk he wants to avoid the contract. Would A succeed? Give reasons.

Ans.: Generally, it is no part of the seller's duty in a contract of sale of goods to give to the buyer an article suitable for a particular purpose, or of a particular quality. Also, the seller is under no obligation to point out the defects in the goods. It is the duty of the buyer to thoroughly examine the goods or to make known to seller the purpose for which goods are required, before he buys. If he makes wrong choice, he cannot blame seller.

In the given case, A himself has made the selection without depending upon the skills and judgment of the seller. Therefore, A cannot avoid the contract.

17. A doctor purchased woollen undergarments from S, a retailer shopkeeper whose business was to sell goods of the description. But after wearing the undergarments, the doctor got developed some skin disease. Can the doctor claim damages from S under the Sale of Goods Act, 1930? Decide. [Dec. 2019 (4 Marks)]

Ans.: Generally, there is no implied condition as to quality or fitness of goods for any particular purpose.

It is the duty of the buyer to thoroughly examine the goods before he buys. If he makes wrong choice, he cannot blame seller for the reason that goods are not fit for particular purpose.

However, goods must be fit for the purpose for which it is sold.

Thus, if a doctor purchases woollen underpants from S, a retailer whose business was to sell goods of that description and after wearing the underpants, doctor developed some skin diseases then the goods were not fit for their only use and hence doctor was entitled to avoid the contract and claim damages. [*Grant* v. *Australian Knitting Mills*]

TRANSFER OF PROPERTY

18. A certain quantity of oil was bought. The oil was to be filled into barrels by the seller and then taken away by buyer. Some barrels were filed

in the presence of the buyer but before the remainders could be filled a fire broke out the entire quantity of oil was destroyed. State the liabilities of buyer and seller.

Ans.: As per Section 21 of the Sale of Goods Act, 1930, where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

In the given case, in respect of barrels which have been filled up, the buyer will have to bear the loss as they were in a deliverable state and the buyer had notice thereof.

In respect of barrels which have not been filled up, the seller has to bear the loss as they were not in a deliverable state.

19. Amar delivers some cotton bales to Bharat on 'sale or return basis'. Bharat, then delivers the same goods to Chandan and Chandan further delivers it to Dhruv on the same terms and conditions on which Amar delivers to Bharat. Before Dhruv could give his acceptance, goods are suddenly destroyed by fire. Who is to bear the loss under these circumstances? Give reasons in support of your answer.

Ans.: As per Section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on sale or return terms, the property passes to the buyer, if buyer does any act adopting the transaction.

Property in goods gets transferred from A to B, when B delivers watch on sale or return basis to C, from B to C, when C delivers watch on sale or return basis to D and from C to D, when D delivers watch on sale or return basis to E. Ownership is with D and hence he will bear the loss.

20. Ankur agreed to sell a horse to Eswar on condition that Eswar will keep the horse for 10 days on trial basis and have the option to return the horse within the stipulated period, if he does not find the horse suitable. However, the horse died on the third day without any fault of either seller or buyer. State the legal position.

Ans.: As per Section 24 of the Sale of Goods Act, 1930, when goods are delivered to the buyer on sale or return terms, the property passes to the buyer:

(*a*) When buyer signifies his approval or acceptance to the seller or

(*b*) Buyer does any act adopting the transaction or

(*c*) If buyer does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, beyond a specified time and if not time has been specified, beyond a reasonable time.

In case of 'sale or return' basis if goods gets lost before property passes to buyer without the fault of either party, the loss has to be borne by seller.

In given case horse died on 3rd day where as buyer have time of 10 days to signify his assent and he has not yet given his approval adopting the transaction. Thus, property in horse has not been passed to the buyer and hence seller will bear the loss.

21. "No one can give a better title to the goods than what he himself has". Comment on this statement and also discuss the exception to this rule as per the Sale of Goods Act, 1930.

Ans.: *Nemo dat quod non habet* means, "No one can give a better title to the goods than what he himself has". Only a true owner can transfer to another person, valid title over the goods. A seller who does not have the ownership cannot confer the same upon the buyer.

Transfer by non-owner: Where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods.

Exceptions:

(1) **Estoppel [Section 27]:** Where the real owner by his conduct leads to believe the buyer that seller has authority to sell, buyer gets a good title.

Example: In presence of Z, X sell goods to Y by telling that goods belong to him (X). Z does not object X's statement. Y gets a good title and Z will be estopped from denying want of authority of X.

(2) **Sale by a mercantile agent [Section 27]:** If goods are sold through mercantile agent buyer gets a good title if following conditions are fulfilled:

(*a*) Such a mercantile agent is in possession of the goods or of a document of title to the goods, with the consent of the owner.

(*b*) Such a mercantile is acting in the ordinary course of business of a mercantile agent.

(*c*) Buyer acts is good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

Example: X gives his car to A, a mercantile agent for sale not below ₹ 1,00,000. A sells the car for ₹ 75,000 to Y. Y bought in good faith and without notice of instruction given by X to A. Y gets a good title.

(3) **Sale by joint owner [Section 28]:** If one of several joint owners of goods has the sole possession of goods with the permission of other co-owners, the property in the goods is transferred to person who buys in good faith and has not notice that the seller has no authority to sell.

(4) **Sale by person in possession under voidable contract [Section 29]:** When the seller of goods has obtained possession under a contract voidable, but the contract has not rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Example: X purchases jewellery from Y, by making fraud. But before Y terminate the contract, X sells the jewellery to Z who buys it in good faith and without notice of X's defective title. Z gets a good title.

(5) Sale by person in possession after sale [Section 30]:

(*a*) Seller in possession of goods after sale can pass on good and valid title if subsequent transferee receives the goods in good faith and for consideration.

(*b*) Similarly, buyer who is possession of goods to whom property in goods has not been passed sell goods, subsequent transferee gets good title if he receives the goods in good faith and for consideration.

Example 1: B buys a mobile from S which he agrees to deliver to B next day. S sells the same mobile to T who pays a higher price than B. T buys in good faith and without notice of previous sale. T gets a good title.

Example 2: B bought TV on hire purchase from S. B sold it to T, who purchased it good faith. T gets a good title.

(6) Sale by unpaid seller [Section 54]: Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title as against the original buyer.

(7) Sale by finder of goods: Finder of goods can sell the goods, if:

- Owner cannot be found with reasonable diligence.
- Owner, if found, does not pay the lawful charges of the finder.
- Goods are in danger of perishing.
- The lawful charges of finder, amount to **2/3rd** of the value of goods.

(8) Sale by a pawnee: If the pawnor makes default in payment of the debt, the pawnee may sell the thing pledged, on giving the pawnor reasonable notice of the sale. If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater that the amount so due, the pawnee shall pay over the surplus to the pawnor.

22. Aman, Raman and Chaman were joint-owners of a truck and possession of the said truck was with Raman. Sudhir purchased the truck from Raman without knowing that Aman and Chaman were also co-owners of the truck. Decide in the light of the provisions of the Sale of Goods Act, 1930 whether the sale between Raman and Sudhir is valid.

Ans.: No one can give a better title to the goods than what he himself has. However, as per Section 28 of the Sale of Goods Act, 1930, if one of several joint owners of goods has the sole possession of goods with the permission of other co-owners, the property in the goods is transferred to person who buys in good faith and has not notice that the seller has no authority to sell.

TAXMANN®

In given case, one of the joint owners Raman had possession of Truck and Sudhir had purchased the truck without knowing that Aman and Chaman were also co-owners of the truck. Hence, applying the provision of Section 28 property in Truck has been passed to the Sudhir.

PERFORMANCE OF CONTRACT

23. Write short notes on: Kinds of delivery of goods

Ans.: Delivery [Section 2(2)]: Delivery means voluntary transfer of possession from one person to another.

Delivery [Section 33]: Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf. Delivery of goods may be actual, symbolic or constructive.

(1) **Actual delivery:** When goods are physically handed over to buyer or his authorised agent, it is known as actual delivery.

(2) **Symbolic delivery:** Where goods are bulky or heavy and it is not possible to hand over physically goods to buyer in such case delivery is made by handing over some symbol, which is known as symbolic delivery.

Examples:

(*a*) Delivering the key of the warehouse where goods are stored.

(*b*) Delivering bill of lading which will enables the holder to receive the goods on the arrival of ship.

(3) **Constructive delivery:** When the person in possession of goods acknowledges that he holds the goods on behalf of and at the disposal of buyer, it is known as constructive delivery.

Examples:

(*a*) Where the seller after having sold the goods, hold them on behalf of buyer there is constructive delivery.

(*b*) Where seller sells the goods lying in warehouse and warehouse keeper holds the goods on behalf of buyer by making necessary entries in his books there is constructive delivery.

24. Amit sells to Sachin a specific horse which is to be delivered to Sachin the next week. Sachin is to pay the price on delivery. In the next week, Sachin was ready to pay price for the horse. But Amit was not in position to deliver the horse to Sachin. Amit asks Sachin to take the delivery of horse after another week. The horse dies before it is delivered to and paid for. Who shall bear the loss? Explain.

Ans.: As per Section 32 of the Sale of Goods Act, 1930, unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions. Thus,

TAXMANN®

the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

In the given case Amit's main duty is to deliver the horse to the buyer Sachin. He has failed to perform his part under the contract of sale. Hence, Amit will bear the loss.

UNPAID SELLER

25. Who is unpaid seller?

Ans.: "Unpaid seller" defined [Section 45]: The seller of goods is deemed to be an unpaid seller:

(*a*) When the whole of the price has not been paid or tendered, or

(*b*) When a bill of exchange or other negotiable instrument has been received as conditional payment and the condition has not been fulfilled by reason of the dishonour of the instrument or otherwise.

"Seller" includes any person who is in the position of a seller, as an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has paid himself, or is directly responsible for, the price.

Small Dues: Even if a small balance is pending, the seller is still regarded as an unpaid seller.

26. What do you understand by the term "Unpaid Seller"? Explain unpaid seller's right to lien. [Dec. 2020 (3 Marks)]

Ans.: "Unpaid seller" defined [Section 45]: *Please refer to answer of Question No. 25.*

Right of lien:

- Lien means to withhold the property of another until lawful charges are paid.
- When unpaid seller retains the possession of goods and requires the buyer to pay for price of goods, seller is said to be exercising right of lien.
- The right of lien can be exercised by unpaid seller on only for price of goods and not for other charges like godown charges, interest.
- Right of lien depends upon possession. If possession is lost right of lien also lost.

Seller's Lien [Section 47]:

The unpaid seller of goods who is in possession of goods is entitled to retain possession until payment or tender of the price in the following cases, namely:

(*a*) Where the goods have been sold without any stipulation as to credit.

TAXMANN®

(*b*) Where the goods have been sold on credit, but the term of credit has expired.

(*c*) Where the buyer becomes insolvent.

The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

Lien in case of part delivery [Section 48]:

- Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder.
- If part delivery treated as full delivery right of lien lost.

Termination of lien [Section 49]:

The unpaid seller of goods loses his lien:

(*a*) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.

(*b*) When the buyer or his agent lawfully obtains possession of the goods.

(*c*) By express or implied waiver of right of lien.

Express Waiver: If contract of sale expressly provides that seller cannot retain possession of goods, it is an express waiver of lien.

Implied Waiver: If it inferred from the circumstances of the case or conduct of seller that there is waiver of right of lien, it is implied waiver of lien.

Example: X sells goods to Y on 2 months credit. After 2 months, X allows one more month to pay price of the goods. Seller by his conduct impliedly waived his right of lien.

Decree form Court: The unpaid seller of goods does not lose his right of lien because he has obtained a decree for the price of the goods.

27. Write a short note on: Unpaid seller's right of stoppage in transit

Ans.: When an unpaid seller stop the goods during the continuance of transit and regain the possession of goods, it is said that seller is exercising right of stoppage in transit.

As soon as right of lien ends right of stoppage in transit starts.

Right of stoppage in transit [Section 50]: When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit. Seller may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

How stoppage in transit is effected [Section 52]: The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are.

Such notice may be given either to the person in actual possession of the goods or to his principal.

When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to the seller. The expenses of such re-delivery shall be borne by the seller.

AUCTION SALE

28. Write a short note on: Auction Sale [June 2022 (3 Marks)]

Ans.: Auction sale is a public sale where bids are invited and goods are sold to highest bidder.

Presenting goods for auction sale is **'invitation to make an offer'**. When bidder makes bid, it is an **'offer'** and **'sale'** is complete when auctioneer accepts the bid.

Auctioneer can accept bid any of following manner:

(*a*) By saying 1, 2 & 3.

(*b*) By saying going, going, gone.

(*c*) By fall of hammer.

Provisions relating to auction sale [Section 64]:

(1) **Sale in lots:** In the case of sale by auction, where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale.

(2) **Completion of sale:** The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner and, until such announcement is made, any bidder may withdraw his bid.

Example: X makes a bid at an auction sale but withdraw it before the fall of hammer. One of the condition of sale was, "bid once made shall not be withdrawn", which X knew. Offer/bid withdrawn by X is valid and sale is not completed.

(3) **Right of seller to bid:** A right to bid may be reserved by the seller and, where such right is expressly reserved, the seller or any one person on his behalf may, bid at the auction.

Where the sale is not notified to be subject to a right to bid on behalf of the seller, such sale may be treated as **fraudulent by the buyer.**

(4) **Reserved price:** The sale may be notified to be subject to a reserved or upset price.

(5) **Pretended bidding:** When seller appoints a person to make bid on his behalf to get higher price, it is known as pretended bidding. Person appointed by seller is known as **'puffers'**.

TAXMANN®

If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

(6) **Knock out agreement/cartel:** It is a secret agreement between bidders by which they agrees not to compete with each other and only one of them will bid and they will distribute privately anything obtained at auction sale.

TAXMANN®

18 CHAPTER

LAW RELATING TO NEGOTIABLE INSTRUMENTS

INTRODUCTION & DEFINITIONS

1. State the essential characteristics of the negotiable instruments.

Ans.: Negotiable instrument [Section 13]: A negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Important characteristics of negotiable instruments:

(1) The holder of the instrument is presumed to be the owner of the property contained in it.

(2) They are freely transferable.

(3) A holder in due course gets the instrument free from all defects of title of any previous holder.

(4) The holder in due course is entitled to sue on the instrument in his own name.

(5) The instrument is transferable till maturity and in case of cheques till it becomes stale (on the expiry of 6 months from the date of issue).

(6) Certain equal presumptions are applicable to all negotiable instruments unless the contrary is proved.

2. What are essentials of promissory note? [Dec. 2020 (3 Marks)]

Ans.: Promissory Note [Section 4]: A promissory note is an instrument in writing (*not being a bank-note or a currency-note*) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Features of a promissory note:

(1) A promissory note must be **in writing**, duly **signed** by its maker and properly **stamped** as per Indian Stamp Act.

(2) It must contain an unconditional undertaking or promise to pay. Mere acknowledgement of indebtedness is not enough.

Example 1: If someone writes 'I owe ₹ 5,000 to Satya Prakash', it is not a promissory note.

Example 2: If it is written 'I promise to pay Suresh ₹ 5,000 after my sister's marriage', is not a promissory note.

(3) It must contain a **promise to pay money** only.

Example: If someone writes 'I promise to give Suresh a Maruti car' it is not a promissory note.

(4) The **parties (*i.e.* maker & payee)** to a promissory note **must be certain.**

(5) A promissory note may be payable on demand or after a certain date.

Example: If it is written 'three months after date, I promise to pay Satinder or order a sum of ₹ 5,000 only' it is a promissory note.

(6) The sum payable mentioned must be certain or capable of being made certain.

3. Distinguish between: Bill of exchange & Promissory note [Dec. 2018 (3 Marks)], [Dec. 2021 (3 Marks)]

Ans.: Following are the main points of distinction between bill of exchange & promissory note:

Point	Bill of exchange	Promissory note
Meaning	A bill of exchange as an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or to the order of a certain person, or to the bearer of the instrument.	Promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument.
Liability of the maker	The liability of the maker/drawer is **secondary & conditional** upon non-payment by the drawee.	The liability of the maker/drawer is **primary and absolute.**
Order/Promise	It contains an **unconditional order.**	It contains an **unconditional promise.**
Who draws	It is drawn by the creditor.	It is made by the debtor.
Acceptance	Acceptance by the drawee is a **must.**	Acceptance is **not required.**
Payee	Drawer of the bill may be payee also.	The maker of the note cannot be payee.
Parties	There are **three parties**: drawer, drawee & payee.	There are **two parties** – maker & payee.

TAXMANN®

4. Distinguish between: Electronic Cheque & Truncated Cheque

Ans.: Following are the main points of distinction between electronic and truncated cheque:

Points	Electronic Cheque	Truncated Cheque
Form	The electronic cheque is never in paper form.	The truncated cheque is initially a regular cheque on paper. It is submitted to bank as usual for clearance.
Original writing	The original writing itself is in electronic form.	The truncated cheque is duly written and signed on paper. It is subsequently converted into electronic form.
Signature	Original signature is digital signature.	Original signature is in ink.

5. Whether a person who has obtained possession of an instrument by theft, or under a forged endorsement is a holder under the Negotiable Instrument Act, 1881? Discuss. [Dec. 2021 (4 Marks)]

Ans.: Holder [Section 8]: The holder of negotiable instrument means any person –

(*a*) entitled in his own name to the possession thereof and

(*b*) to receive or recover the amount due thereon from the parties thereto.

To be a holder, the person must be named in the instrument as the payee, or the endorsee, or he must be the bearer thereof.

If a bill is lost or stolen, the thief or person who found the instrument is not 'holder'.

A person who has obtained possession of an instrument by theft, or under a forged endorsement, is not a holder, as he is not entitled to recover the instrument in his own name.

The holder implies *de jure holder* (holder in law) and not *de facto holder* (holder in fact). An agent holding an instrument for his principal is not a holder although he may receive its payment.

6. Explain the meaning of 'holder in due course' under the Negotiable Instruments Act, 1881.

Ans.: Holder in due course [Section 9]: Holder in due course means any person –

(*a*) who for consideration became the possessor of a negotiable instrument, before the amount mentioned in it became payable and

(*b*) without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. *(i.e. he obtains instrument in good faith)*

TAXMANN®

7. Distinguish between: Holder & Holder in due course

Ans.: Following are the main points of distinction between 'holder' & 'holder in due course':

Points	Holder	Holder in due course
Meaning	The holder of negotiable instrument means any person – (*a*) entitled in his own name to the possession thereof and (*b*) to receive or recover the amount due thereon from the parties thereto.	Holder in due course means any person – (*a*) who for consideration became the possessor of a negotiable instrument, before the amount mentioned in it became payable and (*b*) without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.
Position	A 'holder' may or may not be a 'holder in due course'.	A 'holder in due course' is obliviously holder.
Title	Holder (who is not holder in due course) cannot acquire a good title if the title of the prior party was defective.	A holder in due course acquires a good title even if title of prior party was defective.
Mode	Mere holder need not necessarily be for consideration e.g. heir of deceased holder becoming entitled to the bill is 'holder' not 'holder in due course'. Similarly assignee of bill is holder but not holder in due course.	A person can become a 'holder in due course' only after paying or transferring some consideration.
Acquisition of instrument	Holder may acquire instrument even after maturity, but in such case he will not be 'holder in due course'.	Holder in due course must possess/ acquire bill before maturity.
Enforcement of instrument	A holder cannot enforce instrument which was previously obtained by unlawful means or unlawful consideration.	A holder in due course can enforce instrument even if it was previously obtained by unlawful means or unlawful consideration.
Fictitious bill	Holder (who is not holder in due course) cannot claim payment on fictitious bill.	A 'holder in due course' can claim payment on fictitious bill.
Fraud & coercion	Instrument initially issued or obtained under fraud, coercion without consideration cannot be enforced by holder, is not 'holder in due course'.	A 'holder in due course' can enforce instrument initially issued or obtained under fraud, coercion or without consideration.

TAXMANN®

8. State the privileges of a "holder in due course" under the Negotiable Instruments Act, 1881.

Ans.: A holder in due course has the following privileges:

(1) A person who had signed inchoate instrument is liable to holder in due course for full value as long as stamp value is sufficient to cover the amount. **[Section 20]**

(2) Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied. **[Section 36]**

(3) If payee or drawer of the instrument is fictitious, the acceptor is liable to holder in due course, if the signature of the drawer and endorser as appearing on instrument tallies. (*same person draw and then endorse the instrument*) **[Section 42]**

(4) Parties to the instrument are liable to holder in due course even if it was an accommodation bill *i.e.* raised without consideration. **[Section 43]**

(5) If bill was lost, the possessor is not entitled to get anything on Bill, but the holder in due course is still entitled to get full amount of Bill.

(6) The holder in due course gets better title even if there was defect in title of the transferor. The title of holder in due course is not affected by the any offence or fraud (*but not forgery*) by previous party as long as he is not party to offence/fraud. **[Section 58]**

(7) In suit by holder in due course, maker of promissory note, drawer of bill of exchange or cheque cannot deny validity if the instrument as originally drawn. **[Section 120]**

(8) In suit by holder in due course, maker of promissory note, drawer of bill of exchange or cheque cannot deny payee's capacity to endorse the promissory note or Bill. **[Section 121]**

In brief, all defects in Bill or Promissory note are cleaned when it comes in the hands of 'holder in due course'. He gets good a title even if transferor or any earlier party had defective title. He gets a good title even if there is fraud/ offence (*but not forgery*).

9. Difference between Order Instrument and Bearer Instrument [Dec. 2019 (3 Marks)]

Ans.: A promissory note, bill of exchange or cheque is payable to bearer when:

(*a*) It is expressed to be so payable, or

(*b*) The only or last endorsement on the instrument is an endorsement in blank.

A person who is a holder of a bearer instrument can obtain the payment of the instrument.

TAXMANN®

Order Instruments: A promissory note, bill of exchange or cheque is payable to order:

(*a*) Which is expressed to be so payable; or

(*b*) Which is expressed to be payable to a particular person, and does not contain any words prohibiting transfer or indicating an intention that it shall not be transferable.

10. Distinguish between: Inland bills & Foreign bills

Ans.: Following are the main points of distinction between bills & foreign bills:

Points	Inland Bills	Foreign Bills
Meaning	Following types of bills are called inland instrument: (*a*) The bills drawn in India and payable in India. (*b*) The bills drawn in India on resident person whether payable in India or outside India. (*c*) The bills drawn in India upon a person resident outside India but payable in India.	An instrument which is not an inland instrument is deemed to be a foreign instrument.
Copies	Inland bills are drawn in a single copy.	Foreign bills are drawn in triplicate.
Noting or protesting	In case of dishonour of inland bills noting is required.	In case of dishonour of foreign bills protesting is required.

11. What do you understand by the term 'ambiguous instruments'?

Ans.: Ambiguous instruments [Section 17]: Where an instrument may be construed either as a promissory note or bill of exchange. This may happen if wording of instrument is not clear.

Example: Demand draft issued by one branch on another may either be treated as promissory note or as Bill of Exchange.

12. Explain the provisions relating to 'inchoate instrument' under the Negotiable Instruments Act, 1881.

Ans.: Inchoate means insufficient or incomplete. If a person signs a blank or incomplete stamp paper and delivers it to another person, he thereby gives authority to person to whom he delivers the instrument to fill in the blank. Such instrument is known as inchoate instrument.

Example: If stamp paper was sufficient to cover amount of ₹10,000 and the amount was left blank while signing, the holder can fill the amount of ₹10,000.

TAXMANN®

Such holder (who filled in the blanks) cannot recover amount more than what was intended to be paid to him. However, holder in due course can recover the whole amount from any previous party, including the drawer. Note that the provision is valid only when the instrument is delivered to another person after signature. Thus, if signed instrument is stolen, there is no 'delivery'.

Inchoate stamped instruments [Section 20]: Where one person signs and delivers to another a paper stamped in blank or incomplete, he thereby *prima facie* authorize the holder to complete the negotiable instrument. If no amount is specified, he has authority to fill amount not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument to any holder in due course for such amount.

However, he is liable to holder (who is not holder in due course) only for the amount actually payable to him. A holder who is not holder in due course is not entitled to recover full amount as shown in the Bill of Exchange.

Example: Mayank signs his name on a blank but stamped instrument and gives it to Pratik with authority to fill up as promissory note for ₹3,500. However, Pratik fill the amount as ₹5,000. The stamp is sufficient to cover ₹5,000. Pratik then hands it over Sagar for ₹5,000 for value. Sagar has no knowledge of the fraud. In such case, Mayank is liable to Sagar for ₹5,000 but to Pratik for ₹3,500. [*Lloyds Bank* v. *Cooke*]

13. Distinguish between – Inchoate & Ambiguous Instruments [June 2022 (3 Marks)]

Ans.: Following are the main points of distinction between inchoate & ambiguous instruments:

Points	Inchoate Instrument	Ambiguous Instrument
Meaning	If a person signs a blank or incomplete stamp paper and delivers it to another person, he thereby gives authority to person to whom he delivers the instrument to fill in the blank. Such instrument is known as inchoate instrument.	Where an instrument may be construed either as a promissory note or bill of exchange, such instrument is called ambiguous instrument.
Suit	Holder of inchoate instrument can sue only after amounts are filled up.	Holder of ambiguous instrument can sue it after electing to treat it either as promissory note or bill of exchange.
Negotiability	Inchoate instrument are not negotiable instrument. It can be negotiated only after amount is filled up.	Ambiguous instrument can be negotiated.

TAXMANN®

14. Distinguish between: Cheque & Bill of Exchange [June 2019 (3 Marks)], [June 2023 (4 Marks)]

Ans.: Following are the main points of distinction between cheque & bill of exchange:

Points	Cheque	Bill of Exchange
Meaning	A 'cheque' is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.	A bill of exchange as an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or to the order of a certain person, or to the bearer of the instrument.
Drawn on	It must be drawn on a specified banker.	It may or may not be addressed to banker.
Payable to bearer	It can be made payable to bearer.	It cannot be made payable to bearer on demand.
On demand	It must be made payable on demand.	It cannot be made payable 'on demand'.
Grace days	There is no grace period.	If it is not payable on demand, at sight or on presentment; grace period of 3 days is available.
Crossing	Cheque can be crossed.	It cannot be crossed.
Presentation	Presentation of for acceptance is never required.	Presentation for acceptance is required.
Stamping	It is not required to be stamped.	It is required to be stamped.
Due date	There is no due date for presentation of cheque.	It is required to be presented for payment on due date.
Stop payment	Bankers have to stop payment of cheque if drawer is dead or insolvent and Bank has notice of the same	There is not provision to stop payment if party to instrument is dead or insolvent or becomes insolvent after signature.
Notice of dishonour	Notice of dishonour is not required, unless holder intends to take criminal action u/s 138	Notice of dishonour is usually required.
Noting & protesting	It cannot be noted and protested.	It can be noted and protested.
Criminal liability	Criminal liability gets attracted if cheque is dishonoured.	There is no criminal liability for dishonour of Bill of Exchange.

TAXMANN®

PARTIES TO NOTES, BILLS & CHEQUES

15. X draws a cheque in favour of Y, a minor, Y endorses the same in favour of Z. The cheque is dishonoured by bank on grounds of inadequate funds. What legal remedy is available to Z under the provisions of the Negotiable Instruments Act, 1881? [Dec. 2019 (4 Marks)]

Ans.: As per Section 26 of the Negotiable Instruments Act, 1881, a minor may draw, endorse, deliver and negotiate promissory note, bill of exchange or cheque so as to bind all parties except himself.

Thus, if X draws a cheque in favour of Y (Minor) and Y endorses the same in favour of Z which was dishonoured by bank on grounds of inadequate funds then Z can held liable X but not Y (Minor).

16. A draws and B accepts the bill payable to C or order, C endorses the bill to D and D to E, who is a holder-in-due course. From whom E can recover the amount? Examining the right of E.

[June 2019 (4 Marks)]

Ans.: As per Section 36 of the Negotiable Instruments Act, 1881, every prior party to a negotiable instrument is liable to a holder in due course until the instrument is duly satisfied.

The holder in due course (E) can hold all the prior parties liable jointly and severally. Prior parties include the maker or drawer, the acceptor and endorsers.

Accordingly in the given problem, E, a holder in due course can recover the amount from all the prior parties *i.e.* D & C (the endorsers), B (an acceptor) and A (the drawer).

17. 'X' is the holder of a bill of exchange made payable to the order of 'B', which contains the following endorsements in blank –
First endorsement, 'B'
Second endorsement, 'C'
Third endorsement, 'D'
Fourth endorsement 'E'
'X' strike out, 'E' consent, the endorsement by 'C' and 'D'.
Decide with reason, whether 'X' is entitled to recover anything from 'E'.

Ans.: Discharge of endorser's liability [Section 40]: Every endorser is entitled to recover amount of Bill from prior endorsers. Hence, if a holder of a negotiable instrument destroys or impairs the endorser's remedy against prior party (without consent of endorser), the endorser is discharged from liability to the holder as if the instrument had been paid at maturity.

Example: X is the holder of a bill of exchange made payable to the order of B, which contains the following endorsements in blank –

First endorsement, "B".

Second endorsement, "C".

Third endorsement, "D"

Fourth endorsement "E".

This bill X puts in suit against E and strikes out, without E's consent, the endorsements by C and D. X is not entitled to recover anything from E.

18. P draws a bill on Q for ₹10,000. Q accepts the bill. On maturity the bill was dishonoured by non-payment. P files a suit against Q for payment of ₹10,000. Q proved that the bill was accepted for value of ₹7,000 and as an accommodation to the plaintiff for the balance amount *i.e.* ₹3,000. Referring to the provisions of the Negotiable Instruments Act, 1881 decide whether P would succeed in recovering the whole amount of the bill?

Ans.: As per Section 44 of the Negotiable Instrument Act, 1881, if a person has signed a promissory note, bill of exchange or cheque consisting of partly for consideration and partly for without consideration, then he is liable to the extent of consideration involved in such instrument to the immediate party. Thus P would not succeed in recovering the whole amount of the bill. He will be able recover only ₹7,000.

19. Distinction between: Accommodation Bill & Trade Bill

Answer:

Following are the main points of difference between accommodation bill & trade bill:

Points	Accommodation Bill	Trade Bill
Meaning	A bill which is drawn, for mutual finance is called an accommodation bill.	Bill drawn and accepted for a genuine trade transaction is termed as a trade bill.
Consideration	It is drawn without any consideration.	It is drawn for a consideration.
Evidence	This bill is for mutual financial help.	This bill is evidence of debt.
Acknowledgement of debts	These bills are not acknowledgement of debts.	These bills are acknowledgement of debts.
Discounting with banks.	These bills are always discounted with banks.	These bills may or may not be discounted with banks.
Loss by way of discounting	The loss by way of discounting the bill has to be shared by drawer and drawee in the ratio in which they share the proceeds.	The loss by way of discounting the bill has to be borne by drawer

Points	Accommodation Bill	Trade Bill
Legal action	Legal action cannot be taken up by drawer in case of dishonour of bill.	Legal action can be taken up by drawer in case of dishonour of bill.

20. A draws and B accepts the bill payable to C or order. C endorses the bill to D and D to E, who is 'holder in due course'. Decide from whom E can recover the amount under the Negotiable Instrument Act, 1881?
[June 2019 (4 Marks)]

Ans.: As per Section 36 of the Negotiable Instruments Act, 1881, every prior party to a negotiable instrument is liable to a holder in due course until the instrument is duly satisfied.

The holder in due course (E) can hold all the prior parties liable jointly and severally. Prior parties include the maker or drawer, the acceptor and endorsers. Accordingly in the given problem, E, a holder in due course can recover the amount from all the prior parties *i.e.* D & C (the endorsers), B (an acceptor) and A (the drawer).

NEGOTIATION

21. Distinguish between: Negotiation & Assignment
[Dec. 2018 (3 Marks)]

Ans.: Following are the main points of difference between negotiation & assignment:

Points	Negotiation	Assignment
Meaning	Negotiation means transfer of a negotiable instrument to another person, so that such another person is entitled to possession of the instrument and receive amount of instrument on due date.	Assignment means transfer of interest to another.
Title	Holder in due course after negotiation can get better title than transferor.	Assignee cannot get title better than the assignor.
Notice of endorsement	Notice of endorsement is not necessary in negotiation.	Notice of assignment is required to be given to debtor in case of assignment of debt.
Form	Negotiation of bearer instrument can be simply by delivery.	Assignment must be in writing as per Section 130 of the Transfer of Property Act, 1872.
Consideration	Consideration is presumed in negotiation.	Consideration is not presumed in assignment.

TAXMANN®

Points	Negotiation	Assignment
Further Endorsement & negotiation	A negotiable instrument can be further endorsed without permission or even without knowledge of transferor.	An assignee can further assign only if such right is specifically conferred on him by assignment deed.
Stamp duty	Once original instrument is stamped, further negotiation does not require payment of stamp duty.	Each assignment will require fresh stamp duty.

22. A bill of exchange is drawn payable to X or order. X endorses it to Y, Y to Z, Z to A, A to B and B to X. State with reasons whether X can recover the amount of the bill from Y, A and B, if he has originally indorsed the bill to Y by adding the words 'Sans Recourses'.

Ans.:

- The endorser of a negotiable instrument may, be express words in the endorsement, exclude his own liability thereon.
- If the endorser writes the words *'sans recourse'* he excludes his liability on the instrument.
- Where an endorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate endorsers are liable to him. If endorser excludes his liability, further negotiation is not prohibited. It only excludes liability of endorsee.

  In the example given, normally, X cannot hold Y, Z, A and B, as if X holds them responsible, the responsibility will come back to him by circuitry of action. However, in this case, X had endorsed 'Sans Recourses'. Hence, Y, Z, A & B cannot hold X liable and hence circle does not get complete. On the other hand, X is holder after Y, Z, A and B and can hold them liable.

23. B obtains A's acceptance to a bill of exchange by fraud. B endorses it to C who is a holder in due course. C endorses the bill to D who knows of the fraud. Referring to the provisions of the Negotiable Instruments Act, 1882, decide whether D can recover the money from A in the given case.

Ans.: As per Section 58 of the Negotiable Instruments Act, 1881, if an instrument is obtained by offence, fraud or unlawful consideration, possessor or endorsee is not entitled to get any amount thereon. However, if the instrument goes in the hands of 'holder in due course', subsequent possessor or endorsee is entitled to recover, as he derives title from the 'holder in due course'. This is because Section 53 provides that a holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Thus, D can recover the money from A.

TAXMANN®

24. On a bill of exchange for ₹10,000 Sumit's acceptance to the bill is forged. Amit takes the bill from his customer in good faith and for consideration before the bill becomes payable. State with reasons whether Amit can receive the amount of the bill from Sumit.

Ans.:

The Negotiable Instruments Act, 1881 makes no specific provision in respect of forgery. Hence, common law provisions apply. As per common law, a forgery is nullity of law and it passes no title to holder. It is not a mere defect in title but complete absence of title, which cannot be cured.

Section 58 does not give protection against forgery, though it gives protection against offence or fraud. Hence, a person does not get good title even if he obtains Bill *bona fide* and for value, if the signature was forged.

Hence, Amit is not holder in due course, and cannot get amount from Sumit.

PRESENTMENT

25. State the requirements of 'presentment for acceptance' of bill of exchange and promissory note under the Negotiable Instruments Act, 1881.

Ans.: Presentment for acceptance [Section 61]: If no time or place is specified for presentment, a bill of exchange payable after sight must be presented to the drawee for acceptance. The requirements are –

- Presentment should be made by the person entitled to *demand acceptance*.
- Presentment should be made within a reasonable time after it is drawn.
- Presentment should be in business hours on a business day *i.e.* not a public holiday.

Presentment by post: Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Bill deemed to be dishonoured if drawee cannot be found: If no time or place is specified for presentment and drawee cannot be found after reasonable search, the bill is said to be dishonoured.

Presentment of promissory note for sight [Section 62]: A promissory note, payable at a certain period after sight, must be presented to the maker for sight (*if he can after reasonable search be found*). The requirements are –

- Presentment should be made by the person entitled to *demand payment*.
- Presentment should be made within a reasonable time after promissory note is made.
- Presentment should be in business hours on a business day *i.e.* not a public holiday.

TAXMANN®

Drawees time for deliberation [Section 63]: Drawee can take time of 48 hours (exclusive of public holidays) to consider whether he will accept the bill of exchange.

26. Promissory note dated 1st February, 2022 payable two months after the date was presented to the maker for payment 10 days after maturity. What is the date of maturity? Explain with reference to relevant provisions of the Negotiable Instruments Act, 1881 whether the endorser and the maker will be discharged by reason of such delay?

Ans.: When period of bill is stated in months, calculation will be in months ignoring the days in months. Thus, if promissory note made on 1st February, 2022 then its maturity date after adding 3 grace days will be 4th April, 2019.

As per Section 64 of the Negotiable Instrument Act, 1881, if there is default in presentment of instrument for payment, the other parties are not liable to holder of the instrument. Hence, if the negotiable instrument is not presented for payment on due date to maker, acceptor and drawee then other parties get discharged. Thus, maker, acceptor and drawee continue to be liable even if instrument is not presented for payment on due date.

Thus, in view of above provisions, the endorser will get discharged but maker of the promissory note being primary party is still liable to the holder.

PAYMENT & INTEREST

27. Examining the provisions of the Negotiable Instruments Act, 1881, answer the following:

(*i*) Whether any interest is payable on dishonour of negotiable instrument? If yes, at what rate?

(*ii*) At what rate interest is payable if rate of instrument is not specified in the instrument?

Ans.: Provisions relating to payment of interest on negotiable instruments are follows:

Interest rate is specified [Section 79]	Interest rate is not specified [Section 80]
When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified in the instrument. Interest is calculated on principle amount due from the date of the instrument till date of realization of amount.	When no rate of interest is specified in the instrument, interest on the amount due thereon shall be calculated at the rate of 18% p.a., from the date at which the same ought to have been paid by the party charged till the realization of the amount due thereon.

TAXMANN®

Interest rate is specified [Section 79]	Interest rate is not specified [Section 80]
If the interest rate is excessive and unreasonable, the Court may not allow, if – (*a*) Interest rate is the nature of penalty. (*b*) Instrument has been obtained by undue influence.	Such interest at 18% p.a. is still payable even if there is separate agreement between parties to instrument specifying different rate.

28. When must the banker refuse payment of a cheque?

Ans.: When bank *may* refuse to honour the cheque:

(1) When balance in the account of drawer is insufficient.
(2) When cheque is mutilated *i.e.* torn
(3) When cheque is materially altered.
(4) Cheque is undated.
(5) Signature of drawee does not tally with his specimen signature.
(6) Cheque presented after 6 months.
(7) Cheques signed by one authorized signatory where two are required.
(8) If cheque is presented at other branch of bank where drawer does not have account.
(9) Cheque is appears to be of doubtful.
(10) If bank has lien over the funds.

In all aforesaid cases, banker may honour cheque, but at bank's own risk.

When banker *must* refuse to honour the cheque:

(1) If drawer has becomes insolvent and banker has notice of the same.
(2) If customers issues 'stop payment' instructions.
(3) When cheque is post dated and presented before the date mentioned on the cheque.
(4) Banker receives notice of death or insanity of the drawer.
(5) When order for attachment of account has been issued by Court.
(6) If drawer informs loss of cheque to banker.
(7) If cheque is issued on a closed bank account.
(8) When banker knows that title of holder is defective.
(9) If customer has assigned his credit balance and notice given to bank.
(10) If such payments will violation of any law e.g. FEMA etc.

TAXMANN®

DISCHARGE FROM LIABILITY ON NOTES, BILLS & CHEQUES

29. Describe the different modes of discharge of liability of parties with regard to negotiable instrument.

Ans.: Discharge from liability [Section 82]: The maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon –

(*a*) **Discharge by cancellation:** If a holder of the instrument cancels such acceptor's or endorser's name with intent to discharge him then all the parties get discharged.

(*b*) **Discharge by release:** If a holder discharges maker, acceptor or endorser by any mode other than cancellation (e.g. novation or rescission of contract), maker, acceptor or endorser and all parties deriving title under such holder get discharged. Notice to such parties is necessary.

(*c*) **Discharge by payment:** If the instrument is payable to bearer or has been endorsed in blank, payment to bearer of the instrument discharge maker, acceptor or endorser from all the parties to the instrument.

Discharge by allowing drawee more than 48 hours to accept [Section 83]: If the holder of a bill of exchange allows the drawee more than 48 hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties get discharged from liability to such holder, unless they consent to give more time.

Discharge by operation of law: Besides mode of discharge specified above, parties can get discharged by operation of law in following cases –

(*a*) By order of Court discharging insolvent.

(*b*) Suit becomes time barred under the Limitation Act, 1963.

30. 'A' draws a cheque for ₹50,000. When the cheque ought to be presented to the drawee bank, the drawer has sufficient funds to make payment of the cheque. The bank fails before the cheque is presented. The payee demands payment from the drawer. What is the liability of the drawer?

Ans.: As per Section 84 of the Negotiable Instruments Act, 1881, the cheque should be presented to bank within reasonable time. If cheque is not presented within reasonable time and drawer suffers actual damages, then drawer gets discharged to the extent of actual damages.

Applying the above provisions to the given problem, since the payee has not presented the cheque to the drawer's bank within a reasonable time when the drawer had funds to pay the cheque, and the drawer has suffered actual damage, the drawer is discharged from the liability.

TAXMANN®

31. Under the provisions of the Negotiable Instruments Act, 1881 state as to when shall an alteration made in negotiable instrument be called 'material alteration'. What alterations in such instrument are permitted under the Act? What is the effect of such alteration?

Ans: An alteration is material which in any way alters the operation of the instrument and the liabilities of the parties thereto. Material alteration to an instrument makes the instrument void against previous parties.

The alteration is void only if it is material. Following are material alteration:

- Alteration of date
- Alteration of amount
- Alteration of time of payment
- Alteration of place of payment
- Alteration of name of the parties
- Alteration of rate of interest
- Putting a stamp on insufficiently stamped instrument [*Adapa Baby Sarojini* v. *Ravulapati Chandrashekhar*]

Alterations which are not material alteration:

(*a*) Putting a date in an undated cheque subsequent to issue, when there is no dispute regarding signature, amount and the name, is not material alteration. [*Bhaskaran Chandrashekharan* v. *Radhakrishanan*]

(*b*) Filling banks of inchoate instrument up to value covered by stamp paper. [Section 20]

(*c*) Conversion of blank instrument into full endorsement. [Section 49]

(*d*) Acceptor making qualified acceptance, if consented by all previous parties. [Section 86]

(*e*) Alteration made to carry out the common intention of all original parties to the instrument. [Section 87]

(*f*) Crossing a cheque generally or specially, or crossing a cheque specially which was crossed generally. [Section 125]

Effect of material alteration [Section 87]: Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties.

NOTICE OF DISHONOUR

32. When a bill of exchange may be dishonoured by 'non-acceptance' and 'non-payment' under the provisions of Negotiable Instruments Act, 1881?

TAXMANN®

Ans.: If the negotiable instrument is not accepted (in case of Bill) or not paid, it is said to be dishonoured.

Dishonour by non-acceptance [Section 91]: A bill of exchange is said to be dishonoured by non-acceptance –

(*a*) when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or

(*b*) where presentment is excused and the bill is not accepted.

Presentment is excused if –

- If the maker or drawee intentionally prevents presentment.
- Drawee cannot be found after due search.
- Drawee is fictitious person.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

Dishonour by non-payment [Section 92]: A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee (bank) of the cheque makes default in payment upon being duly required to pay the same.

When presentment is not necessary and instrument is treated as dishonoured [Section 76(a)]: In following cases, Bill is dishonoured by non-payment even if not presented for payment –

- Maker, drawee or acceptor intentionally prevented presentation.
- Place of business is closed.
- Person not found even after due search.

33. Examining the provisions of the Negotiable Instrument Act, 1881, state whether notice of dishonour is necessary in the following cases:

(*i*) X having a balance of ₹ 1,000 with his bankers and having no authority to over draw, drew a cheque for ₹ 5,000. The cheque was dishonoured when duly presented for repayment.

(*ii*) X, drawer of a Bill informs Y, the holder of the bill that the bill would be dishonoured on the presentment for payment.

Ans: When negotiable instrument is dishonoured, notice is required to be given. However, Section 98 of the Negotiable Instrument Act, 1881 enumerate the circumstance when notice of dishonoured is not required to be given. Thus, considering the provisions of Section 98, answer to given problem is as follows:

(*i*) Since X is aware of the fact that his account in bank has only balance of ₹1,000, no notice of dishonoured of cheque of ₹5,000 is required to be given to him.

TAXMANN®

(*ii*) X, drawer of a Bill informs Y, the holder of the bill that the bill would be dishonoured which shows that X is aware of the fact of dishonour of instrument and hence no notice of dishonour is required to be given to him.

NOTING & PROTEST

34. Distinguish between: Noting & Protesting

Ans.: When negotiable instrument is dishonoured, it is noted and protested.

In noting, the notary public simply makes a note of dishonour as per information given to him by the holder of the instrument.

In case of protest, the notary public is required to certify the dishonour of instrument. In such case he is required to make demand for payment from the person who is liable to pay on such instrument.

Noting is optional in case of inland instrument. Protest is required in case of dishonour of foreign instrument if it required by law of other country.

ACCEPTANCE, PAYMENT FOR HONOUR & REFERENCE IN CASE OF NEED

35. Distinguish between: Acceptance for honour & Payment for honour

Ans.: Following are the main points of distinction between acceptance for honour & payment for honour:

Points	Acceptance for honour	Payment for honour
Meaning	If a bill is dishonoured by non-acceptance, another person who was not party to the bill, can accept the same for honour of drawer after bill is noted or protested which is known as acceptance for honour.	When payment is made by any person for the honour of any party liable to pay is known as payment for honour.
When	Acceptance for honour is given before Bill is due.	Payment for honour is only after Bill is due.
Consent of holder	Consent of holder of Bill is necessary in case of acceptance for honour.	Consent of holder of Bill is not necessary in case of acceptance for honour.
Rights	Acceptor for honour is entitled to get compensation for all loss and damages sustained by him.	Person paying the Bill gets all the rights of holder of the Bill after payment. He can recover interest and expenses from party in whose honour he made payment.

TAXMANN®

36. Write a short note on: Drawee in case of need

Ans.: The Bill is drawn as an order to drawee to pay certain amount to payee. If drawee refuses to honour the Bill, another person may be named in the Bill in case of need. Such person is known as 'drawee in case of need'. If drawee dishonours or does not accept the bill, it should be presented to drawee in need.

Drawee in case of need [Section 115]: Where a drawee in case of need is named in a bill of exchange, or in any endorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Acceptance and payment without protest [Section 116]: A drawee in case of need may accept and pay the bill of exchange without previous protest.

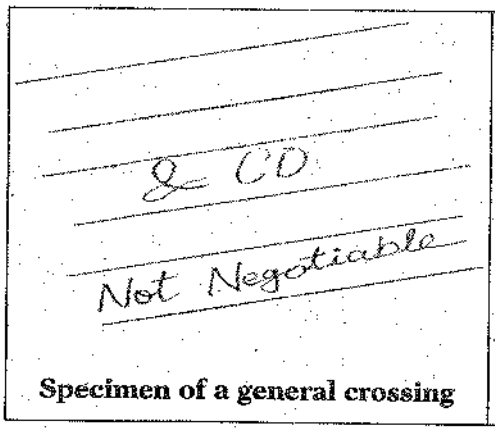
SPECIAL PROVISIONS AS TO CHEQUES

37. Explain in brief the various methods of crossing of a cheque. What is crossing of a cheque? [Dec. 2022 (4 Marks)]

Ans.: A purpose of crossing a cheque is to provide security to system of cheque payment. Tracing payee is easy if amount is deposited in his account as the banker is expected to check details of person before opening an account. If cheque payable to bearer goes in wrong hand, finder can encash it and it will be impossible to find the person and recover the amount.

Cheque crossed generally [Section 123]: Cheque crossed generally means a cheque which bears across its face an addition of the words *'& Company'* or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words *'Not Negotiable'*.

Cheque crossed specially [Section 124]: Cheque crossed specially means a cheque which bears across its face an addition of the name of a banker, either with or without the words *'Not Negotiable'*.



Specimen of a general crossing | **Specimen of a special crossing**

Restrictive crossing: A cheque with just two cross lines across its face is simple crossing. Such cheque is freely negotiable. The only restriction that payment will

TAXMANN®

be through banker of payee. Addition of words like, 'Not negotiable', 'Account Payee', 'Axis Bank', restrict its negotiability. Such crossings are 'restrictive crossings'.

Not-negotiable crossing [Section 130]: If a crossed cheque bears the words *'Not Negotiable'*, person taking a cheque cannot get a title better than transferor. Thus, mere writing words, *'Not Negotiable'* does not means that the cheque is not transferable. It is still transferable, but the effect is that transferee cannot get title better than what transferor had. If there is defect in title of transferor, the same defect will apply to title of transferee also. If a non-negotiable cheque is presented to bank, it should credit to payee's account only. Otherwise, bank will be held liable for negligence and will have to pay compensation.

Account Payee Crossing: There is no provision in Negotiable Instrument Act, 1881 regarding 'Account Payee Crossing'. This is commercially followed practice.

If 'Account Payee' marking appears on cheque, it doesn't mean that is not negotiable. Such 'account payee cheque' still remains transferrable. [*National Bank* v. *Silke*]

Thus, cheque marked as 'Account Payee' or 'Not Negotiable' can be transferred. Such 'Account Payee' cheque can be credited in some other account, as Act makes no provisions for account payee crossing. However, this is prohibited as per RBI Guideline.

38. Write a short note on: Stale Cheques

Ans.: A cheque is overdue or becomes statute-barred **after 3 years** from its due date of issue. A holder cannot sue on the cheque after that time. Apart from this provision, the holder of a cheque is required to present it for payment within a reasonable time, as a cheque is not meant for indefinite circulation.

In India, a cheque, which has been in circulation for **more than 6 months**, is regarded by bankers as stale. If, as a result of any delay in presenting a cheque, the drawer suffers any loss, as by the failure of the bank, the drawer is discharged from liability to the holder to the extent of the damage.

PENALTIES

39. Dishonour of cheque for want of funds is an offence under the Negotiable Instruments Act, 1881. Do you agree with statement?

Ans.: Dishonour of cheque [Section 138]: A person deemed to have committed offence of dishonour of cheque if –

(*a*) The drawer has issued cheque to another person from his account with bank.

(*b*) The cheque is issued for discharge of any debt or other liability.

TAXMANN®

(*c*) The drawee has presented the cheque to the bank within 6 months from the date on which it is drawn.

(*d*) The cheque is returned by drawer's bank as unpaid.

(*e*) The cheque is return due to insufficient funds in drawer's bank account.

(*f*) The payee makes a demand for the payment of money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.

(*g*) The drawer of cheque fails to make the payment to the payee within 15 days of the receipt of the notice.

Penalty for dishonour of cheque: The person dishonouring the cheque shall be punished –

- With imprisonment for a term which may be extended to **2 years** *or*
- With fine which may extend to **twice the amount of the cheque** *or*
- With **both**.

40. Examine, whether there is an offence under the Negotiable Instrument Act, 1881, if a Drawer of a cheque after having issued the cheque, informs the Drawee not to present the cheque as well as informs the Bank to stop the payment.

Ans.: The Supreme Court in *Modi Cements Ltd.* v. *Kuchil Kumar Nandi* held that once a cheque is issued by the drawer, a presumption that the cheque has been issued for the discharge of any debt or other liability follows and merely because the drawer issued a notice thereafter to the drawee as to the bank for stoppage of payment, it will not preclude an action u/s 138 of the Negotiable Instrument Act, 1881. Hence, the drawer of the cheque will be liable for the offence u/s 138 for dishonour of cheque.

TAXMANN®

CASE BASED OBJECTIVE QUESTIONS

1 : SOURCES OF LAW

1. According to Bentham 'a law' may be defined as an assemblage of signs, declarative of volition, conceived or adopted by a sovereign in a state, concerning the conduct to be observed in a certain case by a certain person or a class of persons, who in the case in question are or are supposed to be subject to his power. Thus, Bentham's concept of law is:

(A) An imperative one

(B) Futuristic

(C) Lawyer's extraversion

(D) Substance and interpretive history

2. Austin was a positivist, meaning that he concerned himself on what the law was instead of going into its justness or fairness. You are required to state which of the following statement belongs to Austin's theory of law?

(A) Jurisprudence is founded on the attempt, not to find universal principles of law, but to construct a science which will explain the relationship between law, its concepts, and the life of society.

(B) He differentiated between *'law properly so called'* and *'laws improperly so called'* and said that laws properly so called are general commands but not all of it is given by men for men.

(C) Sovereign is politically and legally inferior.

(D) He drew a similarity between the task of a lawyer and an engineer to build such a structure of society where the satisfaction of wants of maximum was achieved with the minimum of friction and waste.

3. _____ a distinguished _____ legal scholar was a leading jurist of _____ and was one of the biggest proponents of sociological jurisprudence.

(A) Roscoe Pound, British, 19th century

(B) John William Salmond, British, 20th century

(C) Roscoe Pound, American, 20th century

(D) Hans Kelsen, Austrian, 18th century

4. Which of the following is criticism of Kelsen's Pure Theory of Law?

(A) It is possible to trace 'grundnorm' in every legal system. Also, there is perfect rule or yardstick to measure the effectiveness of grundnorm. All that Kelsen maintained was that the grundnorm imparts validity as long as the 'total legal order' remains effective, which he later revised to 'by and large' effective. He also gave measure of 'total' and 'by and large'.

(B) Theory of balancing interests can be effectuated most effectively by judges because the judges get to translate the activity involved in the cases before them in terms of

TAXMANN®

interests and select the ideal with reference to which the competing interests are to be measured. Thus his theory gives more importance to judiciary in comparison to the legislature.

(C) The pursuit of justice is not the only purpose of law, the law of any period serves many ends and these ends themselves change with the passage of time.

(D) International law does not sit well in this theory. He advocated a monist view of the relationship between international and municipal law and declared that the grundnorm of the international system postulated the primacy of international law. The actual experience has been to the contrary and the countries of the world mostly give primacy to municipal laws over international laws.

5. Find the correct match form the following two lists:

List-I	List-II
(P) Ulpine	(1) Law is the highest reason implanted in nature.
(Q) Cicero	(2) Law as the standard of what is just and unjust.
(R) Justinian's Digest	(3) Law is art or science of what is equitable and good.
(S) Hugo Grotius	(4) Duty of sovereign is to safeguard its citizens.

Select correct answer from the options given below –

	(P)	(Q)	(R)	(S)
(A)	(3)	(1)	(2)	(4)
(B)	(4)	(1)	(2)	(3)
(C)	(3)	(1)	(4)	(2)
(D)	(3)	(2)	(1)	(4)

6. Consider following two statements:

Statement I: The expression 'all courts' used in Article 141 refers to courts including the Supreme Court.

Statement II: Article 141 of the Constitution makes it clear that the law declared by the Supreme Court shall be binding on all courts within the territory of India and thus words "law declared" does not include an *obiter dictum* provided it is upon a point raised and argued.

Select correct answer from the options given below –

(A) Statement I is correct and Statement II is incorrect.

(B) Statement I and Statement II both are incorrect.

(C) Statement I is incorrect and Statement II is correct.

(D) Statement I and Statement II both are correct.

7. Which of the following is correctly matched?

(A) Persuasive Precedents – Court is entitled to disregard a decision if it is a wrong one.

(B) Absolutely Authoritative Precedents – A decision has a legal claim to implicit obedience, even if the judge considers it wrong.

(C) Original Precedents – The judges are not obliged to follow but which they will take into consideration and to which they will attach

TAXMANN®

great weight as it seems to them to deserve.

(D) Conditionally Authoritative Precedents – Merely the application of an already existing rule of law.

8. Consider following two statements:

Assertion (A): The principle of a judicial decision, which is only authoritative, is termed as *Ratio Decidendi*.

Reason (R): Where an issue requires to be answered on principles, the principles which are deduced by way of abstraction of the material facts of the case eliminating the immaterial elements which is not only applicable to that case but to other cases also which are of similar nature.

Select correct answer from the options given below –

(A) Both (A) and (R) are true and (R) is the correct *Explanation* of (A)

(B) Both (A) and (R) are true and (R) is not the correct *Explanation* of (A)

(C) (A) is true and (R) is false

(D) (A) is false but (R) is true

9. The concept of "justice, equity and good conscience" was .....

(A) Made applicable by Privy Council in 1934.

(B) Established by Supreme Court in 1951.

(C) Introduced by Impey's Regulations of 1781.

(D) Resolved by the Barons of the Exchequer in 1584.

10. Consider following statements:

(1) A custom is reasonable even if it is opposed to the principles of justice, equity and good conscience.

(2) One Bench of the same High Court can take a view contrary to the decision already given by another co-ordinate Bench of that High Court.

(3) Original Precedents are more numerous and their importance is very less.

(4) The Shruti includes five Vedas.

Select correct statements from the options given below:

(A) (1) only

(B) (3) & (4) only

(C) (4), (2) & (3) only

(D) None of the above

ANSWERS:

1.	(A)	**2.**	(B)	**3.**	(C)	**4.**	(D)	**5.**	(A)	**6.**	(C)	**7.**	(B)
8.	(A)	**9.**	(C)	**10.**	(D)								

2 : CONSTITUTION OF INDIA

1. Which one of the following Articles of the Constitution of India prohibits the State from discriminating against any citizen on grounds of religion, race, cast, sex, place of birth or any of them _____

TAXMANN®

(A) Article 15(*1*)

(B) Article 15(*4*)

(C) Article 16(2)

(D) Article 19(*3*)

[Dec. 2014]

2. Articles 123 and 213 of the Constitution of India have conferred the legislative power to promulgate Ordinance on the —

(A) Chief Justice of India and Election Commissioner of India respectively.

(B) Governor of the State and President of India respectively.

(C) President of India and Governor of the State respectively.

(D) Chief Justice of India and Chief Justice of every High Court respectively.

[Dec. 2014]

3. The definition of the 'State' as given under Article 12 of the Constitution of India includes which of the following:

(*i*) The Government and Parliament of India only.

(*ii*) The Government and the Legislature of each State only.

(*iii*) All local or other authorities within India and under the control of the Government of India only.

Select the correct answer from the options given below.

(A) (*i*) only

(B) (*i*) and (*ii*) only

(C) (*ii*) and (*iii*) only

(D) (*i*), (*ii*) and (*iii*)

[Dec. 2014]

4. It shall be the duty of every citizen of India:

(*i*) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.

(*ii*) To cherish and follow the noble ideals which inspired our national struggle for freedom.

(*iii*) To uphold and protect the sovereignty, unity and integrity of India.

(*iv*) To defend the country and render national service when called upon to do so.

All of the above mentioned are:

(*i*) Fundamental Rights

(*ii*) Fundamental Duties

(*iii*) Directive Principles of State Policy

(*iv*) State Principles

Select the correct answer from the options given below.

(A) (*i*) only

(B) (*i*) and (*ii*) only

(C) (*i*), (*iii*) and (*iv*) only

(D) (*i*), (*ii*), (*iii*) and (*iv*)

[Dec. 2014]

5. Every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs. Which of the following writs may be issued by the High Court:

(*i*) *Habeas corpus*

(*ii*) *Mandamus*

(*iii*) *Prohibition*

(*iv*) *Quo warranto and certiorari*

TAXMANN®

Select the correct answer from the options given below.

(A) (*i*) only

(B) (*i*) and (*ii*) only

(C) (*i*), (*iii*) and (*iv*) only

(D) (*i*), (*ii*), (*iii*) and (*iv*)

[Dec. 2014]

6. The State must endeavour to secure living wage and good standard of life to all types of workers and make provision for securing the right to work and public assistance in case of unemployment, old age.

These provisions are contained in the Constitution of India under —

(A) Fundamental Rights

(B) Fundamental Duties

(C) Directive Principles of State Policy

(D) Social measures

[Dec. 2014]

7. Protection of natural environment is an objective expressly stated in —

(A) Fundamental rights

(B) Fundamental duties

(C) Directive principles of State policy

(D) Social measures

[June 2015]

8. Under the Constitution of India which of the following is not a fundamental right —

(A) Right to equality

(B) Right to freedom

(C) Right to property

(D) Right to freedom of religion

[June 2015]

9. Judicial review under the Constitution of India:

(*i*) is a part of the basic structure of the Constitution

(*ii*) can only be excluded by a constitutional amendment.

Which of the statements given above is/are correct?

(A) (*i*) only

(B) (*ii*) only

(C) Both (*i*) and (*ii*)

(D) Neither (*i*) nor (*ii*)

[June 2015]

10. Emergency shall be proclaimed by —

(A) Governor on the basis of the recommendation of Chief Justice of High Court.

(B) The President of India on the basis of the recommendation of Chief Justice of India.

(C) The President of India on the basis of the recommendation of the Union Cabinet.

(D) Governor on the recommendation of Chief Minister of the State.

[June 2015]

11. Which of the following writ is applicable for dispute regarding refund of money illegally collected as higher secondary education cess by income-tax authorities —

(A) *Habeas corpus*

(B) *Certiorari*

(C) *Quo warranto*

(D) *Mandamus*

[June 2015]

12. "Equality is a dynamic concept with many aspects and dimensions. From a positive point of view, equality

TAXMANN®

is antithesis to arbitrariness. In fact, equality and arbitrariness are sworn enemies." This was observed by the Supreme Court of India in —

(A) *E.P. Royyappa* v. *State of Tamil Nadu*

(B) *Maneka Gandhi* v. *Union of India*

(C) *R.D. Shetty* v. *International Airports Authority*

(D) *Suneel Jaitley* v. *State of Haryana*

[Dec. 2015]

13. Read the following statements and choose the correct answer:

(1) Article 245 of the Constitution of India provides for extent of laws made by the Parliament and Legislature of a State.

(2) As per Article 245(2) of the Constitution of India, any law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Which of the above is/are correct —

(A) Both (1) and (2) are correct.

(B) (1) is incorrect and (2) is correct.

(C) (1) is correct (2) is incorrect.

(D) Both (1) and (2) are incorrect.

[Dec. 2015]

14. The proclamation of the President of India under Article 356 is valid for a period of six months from the date of proclamation. A fresh proclamation can be issued to extend the life of it for a further period of six months but in no case such proclamation can remain in force beyond a consecutive period of —

(A) Six months

(B) One year

(C) Two years

(D) Three years

[Dec. 2015]

15. The Constitution makers recognized the right of the State to deprive a person of his life or personal liberty in accordance with fair, just and reasonable procedure established by law. This proposition was reiterated by the Supreme Court of India in —

(A) *A. K. Gopalan* v. *State of Madras*

(B) *Maneka Gandhi* v. *Union of India*

(C) *Bachan Singh* v. *State of Punjab*

(D) *T. V. Vatheeswaran* v. *State of Tamil Nadu*

[Dec. 2015]

16. A writ of *quo warranto* can be issued by the High Court to question —

(A) Why did a subordinate court not exercise its jurisdiction?

(B) Why did a subordinate court exceed its jurisdiction?

(C) The legality of an order of a public authority.

(D) Under what authority a person holds a public office.

[Dec. 2015]

17. Article 131 of the Constitution of India deals with —

(A) Appellate jurisdiction of the Supreme Court of India.

(B) Special leave to appeal by the Supreme Court of India.

(C) Original jurisdiction of the Supreme Court of India.

(D) Advisory jurisdiction of the Supreme Court of India.

[Dec. 2015]

TAXMANN©

18. An Ordinance promulgated by the President of India or Governor of a State will automatically ceases to have effect at the expiry of _____ if it is not laid before the Parliament or State Legislature when it reassembled.

(A) Two weeks

(B) Four weeks

(C) Eight weeks

(D) Six weeks

[Dec. 2015]

19. Which one of the following statement is incorrect as per the Constitution of India —

(A) Laws made by Parliament may have their application even beyond the territory of India.

(B) Laws made by the State legislature having extra-territorial application may be valid on the basis of 'territorial nexus'.

(C) Parliament has power to make laws in relations to subjects enumerated in the Union on List and the Concurrent List.

(D) The Concurrent list contains subjects on taxation and hence Parliament as well as State Legislature both have power of taxation under this list.

[June 2016]

20. In which of the following case the Supreme Court held that an amendment of the Constitution under Article 368 was 'law' within the meaning of Article 13 —

(A) *Minerva Mill Ltd.* v. *Union of India*

(B) *Sajjan Singh* v. *State of Rajasthan*

(C) *Shankari Prasad* v. *Union of India*

(D) *Kesvananda Bharti* v. *State of Kerala*

[June 2016]

21. While interpreting the phrase 'equality before the law' contained in Article 14 of the Constitution of India, the Supreme Court consistently maintained that 'equality' means —

(A) Absolute equality among human beings.

(B) Equal treatment to all persons.

(C) Equality of status in the Preamble of the Constitution.

(D) Among equals, the law should be equal and should be equally administered.

[June 2016]

22. Consider the following statements under the Constitution of India:

(*i*) The writ jurisdiction of the High Court is wider than that of the Supreme Court.

(*ii*) The writ of *habeas corpus* is a remedy available to a person who is confined without legal justification.

(*iii*) One of the relevant justifications for delegated legislation is the need of some weapon for coping with situations created by emergency.

(*iv*) The power of judicial review is not available in relation to delegated legislation.

Select the incorrect statements from the options given below —

(A) (*i*), (*ii*) and (*iii*)

(B) (*ii*), (*iii*) and (*iv*)

TAXMANN®

(C) (*iii*), (*iv*) and (*i*)

(D) (*iv*), (*i*) and (*ii*)

[June 2016]

23. Which one of the following statement is incorrect as per the Constitution of India —

(A) The definition of 'State' under Article 12 of the Constitution includes the Government and legislature of each of the States.

(B) Article 13(*2*) of the Constitution prevents the State from making law which takes away or abridges the fundamental rights.

(C) Under Article 13(*1*) of the Constitution, any law inconsistent with the fundamental rights shall become *void* and hence dead for all times to come.

(D) In *Basheshar Nath* v. *CIT* [1959], the Supreme Court held that the fundamental rights cannot be waived.

[June 2016]

24. Consider the following statement under the Constitution of India.

(*i*) In India, legal sovereignty is vested in the people of India and political sovereignty is distributed between the Union and the States.

(*ii*) The Constitution of India is basically unitary but with some federal features.

(*iii*) The Preamble declares India to be a socialistic State which means that people of India enjoy religious freedom.

(*iv*) The Constitution is the supreme law of India and it can be amended by following the procedure laid down in Article 368.

Select the incorrect answer from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*)

[June 2016]

25. Though the Directive Principles of State Policy contained in the Constitution are not enforceable by any Court, yet they are —

(A) Fundamental in the governance of the country.

(B) Binding on the State.

(C) Enforceable at the instance of the President of India.

(D) Superior to fundamental rights.

[June 2016]

26. The freedom of trade, commerce and intercourse provided by the Constitution of India is not of absolute nature. There are some restrictions. In this regard, which of the following statement(s) is/are correct —

(A) Parliament has power to impose restrictions in the public interest.

(B) The State Legislature cannot impose restrictions on the freedom of trade, commerce and intercourse.

(C) The laws which create State monopoly in any trade, etc. are saved from the attack under Article 301.

(D) Both (A) and (C) above.

[Dec. 2016]

27. Which one of the following is not a fundamental right under the Constitution of India —

(A) Right to assemble peacefully.

(B) Right to constitutional remedies.

TAXMANN®

(C) Right to property.

(D) Right to move freely throughout the country.

[Dec. 2016]

28. Under the Constitution of India, the legislative powers of Parliament normally extend to all matters enlisted in the Union List and the Concurrent List. But under Article 249, Parliament has power to make laws in respect of any subject enumerated in the State List. In light of the above, consider the following statements:

(*i*) Parliament can make such law only when the State legislatures authorize Parliament to do so.

(*ii*) Council of States has declared by resolution that it is necessary or expedient in national interest.

(*iii*) Such resolution by Council of States must be supported by two-thirds of its members present and voting.

(*iv*) Such law made by Parliament remains in force for a period not exceeding six months.

Select the correct statements from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) None of the above

[Dec. 2016]

29. Article 20(3) of the Constitution of India lays down that "no person accused of an offence shall be compelled to be a witness against himself". A person is entitled to this protection when —

(A) He is accused of an offence.

(B) There is a compulsion to be a witness.

(C) Such compulsion should result in his giving evidence against himself.

(D) All of the above.

[Dec. 2016]

30. Consider the following statements relating to ordinance making powers of the President under Article 123 of the Constitution of India:

(*i*) Ordinance making power of the President is basically his legislative power.

(*ii*) The ambit of ordinance making power of the President is co-extensive with the legislative powers of Parliament.

(*iii*) An ordinance promulgated by the President may have retrospective operation.

(*iv*) The ordinance making power is available to the President only when both the Houses of Parliament have been prorogued or otherwise not in session.

Select the correct statements from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) All of the above

[Dec. 2016]

31. As per the Constitution of India, which one of the following statement is correct —

(A) Fundamental duties are not enforceable by courts.

(B) Fundamental duties are enforceable by courts.

TAXMANN®

(C) Right to property is enforceable a fundamental right.

(D) None of the above.

[Dec. 2016]

32. Article 14 of the Constitution of India states that "the State shall not deny to any person, equality before the law or the equal protection of the laws within the territory of India". Based on the above, *Select the correct statement from the options given below* —

(A) This right is available to all citizen of India.

(B) The expression equality before law has been borrowed from English common law and does not mean absolute equality.

(C) In *Chiranjit Lal Chowdhury* v. *Union of India*, the Supreme Court held that a corporation is a juristic person and not entitled to the benefit of this Article.

(D) Article 14 does not permit classification, however, class legislation is permitted

[Dec. 2016]

33. The Constitution of India envisages —

(A) Single polity but dual citizenship

(B) Dual polity but single citizenship

(C) Dual polity and dual citizenship

(D) Single polity and single citizenship

[Dec. 2016]

34. Consider the following statements regarding the writ of *Habeas Corpus* under the Constitution of India:

(*i*) It is a remedy available to every person who is confined without legal justification.

(*ii*) The power to issue this writ is available only to the Supreme Court.

(*iii*) The writ cannot be issued against a private person.

(*iv*) The words *Habeas Corpus* literally mean 'to have the body'.

Select the false statements from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*)

[Dec. 2016]

35. Subordinate legislation can take effect upon:

(A) Promulgation and publication

(B) Promulgation only

(C) Specific publication

(D) Particular kind of publication

[June 2017]

36. *Writ of Certiorari* is available to any:

(A) Government

(B) Person

(C) Inferior courts

(D) Corporations

[June 2017]

37. Right to constitutional remedies is:

(A) Substantive in nature

(B) Guaranteed

(C) A primary matter

(D) None of the above

[June 2017]

38. Delegated legislation may take the form of:

TAXMANN®

(A) Conditional Legislation
(B) Subordinate Legislation
(C) Supplementary Legislation
(D) Any of the above

[June 2017]

39. Fundamental right includes:
(A) Right to privacy
(B) Right to freedom from noise pollution
(C) Right to travel anywhere
(D) All of the above

[June 2017]

40. Article 19 is guaranteed to:
(A) Citizens
(B) Corporations
(C) Corporate bodies
(D) All of the above

[June 2017]

41. Article 25 of the Constitution deal with:
(A) Right to equality
(B) Right to freedom
(C) Right to freedom of religion
(D) Right against exploitation

[June 2017]

42. Reasonable restrictions can be imposed by:
(A) The executive
(B) The judiciary
(C) An enacted law
(D) The President of India

[June 2017]

43. Under the Constitution of India, the State authority includes:
(A) Income-tax department
(B) Electricity Board
(C) University
(D) All of the above

[June 2017]

44. Public authority means and includes any authority or body or institution of self-government established or constituted:
(A) By or under the Constitution
(B) By any other law made by Parliament or state legislature
(C) By notification issued or order made by the Appropriate Government
(D) All of the above

[Dec. 2017]

45. By which Amendment the words "Secular and Socialist" were included in the preamble of the Constitution of India?
(A) 1st Amendment
(B) 6th Amendment
(C) 42nd Amendment
(D) 44th Amendment

[Dec. 2017]

46. Which of the following Articles of the Constitution of India prohibits to make criminal law having its retrospective effect?
(A) Article 20(*1*)
(B) Article 20(*2*)
(C) Article 21(*1*)
(D) Article 22

[Dec. 2017]

47. While interpreting the phrase "equality before law" contained in Article 14 of the Constitution of India, the Supreme Court constantly maintained that equality means:

TAXMANN®

(A) Absolute equality among human beings.

(B) Equal treatment to all persons.

(C) Equality of status in the preamble of the constitution.

(D) Among equals, the law should be equal and should be equally administered.

[Dec. 2017]

48. Which of the following statement is not correct?

(A) There shall be a Council of Ministers headed by the Prime Minister to aid and advise the President who shall act in accordance with such advice.

(B) The President may require the Council of Ministers to reconsider such advice.

(C) The President need not act in accordance with the advice tendered after such reconsideration.

(D) The President shall act in accordance with the advice tendered after such reconsideration

[Dec. 2017]

49. Which of the following may be included in the term subordinate legislation?

(A) Executive Legislation

(B) Judicial Legislation

(C) Autonomous Legislation

(D) All of the above

[Dec. 2017]

50. Which one of the following rights recently has been included and declared as Fundamental Right under the Constitution of India by the Supreme Court?

(A) Right to equality

(B) Right against exploitation

(C) Right of privacy

(D) Right to constitutional remedies

[Dec. 2017]

51. The fundamental right to ..... has been deleted by ..... amendment of the Constitution of India.

(A) Forming Association; 44th

(B) Property; 44th

(C) Property; 42nd

(D) Against exploitation; 42nd

[June 2018]

52. The preamble of the Constitution of India envisages that:

(A) It shall stand part of the Constitution.

(B) It could be abrogated from the Constitution.

(C) It does not acknowledge recognize or proclaim anything about the Constitution.

(D) It has a separate entity in the Constitution.

[June 2018]

53. Which famous case involved the term "basic structure" of the Constitution?

(A) *Kesavanand Bharti* v. *State of Kerala*, AIR 1973 SC 1461.

(B) *Maneka Gandhi* v. *Union of India*, AIR 1978.

(C) *Vishakha* v. *State of Rajasthan*, AIR 1997.

(D) *Indra Sawhney* v. *Union of India*, AIR 1992.

[June 2018]

TAXMANN®

54. Which Article in the Constitution Empowers the High Court with the power of Writ Jurisdictions?

(A) Article 226

(B) Article 225

(C) Article 370

(D) Article 78

[June 2018]

55. Right to practice any profession, or to carry on any occupation, trade or business subject to reasonable restrictions is available under the article ..... of the Constitution of India.

(A) Article 19(*4*)

(B) Article 19(*5*)

(C) Article 19(*2*)

(D) Article 19(*1*)

[June 2018]

56. Which of the following articles was inserted in Constitution of India imposing therein the fundamental duties on every citizen of India?

(A) Article 50

(B) Article 51

(C) Article 51A

(D) Article 52

[June 2018]

57. Which one of the following pairs is not correctly matched?

(A) Right to equality — includes the principles of natural justice

(B) Right to personal liberty — includes right to livelihood

(C) Protection available to accused person — includes protection against *ex post facto* laws in civil matters

(D) Protection against arrest and detention — includes right to consult and to be defended by lawyer of one's own choice

[June 2018]

58. Article 12 of the Constitution of India defines 'State' for the purpose of enforcement of fundamental rights. Against which of the following a writ cannot be issued for the enforcement:

(A) Income Tax Tribunal

(B) High Court

(C) Delhi Municipal Corporation

(D) Port Trust

[June 2018]

59. Respect for National Flag and National Anthem is:

(A) Fundamental Right of every citizen

(B) Fundamental Duty of every citizen

(C) Directive Principles of State Policy

(D) Ordinary duty of every citizen

[Dec. 2018]

60. Who among the following holds office at the pleasure of the President?

(A) Chairman of U.P.S.C.

(B) Attorney General of India

(C) Speaker of the Lok Sabha

(D) Comptroller and Auditor General of India

[Dec. 2018]

61. Which of the following is not a Fundamental Right?

(A) Protection of life and personal liberty

(B) Right to move freely throughout the territory of India

TAXMANN®

(C) Right to assemble peaceably

(D) Right to hold property

[Dec. 2018]

62. Under Article 16 of the Constitution of India the words "any employment or office" applies:

(A) Only to the public employments

(B) Private employments

(C) Both public and private employments

(D) None of the above

[Dec. 2018]

63. Consider following two statements:

Statement No. 1 — Directive Principles of State Policy are not enforceable by any court.

Statement No. 2 — Directive Principles of State Policy are fundamental in the governance of the country.

(A) Both the statements are true

(B) Both the statements are untrue

(C) Statement No. 1 is untrue but Statement No. 2 is true

(D) Statement No. 2 is untrue but Statement No.1 is true

[Dec. 2018]

64. The following words have been included in the preamble of the Constitution of India:

1. Democratic
2. Socialist
3. Sovereign
4. Secular
5. Republic

Arrange the aforesaid words in order as given under preamble of the Constitution and find out which one of the following order is *correctly* arranged in the Constitution of India:

(A) 3, 2, 4, 1, 5

(B) 2, 3, 4, 1, 5

(C) 3, 2, 1, 4, 5

(D) 3, 1, 2, 5, 4

[Dec. 2018]

65. Freedom of trade, commerce and intercourse has been given in the Constitution of India in:

(A) XII Part

(B) XI Part

(C) X Part

(D) XIII Part

[Dec. 2018]

66. Article 31A, Article 31B and Article 31C of the Constitution of India are related to:

(A) Property

(B) Supplementary Provisions

(C) Minority

(D) Constitutional Remedies

[Dec. 2018]

67. Consider following statements:

Assertion (A): The principle of equality before law means that there should be equality of treatment under equal circumstances.

Reason (R): All persons are not equal by nature, attainment or circumstances.

Codes:

(A) Both (A) and (R) are true and (R) is correct Explanation of (A)

(B) Both (A) and (R) are true and (R) is not correct Explanation of (A)

TAXMANN®

(C) (A) is true and (R) is false

(D) (A) is false but (R) is true

[Dec. 2018]

68. Which one of the following statement is correct?

(A) The preamble enumerates the purpose and objectives that the legislation intended to achieve.

(B) Preamble reflects the intention of members of the Constituent Assembly.

(C) The Preamble codifies the regular measures to the citizens.

(D) Envisages only liberty in all spheres.

[Dec. 2018]

ANSWERS:

1.	(A)	**2.**	(C)	**3.**	(D)	**4.**	(A)	**5.**	(D)	**6.**	(C)	**7.**	(C)
8.	(C)	**9.**	(A)	**10.**	(C)	**11.**	(B)	**12.**	(A)	**13.**	(C)	**14.**	(D)
15.	(C)	**16.**	(D)	**17.**	(C)	**18.**	(D)	**19.**	(D)	**20.**	(B)	**21.**	(D)
22.	(**)	**23.**	(C)	**24.**	(B)	**25.**	(A)	**26.**	(D)	**27.**	(C)	**28.**	(B)
29.	(D)	**30.**	(D)	**31.**	(A)	**32.**	(B)	**33.**	(B)	**34.**	(B)	**35.**	(D)
36.	(B)	**37.**	(D)	**38.**	(D)	**39.**	(D)	**40.**	(A)	**41.**	(C)	**42.**	(C)
43.	(D)	**44.**	(D)	**45.**	(C)	**46.**	(A)	**47.**	(D)	**48.**	(C)	**49.**	(D)
50.	(C)	**51.**	(B)	**52.**	(A)	**53.**	(A)	**54.**	(A)	**55.**	(D)	**56.**	(C)
57.	(C)	**58.**	(B)	**59.**	(B)	**60.**	(**)	**61.**	(D)	**62.**	(A)	**63.**	(A)
64.	(A)	**65.**	(D)	**66.**	(A)	**67.**	(A)	**68.**	(A)				

** ***MCQs are wrongly drafted. For further clarification please see the hints.***

22. The only incorrect statement is (*iv*); but no such option is given and hence MCQ itself is wrong:

60. Options (*A*), (*B*) & (*D*) are correct and hence MCQ itself is wrong.

3 : INTERPRETATION OF STATUTES

1. Executive legislation, judicial legislation, municipal legislation and autonomous legislation are treated as

(A) Main legislation

(B) Subordinate legislation

(C) Para legislation

(D) Primary legislation

[Dec. 2014]

2. In the interpretation of statutes, where there are general words following particular and specific words, the general words following particular and specific words must be confined to things of the same kind as those specified, unless there is a clear manifestation of a contrary purpose. Such rule of interpretation is called

TAXMANN®

(A) Rule of *ejusdem generis*
(B) Rule of literal construction
(C) Rule of reasonable construction
(D) Doctrine of *cypres*

[Dec. 2014]

3. If there is any appearance of inconsistency between the schedule and a specific provision in an enactment, the _____ shall prevail.

(A) Schedule
(B) Regulation
(C) Enactment
(D) Circular

[Dec. 2014]

4. The legal maxim *'actus curiae neminem gravabit'* means —

(A) Act of the Court shall prejudice no one.
(B) An act does not make a man guilty unless there be guilty intention.
(C) The very act is punishable and no proof of damage is required.
(D) For the particular end or case at hand.

[Dec. 2014]

5. The legal maxim *'ubi jus ibi remedium'* means —

(A) Precedent
(B) Of utmost good faith
(C) Damage suffered by consent gives no cause of action
(D) Where there is a right there is remedy

[Dec. 2014]

6. "Interpretation or construction is the process by which the Courts seek to ascertain the meaning of the legislature through the medium of the authoritative forms in which it is expressed". The above statement is given by —

(A) Salmond
(B) Maxwell
(C) Crawford
(D) Lone Fuller

[Dec. 2014]

7. According to which rule of interpretation, the words, phrases and sentences of a statute are ordinarily to be understood in their natural, ordinary or popular and grammatical meaning unless such a construction leads to an absurdity or the content or object of the statute suggests a different meaning —

(A) Rule of literal construction
(B) Rule of reasonable construction
(C) Rule of harmonious construction
(D) Rule of *ejusdem generis.*

[June 2015]

8. Which of the following may not be taken into account as internal aids in interpretation while interpreting a statute —

(A) Preamble
(B) Heading and title of a chapter
(C) Dictionaries
(D) Marginal notes

[June 2015]

9. The very object of the interpretation of a statute or a document is —

(A) To be able to change the meaning according to solution.
(B) To understand the statute according to one's own comprehension.
(C) To ascertain what is the intention expressed by the words used.
(D) To infer guess of what is written.

[Dec. 2015]

TAXMANN

10. Where there are general words followed by particular and specific words, the general words must be confined to things of the same kind as those specified, unless there is a clear manifestation of a contrary purpose or meaning. This is known as the Rule of —

(A) *Noscitur a Sociis*

(B) *Expressio Unis Est Exclusio Alterius*

(C) *Ejusdem generis*

(D) *Ut Res Magis Valeat Quam Pareat*

[Dec. 2015]

11. The Latin doctrine *Ut Res Magis Valeat Quam Pareat* means —

(A) The words used in a statute have to be construed in their ordinary meaning.

(B) To give a sensible or reasonable meaning to the words.

(C) Statutes are to be construed according to their plain and grammatical meaning.

(D) A statute must be read as a whole.

[Dec. 2015]

12. Explanations are inserted in the provisions with the object —

(1) To explain the meaning of a particular provision.

(2) To remove doubts which might creep up in the absence of Explanation.

(3) To expand the meaning of the provision to which it is added.

(4) To understand the true meaning of the provision.

Which of the above is/are correct?

(A) (1), (2), (3) and (4)

(B) (1), (2) and (4)

(C) (1), (2) and (3)

(D) (1) and (2)

[Dec. 2015]

13. Where the meaning of the statute is clear, there is no need for presumptions. But if the intention of the legislature is not clear, there are a number of presumptions. Which one of the following is not applicable in this regard —

(A) A statute creating a criminal offence does not intend to attach liability without guilty intent.

(B) A statute is not intended to be consistent with the principles of international law.

(C) The legislature does not confer powers necessary to carry out duties imposed by it.

(D) The law compels no man to do that which is futile or fruitless.

[June 2016]

14. Under interpretation of statutes, the maxim *expression unit est exclusion alterius* means that —

(A) Meaning of a word should be known from its accompanying or associate words.

(B) The best way to give the meaning to a document or proposition of law is to read it as it would have read when it was made.

(C) Where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified.

(D) Express mention of one thing implies the exclusion of another.

[June 2016]

TAXMANN®

15. The purpose of interpretation clause is _____

(A) To give dictionary meaning of the word or expression.

(B) To give an overview of the statute.

(C) To give complete meaning of the statute.

(D) To avoid the necessity of frequent repetition in describing all the subject matter to which the word or expression so defined is intended to apply.

[June 2016]

16. Which one of the following statement is correct regarding interpretation of statutes —

(A) A statute has been defined as an advice of the legislature to people to do or not to do something.

(B) Consolidating statute means a statute which consolidates several previous statutes relating to the same subject matter, with or without alteration of substance.

(C) The purpose of interpretation is to understand the statute according to one's own comprehension.

(D) While on interpretation of statutes omissions may be presumed and when a word is not in the statute, it may be given meaning.

[June 2016]

17. The primary rule of interpretation is 'literal construction' according to which:

(A) 'Acts' are not to be regarded as including anything which is not within their letter as well as sprit.

(B) If the particular words exhaust the whole genus, then the general words are construed as embracing a larger genus.

(C) The words, phrases and sentences of a statute are ordinarily to be understood in their natural, ordinary or popular and grammatical meanings unless such a construction leads to an absurdity.

(D) None of the above

[Dec. 2016]

18. Regarding the reference to the statement of objects and reasons of a Bill of statute, it is a settled law that it can legitimately be referred to for a correct appreciation of:

(*i*) What was the law before the disputed Act was passed.

(*ii*) What was the mischief or defect for which the law had not provided.

(*iii*) What remedy the legislature has intended.

(*iv*) The reasons for the statute.

Select the correct objects from the options given below —

(A) (*i*), (*ii*) and (*iii*)

(B) (*ii*), (*iii*) and (*iv*)

(C) (*iii*), (*iv*) and (*i*)

(D) All of the above

[Dec. 2016]

19. If there is any appearance of inconsistency between the schedule and the enactment:

(A) The schedule shall prevail.

(B) The enactment shall prevail.

TAXMANN®

(C) The preamble has to be referred to.

(D) Latest decided case to be taken into consideration.

[June 2017]

20. Preamble –

(A) Is part of a statute

(B) Is not part of a statute

(C) Contains no motives

(D) Contains no inducements

[June 2017]

21. Which of the following may be taken into account as internal aids to interpretation while interpreting a statute?

(A) Preamble

(B) Title

(C) Marginal Notes

(D) All of the above

[Dec. 2017]

22. In which of the following cases the Supreme Court pointed out that the preamble may be legitimately consulted in case of any ambiguity arises in the construction of an Act and it may be useful to fix the meaning of the words used so as to keep the effect of the statute within its real scope?

(A) *Kamalpura Kochunni* v. *State of Madras*

(B) *Powell* v. *Kempton Park Race Course Co.*

(C) *Burrakur Coal Co.* v. *Union of India*

(D) *Bishanbar Singh* v. *State of Orissa*

[Dec. 2017]

23. As a principle of the interpretation of statute a particular word should be attributed with same meaning throughout of a statute. But this rule will not be applicable to:

(A) When the context excludes that principle.

(B) Where it could cause injustice or absurdity.

(C) Where different circumstances are being dealt with.

(D) All of the above

[June 2018]

24. The purpose of Interpretation is:

(A) To understand the statute according to one's own comprehension.

(B) To make a guess of what is written.

(C) To see what is the intention expressed by the words used.

(D) To be able to change the meaning according to the situation.

[June 2018]

25. The intentional confinement or restraint of another person without authority or justification and without that person's consent constitutes .....

(A) Defamation

(B) Negligence

(C) False imprisonment

(D) Nervous Shock

[June 2018]

26. Under Interpretation of Statutes 'Rule of *Ejusdem Generis*' means:

(A) Of the same proportion

(B) Of the same branch

(C) Of the same kind or species

(D) Of the same kind or format

[Dec. 2018]

TAXMANN®

ANSWERS:

1.	(B)	2.	(A)	3.	(C)	4.	(A)	5.	(D)	6.	(A)	7.	(A)
8.	(C)	9.	(C)	10.	(C)	11.	(B)	12.	(B)	13.	(C)	14.	(D)
15.	(D)	16.	(B)	17.	(C)	18.	(D)	19.	(B)	20.	(B)	21.	(D)
22.	(A)	23.	(D)	24.	(C)	25.	(C)	26.	(C)				

4 : ADMINISTRATIVE LAW

1. A law was passed by the State Government prohibiting unauthorized occupation of vacant lands and for providing summary eviction of unauthorized occupants. The law conferred power upon the competent authority to declare a land as vacant land without laying down any policy as guidance for the exercise of such discretion.

(A) The law is valid if it is covered in State List and approval of President of India is taken.

(B) The law is valid as Article 19(4) confers power to the State regarding making law by imposing reasonable restrictions.

(C) The Act is violative of Article 14 and hence invalid.

(D) None of the above.

2. Mr. Gopal Shastri is teacher in Government College. His service was terminated by the State of Kerala on the basis of the police report that in the past, he had taken part in RSS activities.

(A) The Court is not against the vesting of discretionary power in the executive and hence termination of service of Gopal Shastri is valid.

(B) Mr. Gopal Shastri in past had taken part in RSS activities and he may influence his students to vote for political party supported or promoted by RSS. Hence his termination of service cannot be challenged.

(C) Earlier political affinities of a Government Servant provided no basis for the Government to terminate his services.

(D) State Government can terminate the service of any person on any ground.

3. Which of the following is abuse of discretion?

(A) Discretionary power is exercised by the authority with bad faith or dishonest intention.

(B) A discretionary power exercised on relevant and not irrelevant or extraneous considerations.

(C) Order based on facts and cogent reasoning.

(D) All of the above.

4. Which of the following statement is correct in relation to temporary injunctions?

(A) It may be granted at any stage of a suit.

(B) It is a matter of discretion of the Court.

TAXMANN®

(C) It is granted as an interim measure to preserve *status quo*.

(D) All of the above.

5. Raman Sharma is a member of a selection board constituted to make the selection to a Central Cadre. He was also a candidate for the interview. After the interview, the name of the Raman Sharma appeared at the top of the list.

Selection of Raman Sharma is against the principles of natural justice and is the best example of –

(A) Rule against bias (*nemo judex in causa sua*)

(B) Pecuniary bias

(C) Rule of '*audi alteram partem*'

(D) No person should be made a judge in his own cause

6. Which of the following is the exception to rule of natural justice?

(I) Statutory exclusion

(II) Emergency

(III) Non-application of mind

(IV) Academic evaluation

Select correct answer from the following options:

(A) (II) & (III)

(B) (I) & (IV)

(C) (I), (II) & (IV)

(D) (I), (II) & (III)

7. Which of the following remedy is also called equitable remedy?

(A) Injunction (Preventive Relief)

(B) Declaratory Action

(C) Action for damages

(D) All of the above

8. One of the most important principles in the administration of justice is that justice must not only be done but also seen to be done. Choose the most suitable option relating to said principle.

(A) Principle of Bias

(B) Principle of Natural Justice

(C) Principle of Administrative Justice

(D) Principle of Pecuniary Bias

9. If the death of any person took place on account of unwarranted atrocious beating and assault by a police officer –

(A) The court will allowed parents of the victim to beat police officer.

(B) Police must take care of family of the victim.

(C) The State Government will be directed by the court to pay compensation to parents of the victim.

(D) The death of person took place in exercise of sovereign function and hence no action can be taken.

10. What is meaning to legal maxim *audi alteram partem*?

(A) The burden of proof is on the plaintiff

(B) Listen to the other side

(C) Audible evidence is the best evidence

(D) The act that proves criminal liability

ANSWERS:

1.	(C)	**2.**	(C)	**3.**	(A)	**4.**	(D)	**5.**	(D)	**6.**	(C)	**7.**	(D)
8.	(B)	**9.**	(C)	**10.**	(B)								

TAXMANN®

5 : LAW OF TORTS

1. Akhil throw a stone and Sahil gets physically injured. Select correct answer out of the following options:

(A) Akhil has committed tort of assault.

(B) Akhil has committed tort of battery.

(C) Akhil has committed tort of false imprisonment.

(D) Akhil has caused nervous shock.

2. Rules of strict liability was laid down in the case of _____

(A) *Hamlyn* v. *Houston & Co.*

(B) *Lloyd* v. *Grace Smith & Co.*

(C) *Ultzen* v. *Nicolas*

(D) *Rylands* v. *Fletcher*

3. _____ is any act of the defendant which directly causes the plaintiff immediately to apprehend a contact with his person.

(A) Assault

(B) Battery

(C) False Imprisonment

(D) Malicious Prosecution

4. Which one of the following is NOT an accurate statement in relation to the law of tort?

(A) Many duties in tort arise by virtue of the law alone and are not fixed by the parties.

(B) The main aim of tort is said to be compensation for harm suffered as a result of the breach of a duty fixed by law.

(C) It is possible for the parties to a contract to make an agreement to vary the tortuous duties which the law imposes.

(D) Tort places greater emphasis on wrongs of omission rather than commission.

5. In certain cases it is lawful to redress one's injuries by means of self help without recourse to the court. Self defense, prevention of trespass, re-entry on land, abatement of nuisance are remedies available to the plaintiff for self help. These remedies are called _____

(A) Judicial remedies

(B) Extra-judicial remedies

(C) Non-judicial remedies

(D) Self help

[Dec. 2014]

6. _____ means harm, loss or damage in respect of money, comfort, health, *etc.* whereas _____ means infringement of a right conferred by law on the plaintiff.

(A) *Damnum, injuria*

(B) *Injuria, damnum*

(C) Legal remedy, *mens rea*

(D) *Mens rea*, injury

[Dec. 2014]

7. In some torts, the defendant is held liable even though the harm caused to the plaintiff is without intention or negligence on the part of the defendant. Thus, the defendant is held liable without fault. This is based on the rule

TAXMANN®

of strict liability which was first laid down in the case of —

(A) *Rylands* v. *Fletcher*

(B) *Read* v. *Lyons*

(C) *Nicholas* v. *Marshal*

(D) *Lyods* v. *Grace*

[Dec. 2014]

8. "An infringement of a right *in rem* of a private individual gives a right of compensation at the suit of the injured party." This statement is given by —

(A) Salmond

(B) Fraser

(C) Winfield

(D) Fleming

[June 2015]

9. Liability in tort depends upon —

(A) Number of damages

(B) Quantity of injury

(C) Infringement of legal right

(D) Encroachment of interest

[June 2015]

10. Consider the following statements under the law of torts:

(*i*) The rule of strict liability, as laid down in the case *Rylands* v. *Fletcher,* is applicable where damage is caused due to natural use of the land.

(*ii*) For the tort committed by a partner in the ordinary course of the business of the firm, all other partners are liable.

(*iii*) A sovereign function denotes the activity of the State which can be carried out only by the State.

(*iv*) Defamation is statement which tends to lower a person in the estimation of right thinking members of society.

Select the incorrect answer from the options given below —

(A) (*iii*) only

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*)

[June 2016]

11. An employer is liable for the acts of independent contractors—

(A) If the employer authorizes independent contractor to commit a tort or illegal act.

(B) In torts of strict liability.

(C) For negligence of independent contractor.

(D) All of the above.

[June 2016]

12. Tortious liability:

(A) Arises from the breach of duty

(B) Primarily not fixed by law

(C) Its breach is not redressable by an action for unliquidated damages

(D) All of the above

[June 2017]

13. Maxim *"Damnum Sine injuria"* means:

(A) Damage without infringement of legal right.

(B) Damage with infringement of legal right.

(C) Infringement of legal right without damage.

(D) Infringement of legal right with damage

[Dec. 2017]

TAXMANN®

14. In case of malicious prosecution, the plaintiff may claim damages for:

(A) Injury caused to his reputation

(B) Injury caused to his person

(C) Injury caused to his property

(D) All of the above

[Dec. 2017]

15. Vicarious liability means the liability of a person of his own act:

(A) True

(B) False

(C) Partly true

(D) Partly false

[June 2018]

16. The rule in *Rylands* v. *Fletcher* does not apply when the escape is due to:

(A) Inevitable accident

(B) *Vis major*

(C) Negligence of the defendant

(D) Mistake

[June 2018]

17. Maxim *'Injuria Sine Damnum'* means:

(A) Injury without damage

(B) Injury with damage

(C) Injury not recoverable

(D) Injury purposely done

[Dec. 2018]

18. The rule of 'strict liability' propounded in the case of *Rylands v. Fletcher* is *not* applicable:

(A) When the damage is due to *vis major*.

(B) When the damage is due to wrongful act of stranger.

(C) When the damage is due to plaintiffs own fault.

(D) All of the above

[Dec. 2018]

ANSWERS:

1.	(B)	**2.**	(D)	**3.**	(A)	**4.**	(C)	**5.**	(B)	**6.**	(A)	**7.**	(A)
8.	(B)	**9.**	(C)	**10.**	(D)	**11.**	(D)	**12.**	(A)	**13.**	(A)	**14.**	(D)
15.	(B)	**16.**	(D)	**17.**	(A)	**18.**	(D)						

6 : LAW RELATING TO CIVIL PROCEDURE

1. Under the Code of Civil Procedure, 1908 a person against whom a decree has been passed or an order capable of execution has been made, is called —

(A) Lender

(B) Judgment debtor

(C) Legal representative of the debtor

(D) Creditor

[Dec. 2014]

2. Section 11 of the Code of Civil Procedure, 1908 deals with the

TAXMANN©

(A) Judgment debtor
(B) *Sub-judicata*
(C) Stay of Suit
(D) *Res judicata*

[Dec. 2014]

3. Right of appeal is a —
(A) Natural right attached to litigation
(B) Inherent right attached to litigation
(C) Right given by the statute
(D) Normal right attached to litigation

[June 2015]

4. Which of the following remedies is available to a defendant if an *ex-parte* decree is passed against him:
(*i*) He may file an appeal against the *ex-parte* decree under section 96 of the Code of Civil Procedure, 1908.
(*ii*) He may file an application for review of the judgment.
(*iii*) He may apply for setting aside the *ex-parte* decree.

Select the correct answer from the options given below —
(A) (*i*) only
(B) (*i*) and (*ii*) only
(C) (*ii*) and (*iii*) only
(D) (*i*), (*ii*) and (*iii*)

[June 2015]

5. Under the Code of Civil Procedure, 1908 the defendant has to file a written statement of his defence within a period of _____ from the date of service of summons.
(A) 30 Days
(B) 45 Days
(C) 60 Days
(D) 90 Days

[June 2015]

6. In the case of a conflict between the doctrine of *res judicata* and the doctrine of *lis pendens* —
(A) The doctrine of *lis pendens* prevails over the doctrine of *res judicata*
(B) The doctrine of *res judicata* prevails over the doctrine of *lis pendens*
(C) The doctrine of *res sub-judicata* prevails over the doctrine of *lis pendens*
(D) Only the doctrine of *lis pendens* prevails

[June 2015]

7. An appeal cannot lie from —
(A) An original decree passed *ex parte*
(B) Decree passed by consent of parties
(C) Decree passed by Small Cause Court in a suit valued not exceeding ₹ 10,000
(D) Appellate decree passed *ex parte*.

[Dec. 2015]

8. A resides at Shimla, B at Calcutta and C at Delhi. A, B, and C are together at Banaras. B and C make a joint promissory note payable at demand and delivered it to A. A wants to file a suit against B and C to recover the money. A can file it in the Court at —
(A) Banaras
(B) Calcutta
(C) Delhi
(D) Either at (A), (B) or (C) above

[Dec. 2015]

TAXMANN®

9. The expression 'former suit' in section 11 of the Code of Civil Procedure, 1908 denotes a suit —

(A) Which has been instituted prior to the suit in question.

(B) Which has been instituted and decided prior to the suit in question.

(C) Which has been decided prior to the suit in question, whether or not it was instituted prior thereto.

(D) Both (B) and (C) above

[Dec. 2015]

10. Which one of the following statement is false under the Code of Civil Procedure, 1908 —

(A) A decree is the decision of a court of justice upon respective rights and claims of the parties to an action.

(B) A decree may be preliminary or final. It is preliminary when further proceedings are required to be taken before the suit can be completely disposed off.

(C) A person who is not a party to the suit but in whose favour an order capable of execution is passed is deemed to be a 'decree-holder'.

(D) The court may on application of any party to a suit, pass orders on different applications and any order which is not the final order in a suit is called interlocutory order'.

[June 2016]

11. Which one of the following in respect of set-off is correct under the provisions of the Code of Civil Procedure, 1908?

(A) Set-off can be claimed in a suit for recovery of money.

(B) The amount claimed must be ascertained amount.

(C) The amount claimed to be set-off must be legally recoverable and not barred by limitation.

(D) All of the above.

[June 2016]

12. Consider the following statements under the Code of Civil Procedure, 1908:

(*i*) In a suit by or against a corporation, pleading may be signed and verified on behalf of the corporation by any of the promoters of the corporation.

(*ii*) In a suit by or against a corporation, the Court cannot require the personal appearance of the Secretary or Director of the corporation.

(*iii*) When a suit is instituted by a minor through a 'next friend', it is not necessary that such next friend should be of sound mind and has attained majority.

(*iv*) When a suit instituted by a minor through a 'next friend' and during pendency of the suit he attains the age of majority, he may elect to proceed with the suit or may elect to abandon the suit.

Select the incorrect statements from the options given below —

(A) (*i*), (*ii*) and (*iii*)

(B) (*ii*), (*iii*) and (*iv*)

(C) (*iii*), (*iv*) and (*i*)

(D) (*iv*), (*i*) and (*ii*)

[June 2016]

13. Which one of the following statement is true regarding appeals in civil cases under the Code of Civil Procedure, 1908 —

TAXMANN®

(A) Right to appeal in civil cases is a natural or inherent right attached to litigation.

(B) From all original decrees an appeal can be preferred to the High Court.

(C) No appeal lies in any suit of the nature cognizable by courts of small causes when the amount or value of the subject matter of the original suit does not exceed ten thousand rupees.

(D) An appeal does not lie against an order under section 95 for compensation for obtaining attachment or injunction on insufficient ground.

[June 2016]

14. Which one of the following statement is false under Code of Civil Procedure, 1908 —

(A) The *Explanation* to section 9 provides that a suit in which the right to an office is contested is not a suit of civil nature.

(B) To apply the doctrine of *res sub judice* it is essential that there must be two suits instituted at different times.

(C) The doctrine of *res judicata* underline the general principle that no one shall be twice vexed for the same cause.

(D) 'Set-off' is a reciprocal acquittal of debts between the plaintiff and defendant and it has the effect of extinguishing the plaintiffs claim to the extent of the amount claimed by the defendant as a counter claim.

[June 2016]

15. As per section 2(*10*) of the Code of Civil Procedure, 1908 a 'judgment debtor' is —

(A) Any person against whom a decree has been passed.

(B) Any person against whom an order capable of execution has been made.

(C) Any person against whom a decree has been passed or an order capable of execution has been made.

(D) A legal representative of a deceased judgment debtor.

[Dec. 2016]

16. An *ex-parte* decree is passed against a defendant. Under the Code of Civil Procedure, 1908, such defendant may —

(A) File an appeal against the *ex-parte* decree.

(B) Submit a petition in the Supreme Court for writ.

(C) File an application for review of the judgment.

(D) Both (A) and (C) above

[Dec. 2016]

17. Which one of the following is not an essential element of a 'decree' under section 2 of the Code of Civil Procedure, 1908 —

(A) The statement given by the Judge on the grounds of decree.

(B) Formal expression of adjudication.

(C) Conclusive determination of the rights of parties.

(D) Determination with regard to or any of the matters in controversy in the suit.

[Dec. 2016]

TAXMANN®

18. As per section 115 of the Code of Civil Procedure, 1908, the High Court is empowered to call for the record of any case which has been decided by subordinate court in which no appeal lies thereto, wherein —

(A) The subordinate court has exercised a jurisdiction not vested in it by law.

(B) The subordinate court has failed to exercise a jurisdiction so vested.

(C) The subordinate court has acted in exercise of its jurisdiction illegally or with material irregularity.

(D) All of the above

[Dec. 2016]

19. Under the Code of Civil Procedure, 1908, the court may grant temporary injunction where it is proved by affidavit or otherwise that —

(A) Any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit.

(B) Defendant threatens or intends to remove or dispose of his property with a view to defrauding his creditors.

(C) Defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

(D) All of the above

[Dec. 2016]

20. Consider the following statements under the Code of Civil Procedure, 1908:

(P) 'Admission' means that one party accepts the case of the other party in whole or in part to be true.

(Q) Issue arises when a material proposition of fact or law is affirmed by one party and denied by the other.

(R) Issues cannot be framed on the basis of documents produced by the parties.

(S) The plaintiff has no right to begin unless the defendant admits the fact alleged by the plaintiff.

Select the false statements from the options given below —

(A) (P) and (Q)

(B) (Q) and (R)

(C) (S) and (T)

(D) All of the above

[Dec. 2016]

21. Jurisdiction of a civil court may be of:

(A) One kind

(B) Two kinds

(C) Three kinds

(D) Four kinds

[June 2017]

22. Under the Code of Civil Procedure, 1908, a suit can be filed to set aside an *ex parte* decree obtained:

(A) By fraud

(B) For non-service of summons

(C) For non-appearance

(D) All of the above

[June 2017]

23. Under section 2(*14*) of the Code of Civil Procedure, 1908, the formal expression of any decision of a civil court means:

(A) A decree

(B) An order

TAXMANN®

(C) An appeal

(D) Injunction

[June 2017]

24. Under the Code of Civil Procedure, 1908, a decree is an:

(A) Order of dismissal for default

(B) Adjudication from which an appeal lies from an order

(C) Formal expression of adjudication

(D) All of the above

[June 2017]

25. Which one of the following remedies is not available to a defendant if an *ex parte* decree is passed against him? Such defendant may:

(A) File an appeal against *ex parte* decree

(B) File a suit for non-service of summons

(C) Apply for setting aside the *ex parte* decree

(D) File an application for review of judgment

[Dec. 2017]

26. The main essential(s) of the suit under Code of Civil Procedure, 1908 is/are:

(A) The opposing parties and cause of action.

(B) The subject matter of the suit.

(C) The relief claimed.

(D) All of the above.

[Dec. 2017]

27. In case of suits by or against minor under Code of Civil Procedure, 1908, a person can act as a next friend if he is:

(A) Major

(B) Of sound mind

(C) Not having any interest adverse to that of a minor residing in India

(D) Fulfilling all the above requirements

[Dec. 2017]

28. Which one of the following is *not* included in the definition of 'Judgment Debtor' under section 2(*10*) of the Civil Procedure Code, 1908?

(A) Any person against whom a decree has been passed.

(B) Any person against whom an order capable of execution has been passed.

(C) Any person against whom decree or order capable of execution has been passed.

(D) Any legal representative of a deceased judgment debtor

[Dec. 2017]

29. Original and Appellate jurisdiction under the provisions of the Civil Procedure Code, 1908 have been provided to:

(A) Supreme Court

(B) High Courts

(C) District Courts

(D) All of the above

[Dec. 2017]

30. In the case of _____ it was held by the Supreme Court that the principle of *'Res Judicata'* applies where an issue which has been raised in a subsequent suit was directly or substantially in issue in a former suit between the same parties and was heard and decided finally. Findings incidentally recorded do not operate as *res judicata*:

(A) *Gouri Naidu* v. *Thandrothu Bodemma*

TAXMANN®

(B) *Madhvi Amma Bhawani Amma* v. *Kurjikutty P. M. Pillai*

(C) *Mysore State E. Board* v. *Bangalore W.C. and S. Mills*

(D) *Lonakutty* v. *Thomman*

[Dec. 2017]

31. Which of the following is the *correct* answer as regards to the essentials of a decree passed under the Civil Procedure Code, 1908?

(A) There must be a formal expression of adjudication.

(B) There must be a conclusive determination of the right of parties.

(C) The adjudication should have been given in the suit.

(D) All of the above

[Dec. 2017]

32. A decree holder has been defined under section _____ of the Civil Procedure Code, 1908.

(A) 2(*3*)

(B) 2(*13*)

(C) 2(*14*)

(D) 2(*16*)

[June 2018]

33. A judgment under the Civil Procedure Code, 1908 contains:

(A) Concise statement of the case.

(B) The points for determination.

(C) The decision on the points of determination and the reason thereof.

(D) All of the above

[June 2018]

34. Court of Small Causes, under section 3 of Civil Procedure Code, 1908 is subordinate to:

(A) District Court

(B) High Court

(C) Both (A) and (B)

(D) Neither (A) nor (B)

[June 2018]

35. For the application of the principle of *Res sub judice*, which of the following is essential:

(A) Suits between the same parties or litigation under the same title.

(B) The two suits must be pending for disposal in a Court.

(C) The matters in issue in the two suits must be directly and substantially be the same.

(D) All of the above

[June 2018]

36. Section 15 of the Civil Procedure Code, 1908 lays down:

(A) A rule of procedure

(B) A rule of jurisdiction

(C) A rule of evidence

(D) All of the above

[June 2018]

37. A revision under section 115 shall not operate as a stay of suit or other proceeding before the court except where such suit or other proceeding is stayed by:

(A) The High Court

(B) The Supreme Court

(C) The Appellate Court

(D) District and Sessions Court

[June 2018]

38. Suits under section 20 of Civil Procedure Code, 1908 can be instituted where the course of action arises:

TAXMANN®

(A) Wholly
(B) Partly
(C) Either wholly or in part
(D) None of the above

[June 2018]

39. Under the provisions of Civil Procedure Code, 1908, from the date of decree or order, an appeal can be made in the High Court within:

(A) 30 days
(B) 45 days
(C) 60 days
(D) 90 days

[Dec. 2018]

40. Under the provisions of Civil Procedure Code, 1908, the defendant has to file the written statement of his defence from the date of the service of summons within a period of:

(A) 30 days
(B) 40 days
(C) 45 days
(D) 60 days

[Dec. 2018]

41. Which of the following courts have original and appellate jurisdiction under the Civil Procedure Code, 1908?

(A) High Court
(B) Supreme Court
(C) High Court, Supreme Court and District Court
(D) None of the above

[Dec. 2018]

42. Section 11 of the Civil Procedure Code, 1908 deals with:

(A) *Res judicata*
(B) Stay of suit
(C) Bar to further suit
(D) Courts to try all civil suits unless barred

[Dec. 2018]

ANSWERS:

1.	(B)	**2.**	(D)	**3.**	(C)	**4.**	(D)	**5.**	(A)	**6.**	(B)	**7.**	(B)
8.	(D)	**9.**	(C)	**10.**	(A)	**11.**	(D)	**12.**	(A)	**13.**	(C)	**14.**	(A)
15.	(C)	**16.**	(D)	**17.**	(A)	**18.**	(D)	**19.**	(D)	**20.**	(C)	**21.**	(D)
22.	(A)	**23.**	(B)	**24.**	(C)	**25.**	(B)	**26.**	(D)	**27.**	(D)	**28.**	(D)
29.	(D)	**30.**	(B)	**31.**	(D)	**32.**	(A)	**33.**	(D)	**34.**	(C)	**35.**	(D)
36.	(B)	**37.**	(A)	**38.**	(C)	**39.**	(D)	**40.**	(A)	**41.**	(C)	**42.**	(A)

7 : LAW RELATING TO CRIME AND ITS PROCEDURE

1. Under the Code of Criminal Procedure, 1973 _____ means a case in which, a police officer may, in accordance with the _____ or under any other law for the time being in force, arrest without warrant.

TAXMANN®

(A) Cognizable case; First Schedule

(B) Non-cognizable case; Second Schedule

(C) Cognizable case; Second Schedule

(D) Non-cognizable case; First Schedule

[Dec. 2014]

2. As per section 29 of the code of Criminal Procedure, 1973 the Court of a Chief Judicial Magistrate is empowered to pass _____

(A) Sentence of death.

(B) Sentence of life imprisonment.

(C) Any sentence authorized by law except a sentence of death or imprisonment of life or imprisonment for a term exceeding seven years.

(D) Sentence of death and life imprisonment.

[Dec. 2014]

3. As per section 29 of the Code of Criminal Procedure, 1973 the Court of a Magistrate of the First Class is authorized to pass a sentence of _____

(A) Imprisonment up to 3 years

(B) Imprisonment up to 5 years

(C) Imprisonment up to 7 years

(D) Imprisonment up to 10 years

[Dec. 2014]

4. In which of the following categories of cases, a police officer may arrest a person without an order from a Magistrate and without a warrant:

(*i*) Who is reasonably suspected of being a deserter from any of the Armed Forces of the Union.

(*ii*) Who has been proclaimed as an offender either under the Code of Criminal Procedure, 1973 or by order of the State Government.

(*iii*) Who being a released convict, commits a breach of any rule, relating to notification of residence or change of or absence from residence.

Select the correct answer from the options given below.

(A) (*i*) only

(B) (*i*) and (*ii*) only

(C) (*ii*) and (*iii*) only

(D) (*i*), (ii) and (*iii*)

[Dec. 2014]

5. According to the Code of Criminal Procedure, 1973, a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years is defined as —

(A) Summons case

(B) Sentence case

(C) Warrant case

(D) Accused

[June 2015]

6. Every inquiry other than a trial conducted under the Code of Criminal Procedure, 1973 by a Magistrate or Court, carries the following features:

(*i*) The inquiry is different from a trial in criminal matters.

(*ii*) Inquiry is wider than trial.

(*iii*) Inquiry stops when trial begins.

Select the correct answer from the options given below —

(A) (*i*), (*ii*) and (*iii*)

(B) (*i*) and (*ii*) only

(C) (*ii*) and (*iii*) only

(D) (*i*) only

[June 2015]

TAXMANN®

7. Any sentence of death passed by an Additional Sessions Judge shall be subject to confirmation by the —

(A) Sessions Judge

(B) Chief Judicial Magistrate

(C) Chief Metropolitan Magistrate

(D) High Court

[June 2015]

8. An order under section 144 of the Code of Criminal Procedure, 1973 can remain in force for two months, and may be extended further by the State Government if it considers necessary for a period not exceeding —

(A) Twelve months

(B) Eight months

(C) Six months

(D) Five months

[June 2015]

9. Under section 61 of the Code of Criminal Procedure, 1973 which of the following is issued by the Court, either for appearance or for producing a document or thing which may be issued to an accused person or witness—

(A) Warrant

(B) Summon

(C) Notice

(D) Arrest order

[June 2015]

10. As per section 29 of the Code of Criminal Procedure, 1973 a Magistrate of the First Class is authorized to pass a sentence of —

(A) Imprisonment up to 3 years

(B) Imprisonment up to 5 years

(C) Imprisonment up to 7 years

(D) Imprisonment up to 10 years

[June 2015]

11. The requisites of a 'complaint' to a Magistrate under the Code of Criminal Procedure, 1973 are:

(*i*) An oral or a written allegation.

(*ii*) Some person known or unknown has committed an offence.

(*iii*) It must be made to a Magistrate.

(*iv*) It must be made with the object that he should take action.

(*v*) A police report.

Select the correct answer from the options given below —

(A) (*i*), (*ii*) and (*v*) only

(B) (*ii*), (*iii*) and (*iv*) only

(C) (*i*), (*ii*), (*iii*) and (*v*) only

(D) (*i*), (*ii*), (*iii*) and (*iv*) only

[June 2015]

12. Anticipatory bail under section 438 of the Code of Criminal Procedure, 1973 may be granted by —

(A) Chief Judicial Magistrate

(B) Sessions Judge

(C) High Court

(D) Either Sessions Judge or High Court

[Dec. 2015]

13. The term 'warrant case' as defined in section 2(*x*) of the Code of Criminal Procedure, 1973 means an offence punishable with —

(A) Death, imprisonment for life or imprisonment for a term exceeding seven years.

(B) Death, imprisonment for life or imprisonment for a term not exceeding two years.

(C) Death, imprisonment for life or imprisonment for a term exceeding two years.

TAXMANN®

(D) Death, imprisonment for life or imprisonment for a term not exceeding three years.

[Dec. 2015]

14. The term 'cognizable offence' means an offence for which —

(A) The punishment prescribed is imprisonment for a term of one year.

(B) The punishment prescribed is imprisonment for a term exceeding two years.

(C) A police officer may arrest the accused without warrant.

(D) A police officer may arrest an accused with the permission of the court.

[Dec. 2015]

15. A search warrant shall not be issued by a Magistrate where —

(A) The court believes that a person summoned to produce any document or thing will not produce.

(B) Such document or thing is not known to the court to be in the possession of any person.

(C) Such a document or thing is in the custody of the postal authority.

(D) Where a general search is necessary.

[Dec. 2015]

16. Consider the following statements under the Code of Criminal Procedure, 1973:

(*i*) A Sessions Judge may pass any sentence authorized by law but the sentence of death is subject to confirmation by the Supreme Court.

(*ii*) If a person has committed a non-cognizable offence and does not disclose his name and residence, he may be arrested without warrant.

(*iii*) A private person can arrest any person who has committed any offence.

(*iv*) A magistrate of the First Class may pass a sentence of imprisonment up to seven years and fine up to five thousand rupees or both.

Select the incorrect statements from the options given below —

(A) (*i*), (*ii*) and (*iii*)

(B) (*ii*), (*iii*) and (*iv*)

(C) (*iii*), (*iv*) and (*i*)

(D) (*iv*), (*i*) and (*ii*)

[June 2016]

17. Which one of the following statement is true regarding limitation period for taking cognizance of an offence under the Code of Criminal Procedure, 1973 —

(A) If the offence is punishable with fine only, the period of limitation is one year.

(B) If the offence is punishable with imprisonment for a term exceeding three years, the period of limitation is three years.

(C) No rule of period of limitation is applicable where the offender is absconding or concealing himself.

(D) The court may take cognizance of an offence after the expiry of the period of limitation, in the interest of justice.

[June 2016]

TAXMANN©

18. Which one of the following statement is false regarding power of 'summary trial' under the Code of Criminal Procedure, 1973 —

(A) Power of summary trial is available to the Chief Judicial Magistrate, Metropolitan Magistrate and Magistrate of the First Class who is specially empowered by the High Court.

(B) Offence not punishable with death, imprisonment for life or imprisonment for a term exceeding three years are covered under summary trial.

(C) In all summary trials the summons case procedure is followed.

(D) No sentence of imprisonment for a term exceeding three months shall be passed in any conviction in summary trial.

[June 2016]

19. Which one of the following statement is incorrect relating to 'complaint' under section 2(*d*) of the Code of Criminal Procedure, 1973 —

(A) A complaint is an allegation made orally or in writing to a Magistrate.

(B) It is necessary that the name of the person or persons who have committed the offence in question must be mentioned the complaint.

(C) A police report is deemed to be a complaint where after investigation it discloses commission of a non-cognizable offence.

(D) A petition addressed to the Magistrate containing an allegation that an offence has committed and ending with a prayer that the culprit be suitably dealt with is a complaint.

[June 2016]

20. Section 190 of the Code of Criminal Procedure, 1973 provide for taking cognizance of an offence by the Magistrate —

(A) On a police report filed under section 173 of the Code of Criminal Procedure, 1973.

(B) On a complaint within the meaning of section 2(*d*) of the Code of Criminal Procedure, 1973.

(C) *Suo motu*

(D) All of the above.

[June 2016]

21. Under section 2(*d*) of the Code of Criminal Procedure, 1973, a complaint —

(A) Must be in writing.

(B) Must be made to the Chief Judicial Magistrate.

(C) Must indicate that some known or unknown person has committed an offence.

(D) May be sent to the police officer having power of investigation.

[Dec. 2016]

22. An anticipatory bail is granted by High Court or a Court of Sessions to a person —

(A) Who apprehends arrest for having committed a bailable offence but has not yet been Arrested.

(B) Who apprehends arrest for having committed a non-bailable offence but has not yet been arrested.

(C) Who apprehends arrest for having committed both bailable and non-bailable offences but has not yet been arrested.

(D) All of the above.

[Dec. 2016]

TAXMANN®

23. Under section 468 of the Code of Criminal Procedure, 1973, the period of limitation for an offence punishable with imprisonment for a term not exceeding one year is —

(A) Six months

(B) One year

(C) Two years

(D) Three years

[Dec. 2016]

24. Consider the following statements regarding FIR and power of investigation under the Code of Criminal Procedure, 1973:

(*i*) The basic rule is that FIR is lodged with the officer in charge of the police station within whose local jurisdiction the offence has been committed.

(*ii*) If the police officer refuses to record the information of offence, the aggrieved person may send it in writing to the superintendent of police concerned.

(*iii*) In cognizable offences, the police has no power of investigation without the order of the Magistrate.

(*iv*) The police officer has power to investigate in matters related to non-cognizable offences without the order of the Magistrate.

Select the correct statements from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*)

[Dec. 2016]

25. Consider the following statements under the Code of Criminal Procedure, 1973:

(*i*) A summon shall be served by a police officer or by an officer of the court or other public servant.

(*ii*) A summon is issued either for appearance or for producing a document or thing which may be issued to an accused person or witness.

(*iii*) A warrant of arrest must bear the name and designation of the person who is to execute it.

(*iv*) If any person against whom a warrant of arrest has been issued has absconded, the court may publish a proclamation requiring him to appear.

Select the false statements from the options given below —

(A) (*i*), (*ii*) and (*iii*)

(B) (*ii*), (*iii*) and (*iv*)

(C) (*iv*), (*i*) and (*ii*)

(D) None of the above

[Dec. 2016]

26. The Code of Criminal Procedure, 1973, provides in its Second Schedule the form of warrant of arrest in:

(A) Form No. 1

(B) Form No. 2

(C) Form No. 3

(D) Form No. 4

[June 2017]

27. Under the Code of Criminal Procedure, 1973 "summary trial" _____ means:

(A) Total settlement

(B) Speedy disposal

TAXMANN®

(C) Such offences which are not punishable

(D) Trial for bailable offences

[June 2017]

28. Under the Code of Criminal Procedure, 1973 the requisites of a "complaint" in a criminal case include:

(A) An oral or a written allegation.

(B) Some person known or unknown has committed an offence.

(C) It must be made with the object that the Magistrate should take action.

(D) All of the above

[June 2017]

29. Under section 59 of Criminal Procedure Code, 1973 a person arrested by a police officer shall be discharged:

(A) On his own bond

(B) On bail

(C) Under the special order of the Magistrate

(D) On the basis of all or any one of them

[Dec. 2017]

30. As per section 43 of the Criminal Procedure Code, 1973 a private person may arrest or cause to be arrested by person who in his presence commits:

(A) A non-bailable offence

(B) A cognizable offence

(C) A proclaimed offender

(D) All of the above

[Dec. 2017]

31. Consider the following statements:

Mens rea is not an essential ingredient in:

(*i*) Cases not criminal in any real sense but which in the public interest are prohibited under a penalty.

(*ii*) Public nuisance.

(*iii*) Cases criminal in form but which are really a summary mode of enforcing a civil right.

(*iv*) Cases relating to statutory offence unless the statute expressly or by necessary implication excludes *mens rea*.

Which of the statements given above are correct out of the following?

(A) (*i*), (*ii*) and (*iii*)

(B) (*i*), (*ii*) and (*iv*)

(C) (*ii*), (*iii*) and (*iv*)

(D) (*i*), (*iii*) and (*iv*)

[Dec. 2017]

32. Under which Section of Criminal Procedure Code, 1973, a Magistrate can order to arrest a person?

(A) Section 38

(B) Section 40

(C) Section 41

(D) Section 44

[Dec. 2017]

33. Which one of the following statements is not correct as regards to the inquiry and trial under the provisions of Criminal Procedure Code, 1973?

(A) The inquiry is different from a trial.

(B) Inquiry is wider than trial.

(C) It stops when trial begins.

(D) Inquiry and trial may be done together

[June 2018]

TAXMANN®

34. Which one of the following requisites is not correct as regards to the warrant of arrest issued by the court under section 70 of the Criminal Procedure Code, 1973?

(A) It must be in writing.

(B) It must state the offence charged.

(C) It may not be sealed.

(D) It must be signed by the presiding officer of the court.

[June 2018]

35. As per section 43 of Criminal Procedure Code, 1973 a private person cannot arrest any person who in his presence commits:

(A) A bailable offence

(B) A non-bailable offence

(C) Who is a proclaimed offender

(D) A cognizable offence

[June 2018]

ANSWERS:

1.	(A)	**2.**	(C)	**3.**	(A)	**4.**	(D)	**5.**	(C)	**6.**	(A)	**7.**	(D)
8.	(C)	**9.**	(B)	**10.**	(A)	**11.**	(D)	**12.**	(D)	**13.**	(C)	**14.**	(C)
15.	(C)	**16.**	(C)	**17.**	(D)	**18.**	(B)	**19.**	(B)	**20.**	(D)	**21.**	(C)
22.	(B)	**23.**	(B)	**24.**	(A)	**25.**	(D)	**26.**	(B)	**27.**	(B)	**28.**	(D)
29.	(D)	**30.**	(D)	**31.**	(A)	**32.**	(D)	**33.**	(D)	**34.**	(C)	**35.**	(A)

8 : LAW RELATING TO EVIDENCE

1. Under section 3 of the Indian Evidence Act, 1872, 'evidence' means and includes all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry.

Such statements are called —

(A) Oral Evidence

(B) Personal Evidence

(C) Circumstantial Evidence

(D Factual Evidence

[Dec. 2014]

2. Under the Indian Evidence Act, 1872 any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter is interpreted as —

(A) Facts

(B) Circumstances

(C) Document

(D) Evidence

[June 2015]

3. Which principle/doctrine says that a man cannot approbate and reprobate, or that a man shall not say one thing at one time and later on say a different thing —

TAXMANN®

(C) Such offences which are not punishable

(D) Trial for bailable offences

[June 2017]

28. Under the Code of Criminal Procedure, 1973 the requisites of a "complaint" in a criminal case include:

(A) An oral or a written allegation.

(B) Some person known or unknown has committed an offence.

(C) It must be made with the object that the Magistrate should take action.

(D) All of the above

[June 2017]

29. Under section 59 of Criminal Procedure Code, 1973 a person arrested by a police officer shall be discharged:

(A) On his own bond

(B) On bail

(C) Under the special order of the Magistrate

(D) On the basis of all or any one of them

[Dec. 2017]

30. As per section 43 of the Criminal Procedure Code, 1973 a private person may arrest or cause to be arrested by person who in his presence commits:

(A) A non-bailable offence

(B) A cognizable offence

(C) A proclaimed offender

(D) All of the above

[Dec. 2017]

31. Consider the following statements:

Mens rea is not an essential ingredient in:

(*i*) Cases not criminal in any real sense but which in the public interest are prohibited under a penalty.

(*ii*) Public nuisance.

(*iii*) Cases criminal in form but which are really a summary mode of enforcing a civil right.

(*iv*) Cases relating to statutory offence unless the statute expressly or by necessary implication excludes *mens rea*.

Which of the statements given above are correct out of the following?

(A) (*i*), (*ii*) and (*iii*)

(B) (*i*), (*ii*) and (*iv*)

(C) (*ii*), (*iii*) and (*iv*)

(D) (*i*), (*iii*) and (*iv*)

[Dec. 2017]

32. Under which Section of Criminal Procedure Code, 1973, a Magistrate can order to arrest a person?

(A) Section 38

(B) Section 40

(C) Section 41

(D) Section 44

[Dec. 2017]

33. Which one of the following statements is not correct as regards to the inquiry and trial under the provisions of Criminal Procedure Code, 1973?

(A) The inquiry is different from a trial.

(B) Inquiry is wider than trial.

(C) It stops when trial begins.

(D) Inquiry and trial may be done together

[June 2018]

LAXMANN®

(A) Doctrine of indoor management
(B) Doctrine of constructive notice
(C) Principle of *estoppels*
(D) Principle of equity

[June 2015]

4. Statement under section 32(*1*) of the Indian Evidence Act, 1872 contemplates statements:

(1) By a person as to the cause of his death.
(2) By a person as to any of the circumstance of the transaction which resulted in his death.
(3) By a person under expectation of death.
(4) By a person as to likelihood of his death.

Which of the above is/are correct?

(A) (1) only
(B) (2) and (3)
(C) (1) and (2)
(D) (4) only

[Dec. 2015]

5. The Indian Evidence Act, 1872, provides that when one fact is declared by the Act to be conclusive proof of another, the Court shall —

(A) Allow evidence to be given for the purpose of disproving it.
(B) On proof of one fact, regard the other as proved.
(C) Not allow evidence to be given for the purpose of disproving it.
(D) Both (B) and (C) of the above

[Dec. 2015]

6. Out of the following which is not a secondary evidence —

(A) Copies made from the original by mechanical process.
(B) Copies made from or compared with original.
(C) Oral accounts of the contents of a document given by a person who has himself seen it.
(D) Oral account of a photograph.

[June 2016]

7. The doctrine of *estoppels* is a —

(A) Substantive law
(B) Rule of equity
(C) Rule of evidence
(D) Law of pleading

[June 2016]

8. Which one of the following is not a secondary evidence under section 63 of the Indian Evidence Act, 1872 —

(A) Certified copies of primary evidence (document)
(B) A document executed in several parts
(C) Counter parts of documents as against the parties who did not execute them
(D) Oral account of the contents of a document given by some person who has himself seen it.

[Dec. 2016]

9. Estoppel is a rule of evidence and does not give rise to a:

(A) Conduct
(B) Cause of action
(C) Representation
(D) Inducement

[June 2017]

TAXMANN®

10. Which one of the following statement is *not* correct as regards to oral evidence?

(A) It must be direct in all cases.

(B) All facts except the contents of documents may be proved by oral evidence.

(C) The contents of documents must be stated orally.

(D) Oral evidence must be direct as well as it should be related to facts.

[Dec. 2017]

11. Facts forming part of the same transaction are known as:

(A) Plea of *Alibi*

(B) *Res Gestae*

(C) Dying declaration

(D) Admission

[Dec. 2017]

12. Under the Indian Evidence Act, 1872, 'Fact' means:

(A) *Factum probandum*

(B) *Factum probans*

(C) Both *factum probandum* and *factum probans*

(D) None of the above

[June 2018]

13. The facts which form part of the same transaction are relevant:

(A) Under section 5 of the Indian Evidence Act, 1872

(B) Under section 6 of the Indian Evidence Act, 1872

(C) Under section 7 of the Indian Evidence Act, 1872

(D) Under section 8 of the Indian Evidence Act, 1872

[June 2018]

14. Under which provision of the Indian Evidence Act, 1872, an accused may plead *'Plea of alibi'*?

(A) Section 10

(B) Section 11

(C) Section 12

(D) Section 13

[Dec. 2018]

15. The 'doctrine of estoppel' means:

(A) Not to make statement in consonance to the earlier statement.

(B) Restriction to make statement contrary to the earlier statement/ admission.

(C) *Res judicata*

(D) Vague statement

[Dec. 2018]

16. Section 124 of the Indian Evidence Act, 1872 regarding privileged communication is related to:

(A) Affairs of the State

(B) Communication during marriage

(C) Official communications

(D) None of the above

[Dec. 2018]

ANSWERS:

1.	(A)	**2.**	(C)	**3.**	(C)	**4.**	(C)	**5.**	(D)	**6.**	(D)	**7.**	(C)
8.	(B)	**9.**	(B)	**10.**	(C)	**11.**	(B)	**12.**	(C)	**13.**	(B)	**14.**	(B)
15.	(B)	**16.**	(B)										

TAXMANN®

9 : LAW RELATED TO SPECIFIC RELIEF

1. Section 39 of the _____ provides that when, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of and also to compel performance of the requisite acts.

(A) Indian Evidence Act, 1872

(B) Specific Relief Act, 1963

(C) Limitation Act, 1963

(D) Indian Contract Act, 1872

[Dec. 2014]

2. A decree through which the right as to any property or the legal character of a person is judicially ascertained is known as —

(A) *De jure*

(B) Dissent property

(C) *De facto*

(D) Declaratory decree

[Dec. 2014]

3. According to section 5 of the Specific Relief Act, 1963 a person, entitled to the possession of specific immovable property may recover the same in the manner provided by the —

(A) Code of Criminal Procedure, 1973

(B) Code of Civil Procedure, 1908

(C) Indian Penal Code, 1860

(D) Transfer of Property Act, 1882

[June 2015]

4. Rakesh conveys land to Amit, who bequeaths it to Sonu and dies. Thereupon Sonakshi gets possession of the land and produces a forged instrument stating that the conveyance was made to Bimal in trust for him. Who may obtain the cancellation of the forged instrument under the Specific Relief Act, 1963 —

(A) Rakesh

(B) Amit

(C) Sonu

(D) Sonakshi

[June 2015]

5. Section 27 of the Specific Relief Act, 1963 lays down that any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the Court where the contract is voidable by the plaintiff. Here 'contract' means —

(A) A contract in writing

(B) A contract in will

(C) A contract in oral

(D) A contract in spirit

[June 2015]

6. A contract may not be specifically enforced where:

(1) Where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20.

(2) Contract runs into minute or numerous details.

(3) Contract depends upon personal qualification of the parties.

(4) The contract is determinable.

TAXMANN®

Which of the above is/are correct?

(A) (1) and (4)

(B) (2) and (3)

(C) (2), (3) and (4)

(D) (1), (2), (3) and (4)

[Dec. 2015]

7. A temporary injunction is granted under —

(A) Section 36(1) of the Specific Relief Act, 1963

(B) Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908

(C) Section 38(1) of the Specific Relief Act, 1963

(D) Section 39 of the Specific Relief Act, 1963

[Dec. 2015]

8. Read the following and select the correct answer:

(1) Where the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief, specific performance of contract is enforceable.

(2) The breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money.

Select the correct answer from the options given below —

(A) (1) is correct, (2) is incorrect

(B) (2) is correct, (1) is incorrect

(C) Both (1) and (2) are correct

(D) Neither (1) nor (2) is correct

[Dec. 2015]

9. Where an instrument does not reflect the real intention of the parties because of fraud or mutual mistake, the remedy available to parties is to —

(A) Rectify the instrument

(B) Rescind the instrument

(C) Cancel the instrument

(D) Amend the instrument

[Dec. 2015]

10. A person dispossessed from immovable property without due course of law can file a suit under section 6 of the Specific Relief Act, 1963 to recover the same on the basis of —

(A) Title by ownership

(B) On possessory title

(C) Previous possession

(D) Not entitled to file suit

[Dec. 2015]

11. Perpetual injunction under section 38 of the Specific Relief Act, 1963 can be granted —

(A) When there exists no standard for ascertaining the actual damages caused.

(B) When compensation would not afford adequate relief.

(C) When the defendant is a trustee of the property for the plaintiff.

(D) All of the above

[June 2016]

12. Under section 10 of the Specific Relief Act, 1963 to succeed in a suit for specific performance the part need not prove that —

(A) The plaintiff did not commit the breach of contract.

(B) A valid agreement of sale was entered into by the defendant in his favour and the terms thereof.

(C) The defendant committed breach of the contract.

TAXMANN®

(D) The plaintiff was always ready and willing to perform his part of obligation in terms of the contract.

[June 2016]

13. Under section 10 of the Specific Relief Act, 1963, to succeed in a suit for specific performance, the plaintiff has to prove —

(A) That a valid agreement of sale was entered into by the defendant in his favour.

(B) That the defendant committed breach of the contract.

(C) That he was always ready and willing to perform his part of obligation in terms of the contract.

(D) All of the above

[Dec. 2016]

14. The Specific Relief Act, 1963 —

(A) Does not consolidate the whole law on the subject.

(B) Purports to lay down the law relating to specific reliefs in all its ramifications.

(C) Is not an Act to define and amend the law relating to specific relief.

(D) Both (A) and (B) above

[Dec. 2016]

15. A contract cannot be specifically enforced, if it is:

(A) Of a determinable nature

(B) Dependent on personal qualification of parties

(C) Having minute details

(D) All of the above

[June 2017]

16. Under the Specific Relief Act, 1963, specific performances of contract may be obtained by:

(A) Any party thereto

(B) The representative in interest of any party thereto

(C) A reversioner in possession

(D) All of the above

[June 2017]

17. Under section 16 of the Specific Relief Act, 1963, specific performance of a contract cannot be enforced in favour of a person:

(A) Who would be entitled to recover compensation for its breach.

(B) Who has became capable of performing, or not violating any essential term of the contract on his part remains to be performed.

(C) Who fails to aver and prove that he has performed.

(D) All of the above

[June 2017]

18. Relief of cancellation of instruments under section 31 of the Specific Relief Act, 1963 would be available when:

(A) An instrument is void or voidable against the plaintiff.

(B) Where the plaintiff may apprehend serious injury if the instrument is left outstanding.

(C) Where it is proper under the circumstances of the case to grant the relief.

(D) All of the above

[June 2017]

19. The characteristic of an injunction is that _____

(A) It is mutual agreement to act

(B) It is restrainment

LAXMANN®

(C) It is non-prevention of repetition

(D) All of the above

[June 2017]

20. A suit for recovery of possession under section 6 of the Specific Relief Act, 1963 cannot be filed against:

(A) Private Individual

(B) Company

(C) Government

(D) Firm

[Dec. 2017]

21. Which of the following sections of the Specific Relief Act, 1963 deal with the recovery of possession of movable property?

(A) Sections 1 and 2

(B) Sections 3 and 4

(C) Sections 7 and 8

(D) Sections 9 and 10

[Dec. 2017]

22. Under section 10 of the Specific Relief Act, 1963, the specific performance of the contract cannot be granted:

(A) If there is no concluded contract.

(B) If there is concluded contract.

(C) If the compensation in money is not an adequate relief.

(D) If there exist no standard for ascertaining the actual damages.

[Dec. 2017]

23. Which of the following is the preventive relief under the provisions of Specific Relief Act, 1963?

(A) Injunctions

(B) Rescission of contracts

(C) Specific performance of contracts

(D) Declaratory decrees

[Dec. 2017]

24. The doctrine of 'Part Performance' has been given statutory recognition in:

(A) Section 53A of the Transfer of Property Act, 1882

(B) Section 27A of the Specific Relief Act, 1963

(C) Section 49 of Indian Registration Act, 1908

(D) All of the above

[June 2018]

25. Which of the following contracts is *not* specifically enforced as per Specific Relief Act, 1963?

(A) Contract for sale of patent right

(B) Contracts for copyright

(C) Contracts for rent laws

(D) Contracts for future property

[Dec. 2018]

ANSWERS:

1.	(B)	**2.**	(D)	**3.**	(B)	**4.**	(C)	**5.**	(A)	**6.**	(C)	**7.**	(B)
8.	(C)	**9.**	(A)	**10.**	(C)	**11.**	(D)	**12.**	(A)	**13.**	(D)	**14.**	(A)
15.	(D)	**16.**	(D)	**17.**	(C)	**18.**	(D)	**19.**	(B)	**20.**	(C)	**21.**	(C)
22.	(A)	**23.**	(A)	**24.**	(A)	**25.**	(C)						

TAXMANN®

10 : LAW RELATING TO LIMITATION

1. The period of limitation in terms of sections 2(*j*) and 3 of the Limitation Act, 1963 to file a suit is _____ for the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.

(A) Three years

(B) Two years

(C) One year

(D) Six months

[Dec. 2014]

2. Section 5 of the Limitation Act, 1963 allows the extension of prescribed period in certain cases on sufficient cause being shown for the delay. This is known as doctrine of sufficient cause for condonation of delay.

The test of 'sufficient cause' is purely —

(A) An open test

(B) An intention test

(C) An objective test

(D) An individualistic test

[June 2015]

3. Section 24 of the Limitation Act, 1963 deals with computation of time mentioned in the instruments. It states that all instruments shall for the purposes of the Act, be deemed to be made with reference to —

(A) The Gregorian calendar

(B) The Arabian calendar

(C) The Greek calendar

(D) The Hindu calendar

[June 2015]

4. Which of the following statements regarding computing period of limitation is not correct under the Limitation Act, 1963 —

(A) For an appeal or an application for leave to appeal, the requisite time for obtaining a copy of decree to be appealed from, shall be excluded.

(B) Where leave to sue or appeal as pauper is prosecuted, the time taken in disposing off such leave shall be excluded, to sue or appeal as pauper.

(C) For an application to set aside an award, the time taken in obtaining the copy of award shall be excluded.

(D) For appeal, time taken by the court to prepare a decree before application for obtaining the copy of decree to be appealed, shall be excluded.

[Dec. 2015]

5. The rule is that where once time of limitation has begun to run, no subsequent disability can stop it. The exception is —

(A) A person entitled to make an application for execution of a decree becomes insane.

(B) A person entitled to institute a suit is confined to bed.

(C) A person entitled to institute a suit dies and legal representative is minor.

TAXMANN®

(D) A suit is to be filed to recover a debt and letter of administration to the estate of the creditor is granted to his debtor.

[Dec. 2015]

6. For a suit to recover possession of a movable property conveyed or bequeathed in trust and afterwards transferred by the trustee for a valuable consideration, under clause 93 of the Schedule to the Limitation Act, 1963 the period of limitation is —

(A) Thirty years

(B) Twelve years

(C) Three years

(D) One year

[June 2016]

7. Section 14 of the Limitation Act, 1963 provides for exclusion of time *bona fide* taken in a court without jurisdiction. For the relief under the said section consider the following conditions:

(*i*) Plaintiff or applicant was prosecuting another civil proceedings against the defendant with due diligence.

(*ii*) Previous suit or application was not related to the same matter in issue.

(*iii*) Plaintiff or applicant was not prosecuting in good faith in that court.

(*iv*) Court was unable to entertain a suit or application on account of defect of jurisdiction.

Select the conditions which are not applicable from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*)

[Dec. 2016]

8. Which one of the following is not a 'sufficient cause' under section 5 of the Limitation Act, 1963 —

(A) Time taken for obtaining certified copies of the decree of the judgment necessary to accompany the appeal or application.

(B) Ailment of a friend during which period the applicant or appellant was looking after him.

(C) Imprisonment of the party or serious illness of the party.

(D) *Bona fide* wrong advice given by the advocate.

[Dec. 2016]

9. Which of the following authorities have the power to extend the period of limitation as per section 5 of the Limitation Act, 1963?

(A) Executive Authorities

(B) *Quasi judicial* Tribunals

(C) Labour Courts

(D) High Court

[June 2017]

10. Which of the following would come under Doctrine of "sufficient cause"?

(A) Time taken to obtain certified copies.

(B) Wrong practice of High Court.

(C) Serious illness of the party.

(D) All of the above

[June 2017]

11. For a suit to recover compensation for libel under clause 75 of Part VII —

TAXMANN®

Suits relating to Tort — of the Schedule to the Limitation Act, 1963 the period of limitation is:

(A) Three months

(B) Six months

(C) One year

(D) Three years

[Dec. 2017]

12. Under the Limitation Act, 1963, the period of limitation for filing a suit for compensation for false imprisonment begins to run from the time:

(A) When imprisonment begins

(B) When imprisonment ends

(C) When prosecution terminates

(D) None of the above

[Dec. 2018]

13. Under the Limitation Act, 1963 the period of limitation for filing an application for an order to set aside an abatement is:

(A) 60 days

(B) 90 days

(C) 120 days

(D) None of the above

[Dec. 2018]

14. Which of the following authority under section 5 of the Limitation Act, 1963 is empowered to extend the period of limitation?

(A) Labour Court

(B) District Court

(C) High Court

(D) Arbitrator

[Dec. 2018]

ANSWERS:

1.	(A)	**2.**	(D)	**3.**	(A)	**4.**	(D)	**5.**	(D)	**6.**	(C)	**7.**	(B)
8.	(B)	**9.**	(D)	**10.**	(D)	**11.**	(C)	**12.**	(B)	**13.**	(C)	**14.**	(C)

11 : LAW RELATING TO ARBITRATION, MEDIATION & CONCILIATION

1. Advice your client as to which of the following matter cannot be referred to arbitration?

(*a*) Raja wants to enforce his conjugal rights against her wife Rani.

(*b*) Dispute between PQR Limited and its workers relating to conditions of service.

(*c*) Motor vehicle accident cases.

(*d*) Dispute which considered as commercial and where one of the party is a national of any country other than India.

Select the correct answer from the options given below –

(A) (*a*) & (*c*) only

(B) (*b*), (*a*) & (*c*)

TAXMANN®

(C) (*d*), (*b*), (*c*) & (*a*)

(D) (*d*) only

2. Neha & Richa entered into an agreement to refer a dispute relating to geniuses of a will to arbitrator. In spite of this Richa commenced proceeding relating to the dispute in the district Court of competent jurisdiction. Neha, therefore, submits an application for stay of legal proceedings under the Arbitration & Conciliation Act, 1996.

(A) Court can grant the remedy of stay of legal proceeding to Neha.

(B) Neha & Richa are advised to settle the matter by way of conciliation instead of going for arbitration

(C) Jurisdiction of Civil Court is barred due to arbitration agreement and hence Court cannot intervene in dispute between Neha and Richa.

(D) Dispute between Neha and Richa cannot be referred to arbitration

3. Ram and Shyam appointed Mohan as an arbitrator by their mutual consent. Thereafter, Ram makes a declaration that he revokes the authority of Mohan to act as an arbitrator.

Which of the following is correct?

(A) Ram and Shyam can remove Mohan as an arbitrator by mutual consent.

(B) Parties must apply Court of competent jurisdiction for adopting procedure for challenging appointment of arbitrator.

(C) Once an arbitrator has been appointed, he cannot be removed.

(D) Ram and Shyam are advised to write petition for setting aside the appointment of Mohan as an arbitrator.

4. Under the terms of an arbitration agreement, the Court appointed Anurag as chairman of the arbitral tribunal. During the pendency of the arbitration, Anurag was demoted and ceased to be the chairman of arbitral tribunal.

(A) Mr. Anurag cannot continue work as arbitrator.

(B) Mr. Anurag can continue work as arbitrator.

(C) Mandate of Mr. Anurag automatically terminates on his demotion.

(D) Mr. Anurag is advised to withdraw from his office.

5. Which of the following statement is correct as per the Arbitration & Conciliation Act, 1996?

(A) The award in the matter of international commercial arbitration must be made by the arbitral tribunal within a period of 12 months from the date of completion of pleadings.

(B) The award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of 9 months from the date of completion of pleadings.

(C) The award under fast track procedure shall be made within a period of 12 months from the date the arbitral tribunal enters upon the reference.

(D) If an arbitral award is for the payment of money, the arbitral tribunal may include interest in its award at such rate as it deems reasonable. Sum directed to be

TAXMANN®

paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of 2% higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

6. Minakshi moves an application for setting aside the arbitral award on the ground that she was not given a proper notice of the arbitral proceedings and thereby not being able to present her case. She furnishes sufficient proof and pleads before the court that she received the arbitral award just 15 days back.

(A) Law of limitation will be a bar in her case.

(B) Minakshi must have made application within 10 days.

(C) Law of limitation will not be a bar in her case.

(D) Not receiving proper notice of the arbitral proceedings is not valid ground under section 34 of the Arbitration & Conciliation Act, 1996.

7. After the completion of arbitration proceedings, the arbitrator gave a notice to the parties of the making and signing of award and of the amount of fees and charges in respect of the arbitration and award. The parties failed to pay the fees and charges and hence, the arbitrator refused to deliver award. A party, aggrieved by the conduct of the arbitrator, submitted an application to the Court to direct the arbitrator to deliver the award in the court. How the matter will be solved?

(A) The arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration. Cost of arbitration means reasonable cost relating fees and expenses of arbitrators and witnesses.

(B) If parties refuse to pay the costs, the Arbitral Tribunal may refuse to deliverer its award. In such a case, any party can approach court.

(C) The court will ask to deposit from the parties and on such deposit, the court will decide the cost of arbitration & fees payable to arbitrator and balance remaining in amount deposited will be refunded to the parties.

(D) All of the above statements are correct in relation to given case.

8. Which of the given is not an essential of Arbitration Award?

(A) Written

(B) Signed

(C) Dated

(D) Stamped and Registered

9. Which type of error can be corrected by the arbitral tribunal under section 33 of the Arbitration & Conciliation Act, 1996?

(*a*) Clerical error

(*b*) Typographical error

(*c*) Computation error

Select correct answer from the options given below:

(A) (a) & (b)

(B) (b) & (c)

(C) (a) & (c)

(D) All of the above

10. Section 34 of the Arbitration & Conciliation Act, 1996 provides that an application for setting aside award

TAXMANN®

should be made within _____ from the date of receipt of arbitral award. This period could be extended to a maximum of _____ by the Court if it is satisfied that the applicant was prevented by sufficient cause from making the application within the above period.

(A) 3 months; 30 days
(B) 6 months; 60 days
(C) 6 months; 30 days
(D) 3 months; 60 days

ANSWERS:

1.	(B)	**2.**	(D)	**3.**	(C)	**4.**	(B)	**5.**	(D)	**6.**	(C)	**7.**	(D)
8.	(D)	**9.**	(D)	**10.**	(A)								

12 : INDIAN STAMP LAW

1. Consider, following two statements:

(1) Bill of exchange payable on demand do not include a letter of credit section 2(3) of the Indian Stamp Act, 1899.

(2) The definition of 'bill of exchange' in the Indian Stamp Act, 1899 includes many instruments which could not be classed as 'bills of exchange' within the definition given by the Negotiable Instruments Act, 1881.

Select correct answer from the options given below:

(A) Statement (1) is true and Statement (2) is false.

(B) Statement (2) is true and Statement (1) is false.

(C) Statement (1) and Statement (2) both are false.

(D) Statement (1) and Statement (2) both are true.

2. Which of the following correct under the Indian Stamp Act, 1899?

(A) The instrument is not duly stamped if the stamp is subsequently removed or lost.

(B) Court can impound the instrument where instrument not relating to case and which the witness had not been asked to produce, has been produced.

(C) The instrument duly stamped at the time of execution is admissible in evidence, though the stamp is subsequently removed or lost.

(D) Unstamped document found during search & produced before Court cannot be impounded.

3. Which of the following is 'Instrument' under section 2(*14*) of the Indian Stamp Act, 1899?

(*a*) Document mentioned in Schedule II.

(*b*) Unsigned draft document.

(*c*) Letter which acknowledges receipt of a certain sum

(*d*) Photocopy of an agreement

TAXMANN®

Select correct answer from the options given below:

(A) (*a*) & (*c*)

(B) (*b*)& (*d*)

(C) (*c*) only

(D) (*a*), (*c*) & (*b*) only

4. A letter which acknowledges receipt of ₹ 15,45,530 as having been borrowed at a 9% rate of interest and for 5 years and that it will be repaid with interest on the due date –

(A) is an 'instrument' as defined in section 2(*14*) and liable to stamp duty as prescribed in Schedule I.

(B) is not a 'instrument' and hence not liable to stamp duty.

(C) is an 'instrument' as defined in section 2(*14*) but exempt from stamp duty as per Schedule I.

(D) is not a 'instrument' as it does not create or purport to create any right and hence not liable to stamp duty.

5. Which of the following is liable to stamp duty under section 3 of the Indian Stamp Act, 1899?

(A) Promissory note.

(B) Bill of exchange payable on demand.

(C) Every instrument executed out of India and not related to property in India.

(D) Instrument related to sale or deposition of ship or vessels.

6. Madhuri's agricultural land was purchased by the government for the purpose of construction of a factory but no duty was paid for this transfer by the government.

(A) Madhuri can take back her land on the ground that government has not paid stamp duty.

(B) Sale without stamp duty is valid in this case.

(C) Since land is purchases for construction of a factory, stamp duty is required to be paid.

(D) It is seller who is required to pay stamp duty for transfer of immovable property to government.

7. Pavan executed a conveyance of immovable property of house located in Pune City. On the same deed his nephew Krishna (undivided in status) endorsed his consent to the sale, as such consent was considered to be necessary.

(A) Conveyance of immovable property is the principal instrument on which stamp duty of ₹ 10,000 will be charged and on the consent his nephew nominal stamp duty of ₹ 5 will be payable.

(B) Conveyance of immovable property is the principal instrument on which regular stamp duty will be charged and on the consent his nephew stamp duty of ₹ 1 will be payable.

(C) Conveyance of immovable property is the principal instrument on which stamp duty of ₹ 10,000 will be charged and on the consent his nephew stamp duty of ₹ 1 will be payable.

(D) Conveyance of immovable property is the principal instrument on which regular stamp duty will be charged and on the consent his nephew nominal stamp duty of ₹ 100 will be payable.

TAXMANN®

8. A document contains both 'an agreement for dissolution of a partnership' and 'a bond' –

(A) Both matter had to be construed as part of the same document; the first was liable to full duty while the second was liable to a duty of ₹ 1 only as section 4 will applied.

(B) Document will be chargeable with highest rate of duty that are applicable two matters as section 6 will applied.

(C) A document is chargeable with the aggregate of the duties with which two such separate instruments would be chargeable. The two are distinct matters and hence section 5 will be applied.

(D) A document is chargeable with a stamp duty of 1% of total amount of assets and face value of bond.

9. Cross mark by illiterate person is effectual cancellation of stamps. It was held in _____

(A) *Kolai Sai* v. *Balai Jajam*

(B) *Mahadeo* v. *Sheroji Ram Teli*

(C) *Daya Ram* v. *Chandulal*

(D) *Melaram* v. *Brijlal*

10. Ajit owes Baljit ₹ 10,00,000. Ajit sells a property to Baljit, the consideration being ₹ 5,00,000 and the release of the previous debt of ₹ 10,00,000. Stamp duty is payable on:

(A) ₹ 10,00,000

(B) ₹ 15,00,000

(C) ₹ 5,00,000

(D) ₹ 25,00,000

TAXMANN®

ANSWERS:

1.	(B)	**2.**	(C)	**3.**	(C)	**4.**	(A)	**5.**	(A)	**6.**	(B)	**7.**	(B)
8.	(C)	**9.**	(A)	**10.**	(B)								

13 : LAW RELATING TO REGISTRATION OF DOCUMENTS

1. Ankit gifts his movable property to Babita. Ankit did not register the gift deed and died.

(A) Gift is not enforceable under law because Ankit died before registration.

(B) Gift is not valid contract.

(C) Gift is fully enforceable under law because its registration was optional.

(D) Registration is necessary solemnity for the enforcement of a gift of movable property.

2. Which of the following is compulsorily required to be registered under the Registration Act, 1908?

(A) A lease deed for premises for less than 1 year.

(B) A sale deed by which X sells his Maruti 800 Car to Y.

(C) Instrument of partition made by Revenue officer.

(D) B made a payment of ₹ 25 Lakh for purchase of a land in Mumbai to A.

3. A document executed on 2nd January 2022 was presented for registration under the Registration Act, 1908 on 31st August, 2022. The registering authorities refused to accept the document for registering on the ground that it was time-barred.

(A) Act of refusal of registering authorities is valid and document cannot be registered.

(B) As period of 4 months is already expired from the date of execution of document; it is time barred and cannot be register.

(C) Document can be registered on 31st August, 2022 on payment of additional fee.

(D) Registering Authorities can refuse to accept the document for registration.

4. Mr. Ravi had executed a sale document outside India on 2nd January, 2022. He came to India with document on 6th June, 2022. Mr. Ravi must register document –

(A) Within 4 months from 2nd January, 2022

(B) Within 4 months from 2nd January, 2022 and in next 4 months on payment of additional fee.

(C) Within 4 months from 6th June, 2022.

(D) Within 4 months from 6th June, 2022 and in next 4 months on payment of additional fee.

5. By an agreement, Anamika transferred to Bipasha a decree of a Court by which she was entitled to possess 500 bighas of land.

(A) Registration is compulsory.

(B) Registration is not compulsory.

(C) Registration is exempt if the court so direct in its decree.

(D) Transfer by way of decree of a Court is optionally registered.

6. State which of the following requires compulsory registration under the Registration Act, 1908?

(A) Lease agreement for tenancy of a residential flat for one year only.

(B) Lease agreement for one year containing an option to the tenant to renew it for a further period of one year or any other term.

(C) Lease agreement from year to year.

(D) Lease agreement for one year with an annual reserved rent.

7. Shivaji, a resident of Kolhapur executes a sale deed of a house in favour of Pavan who resides at Mumbai. The house is situated at Satara, but the transferor and transferee want the sale deed to be registered at Pune. Examining the provisions of the Registration Act, 1908 you are required to state the place where the document executed between Shivaji and Pavan can be registered?

(W) Kolhapur, whether transferor resides.

(X) Mumbai, where transferee resides.

(Y) Pune, where transferor and transferee want the sale deed to be registered.

(Z) Satara, where property is situated.

TAXMANN®

Select correct answer from the options given below:

(A) (Y) only

(B) (W) or (X)

(C) (W) or (X) or (Y)

(D) (Z) only

8. Mr. Kadam sold his flat located at Surat to Mr. Rane for ₹ 25,00,000. They executed the sale deed but the same is not registered till date. In which of the case such sale deed can be used as evidence?

(A) As evidence, if Mr. Rane files a suit for specific performance under the Specific Relief Act, 1877.

(B) As evidence, if Mr. Rane files a suit of part performance under section 53A of the Transfer of Property Act, 1882.

(C) As evidence of any collateral transaction to contract between Mr. Kadam and Mr. Rane

(D) Any of the above

9. There are two registered documents executed by same persons in respect of the same property to two different persons at two different times.

Document (1): Executed on 1-10-2021 & Registered on 14-12-2021.

Document (2): Executed on 20-1-2021 & Registered on 5.12.2021.

State which documents gets priority over the other under the provisions of the Registration Act, 1908.

(A) Document (2) executed on 20-10-2021 gets priority over the Document (1) as last registered document gets the priority over document registered earlier.

(B) Document (2) executed on 20-10-2021 gets priority over the Document (1) as it was registered prior to registration of Document (1)

(C) Document (1) executed on 1-10-2021 gets priority over the document executed on 20-10-2021 even though Document (1) was registered subsequently.

(D) It is up to seller to decide whether purchaser mentioned in Document (1) or Document (2) will be the priority.

10. Ram executes the document on 24-6-2023 and the same is presented for registration on 6-7-2023 and registered on 8.7.2023. Ram gets the certified copy on 10-7-2023.

Registration of document takes effect from the –

(A) 24-6-2023

(B) 6-7-2023

(C) 8-7-2023

(D) 10-7-2023

ANSWERS:

1.	(C)	**2.**	(D)	**3.**	(C)	**4.**	(C)	**5.**	(A)	**6.**	(C)	**7.**	(D)
8.	(D)	**9.**	(C)	**10.**	(A)								

TAXMANN®

14 : RIGHT TO INFORMATION LAW

1. The Right to Information Act, 2005 provides for setting out the practical regime of right to information for citizens to secure access to information held by public authorities in order to promote transparency and accountability in the working of every public authority. The burden of proving that the denial of information was justified lies on the ____

(A) Central Information Commission

(B) First Appellate Authority

(C) Public Information Officer

(D) State Information Commission

[Dec. 2014]

2. The Right to Information Act, 2005 exempts certain categories of information from disclosure. These categories of information have been provided under _____

(A) Section 6 of the RTI Act, 2005

(B) Section 7 of the RTI Act, 2005

(C) Section 8 of the RTI Act, 2005

(D) Section 19 of the RTI Act, 2005

[Dec. 2014]

3. Under the Right to Information Act, 2005 on failing to provide information, Public Information Officer will be liable for a fine of —

(A) ₹ 250 per day up to a maximum of ₹ 25,000

(B) ₹ 200 per day up to a maximum of ₹ 50,000

(C) ₹ 500 per day up to a maximum of ₹ 75,000

(D) ₹ 250 per day up to a maximum of ₹ 1,00,000

[Dec. 2014]

4. Where life or liberty of a person is involved, the information shall be provided under the Right to Information Act, 2005 by the ____

(A) Central Information Commission within 30 days

(B) First Appellate Authority within 48 hours

(C) Public Information Officer within 48 hours

(D) Chief Information Commission within 30 days

[Dec. 2014]

5. Which of the following is not a mode of payment of fee for seeking information under the Right to Information Act, 2005 —

(A) Demand draft

(B) Banker's cheque

(C) Promissory note

(D) Indian postal order

[June 2015]

6. Under the Right to Information Act, 2005 the First Appellate Authority in exceptional cases shall dispose off the appeal within how many days of the receipt of the appeal —

(A) 30

(B) 45

(C) 60

(D) 90

[June 2015]

TAXMANN®

7. The number of Central Information Commissioners prescribed under section 12 of the Right to Information Act, 2005 are —

(A) Not exceeding five

(B) Not exceeding seven

(C) Not exceeding ten

(D) Not exceeding eleven

[June 2015]

8. The Central Information Commissioner shall be appointed by —

(A) The President of India on the recommendation of the Council of Ministers.

(B) The President of India on the recommendation of a Committee consisting of the Prime Minister, Leader of Opposition in Lok Sabha, and one Union Minister nominated by the Prime Minister.

(C) The Prime Minister on the recommendation of Union Home Minister, Union Law Minister and Leader of Opposition in Lok Sabha.

(D) The Chief Justice of India on the recommendation of four senior Judges of the Supreme Court

[June 2015]

9. The State Information Commission shall consist of —

(A) One Chief Information Commissioner, one Additional Chief Information Commissioner and not more than eight Information Commissioners.

(B) One Chief Information Commissioner, one Deputy Chief Information Commissioner and not more than ten Information Commissioners.

(C) One Chief Information Commissioner and not more than ten Information Commissioners.

(D) One Chief Information Commissioner and not more than six Information Commissioners.

[Dec. 2015]

10. Right to receive information under the Right to Information Act, 2005 is derived from—

(A) Article 20 of the Constitution of India

(B) Article 19(*1*)(*a*) of the Constitution of India

(C) Article 21 of the Constitution of India

(D) Article 7 of the Constitution of India

[Dec. 2015]

11. Which of the following acts as a Chairman of the committee constituted for appointment of Central Information Commission —

(A) President of India

(B) Prime Minister of India

(C) The leader of opposition in the Parliament

(D) Any designated member of the Parliament.

[June 2016]

12. Which one of the following statement is incorrect under the Right to Information Act, 2005 —

(A) The Right to Information Act, 2005 extends to the whole of India.

(B) The Right to Information Act, 2005 confers on all persons a right to information.

TAXMANN®

(C) Under section 4 of the Act every public authority has been entrusted with a duly to maintain records and publish manuals, rules, regulations, instructions, etc., in its possession as prescribed under the Act.

(D) The Act specifies the manner in which request may be made for obtaining the information.

[June 2016]

13. Consider the following statements under the Right to Information Act, 2005:

(*i*) Information regarding Cabinet papers including records of deliberations of the Council of Ministers is exempted from disclosure.

(*ii*) The Public Information Officer is empowered to reject a request for information where an infringement of a copyright is involved.

(*iii*) The Central Information Commission is constituted by the Appropriate Government through a gazette notification.

(*iv*) The State Information Commission consists of one State Chief Information Commissioner and not more than 15 State Information Commissioners.

Select the incorrect statements from the options given below —

(A) (*i*) and (*ii*)

(B) (*ii*) and (*iii*)

(C) (*iii*) and (*iv*)

(D) (*iv*) and (*i*)

[June 2016]

14. Right to impart and receive information under the Right to Information Act, 2005 a species of —

(A) The right of freedom of speech and expression.

(B) Article 21 relating to protection of life and personal liberty.

(C) Article 38 relating to securing a social order for the promotion of welfare of the people.

(D) Article 39A relating to equal Justice and free legal aid.

[Dec. 2016]

15. Which one of the following is not a correct statement as regards salient features of the Right to Information Act, 2005 —

(A) The Act extends to the whole of India except Jammu and Kashmir.

(B) Its commencement day is 180 days from its enactment.

(C) It applies to the public authorities.

(D) All citizens shall have the right to information subject to the provisions of the Act.

[Dec. 2016]

16. The Right to Information Act, 2005, provides exemption to intelligence and security agencies from the ambit of the Act, as given in its:

(A) Schedule I

(B) Schedule II

(C) Chapter 2

(D) Chapter 3

[June 2017]

17. If the information concerns life or liberty of a person, then the information under the Right to Information Act, 2005, will be provided within:

(A) 35 hours

(B) 48 hours

TAXMANN®

(C) 40 hours
(D) 60 hours

[June 2017]

18. Under the Right to Information Act, 2005 "right to information" includes:

(A) Right to take certified samples of material.
(B) Right to obtain information in the form of video cassettes.
(C) Right to inspect records.
(D) All of the above

[June 2017]

19. Where the information requested concerning the life or liberty of a person, the same shall be provided within:

(A) 48 hours
(B) 72 hours
(C) Three days
(D) Seven days

[Dec. 2017]

20. What is the time limit to get the information concerning the life and liberty of a Person?

(A) 48 hours
(B) 24 hours
(C) 5 days
(D) 10 days

[June 2018]

21. If information sought has been supplied by third party or is treated as confidential by that third party, the third party must be given a representation before the PIO (Public Information Officer) in reply to the notice issued to him within _____ days from the date of receipt of such notice.

(A) 5
(B) 15
(C) 10
(D) 7

[June 2018]

22. Appointment Committee of Central Chief Information Commission (CIC) includes:

(A) Prime Minister
(B) Leader of the opposition in the Lok Sabha
(C) One Union Cabinet Minister to be nominated by the Prime Minister
(D) All of the above

[June 2018]

23. As per section 2(*h*) of the Right to Information Act, 2005, "Public Authority" means any authority or body or institution of self-government established or constituted:

(*i*) by or under the Constitution
(*ii*) by any other law made by Parliament
(*iii*) by any other law made by State Legislature
(*iv*) by notification issued or order made by the Appropriate Government

Considering the above statements and select the correct statement from the option given below:

(A) (*i*), (*ii*) and (*iii*)
(B) (*i*), (*ii*) and (*iv*)
(C) (*i*), (*iii*) and (*iv*)
(D) (*i*), (*ii*), (*iii*) and (*iv*)

[June 2018]

TAXMANN®

ANSWERS:

1.	(C)	**2.**	(C)	**3.**	(A)	**4.**	(C)	**5.**	(C)	**6.**	(A)	**7.**	(C)
8.	(B)	**9.**	(C)	**10.**	(B)	**11.**	(B)	**12.**	(B)	**13.**	(C)	**14.**	(A)
15.	(B)	**16.**	(B)	**17.**	(B)	**18.**	(D)	**19.**	(A)	**20.**	(A)	**21.**	(C)
22.	(D)	**23.**	(D)										

15 : LAW RELATING TO INFORMATION TECHNOLOGY

1. To which of the following the Information Technology Act, 2000 shall apply –

(A) Cheque

(B) Power of attorney

(C) Will

(D) Promissory note

2. Provisions of the Information Technology Act, 2000 shall apply –

(A) To documents or transactions specified in First Schedule.

(B) To any contract for the sale or conveyance of immovable property or any interest in such property.

(C) To any offence or contravention committed outside India by any person irrespective of his nationality if it involves computer system or network located in India.

(D) All of the above

3. Interconnection of one or more computers through the use of satellite, microwave, terrestrial line, wire, wireless or other communication media and terminals or a complex consisting of two or more interconnected—computers whether or not the interconnection is continuously maintained is known as —

(A) Computer System

(B) Computer Network

(C) Computer Resource

(D) Computer Function

4. As per section 2(*p*) of the Information Technology Act, 2000, Digital Signature means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of—

(A) Section 3

(B) Section 4

(C) Section 6

(D) Section 9

5. Which of the following is electronic signature?

(A) Biometric signatures

(B) Passwords

(C) PINs

(D) All of the above

6. A subordinate legislation was made by the authority on 28-11-2019 and published in Official Gazette on 2-1-2020 and in Electronic Gazette on 31-12-2019. Which of the following shall be deemed to be the date of publication?

TAXMANN®

(A) 31-12-2019

(B) 28-11-2019

(C) 2-1-2020

(D) 1-1-2020

7. _____ means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary.

(A) Sender

(B) Originator

(C) Receiver

(D) Intermediary

8. As per section 66 of the Information Technology Act, 2000, if any person, dishonestly, or fraudulently, does any act referred to in section 43, he shall be punishable –

(A) With imprisonment only

(B) With fine only

(C) With imprisonment *and* fine

(D) With imprisonment *or* fine

9. As per section 66 of the Information Technology Act, 2000, if any person, dishonestly, or fraudulently, does any act referred to in Section 43, he shall be punishable –

(A) With imprisonment for a term which may extend to 2 years or with fine which may extend to ₹ 2 lakh or both.

(B) With imprisonment for a term which may extend to 5 years or with fine which may extend to ₹ 5 lakh or both.

(C) With imprisonment for a term which may extend to 3 years or with fine which may extend to ₹ 5 lakh or both.

(D) With imprisonment for a term which may extend to 2 years or with fine which may extend to ₹ 3 lakh or both.

10. As per section 62 of the Information Technology Act, 2000, any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within _____ from the date of communication of the decision or order of the Appellate Tribunal to him on any _____ arising out of such order.

(A) 60 days; question of fact or law

(B) 30 days; question of law

(C) 90 days; question of fact or law

(D) 45 days; question of fact

ANSWERS:

1.	(A)	**2.**	(C)	**3.**	(B)	**4.**	(A)	**5.**	(D)	**6.**	(A)	**7.**	(B)
8.	(D)	**9.**	(C)	**10.**	(A)								

TAXMANN®

16 : CONTRACT LAW

1. Ram employed in Mumbai promised to pay ₹ 8,000 per month to his wife Sunita. She was living in Delhi. On receiving information that she has become unfaithful to him, Ram stopped the payment of ₹ 8,000 to Sunita.

(A) Sunita will succeed if she files a case under the Indian Contract Act, 1872 against her husband to recover money as promised by him.

(B) Ram should voluntarily pay the amount to her wife Sunita

(C) Sunita will not succeed if she files a case under the Indian Contract Act, 1872.

(D) Ram and Sunita can apply to Fast Track Court.

2. Pratap goes to super market to buy a washing machine. He selects a branded washing machine having a price tag of ₹ 15,000 after a discount of ₹ 3,000. Pratap reaches at cash counter for making the payment, but cashier says, "Sorry sir, the discount was up to yesterday. There is no discount from today. Hence you have to pay ₹ 18,000." Pratap got angry and insists for ₹ 15,000.

(A) Pratap will get the machine at ₹ 18,000.

(B) Cashier cannot refuse to sale the washing machine ₹ 15,000.

(C) Pratap is advised to pay ₹ 16,000 for washing machine.

(D) Contract is void as Pratap get angry.

3. Anuradha proposes by a letter to Govinda, to sell a house at ₹ 50,000. The letter is posted on 10th July, 2022. It reaches to Govinda on 12th July, 2022. Govinda sends a letter on 14th July, 2022 accepting the offer of Anuradha, which reach in the hands of Anuradha on 16th July, 2022, then communication of acceptance is compete: (*i*) As against Anuradha (Offeror) (*ii*) As against Govinda (Accepter)

	(*i*)	(*ii*)
(A)	12th July, 2022	14th July, 2022
(B)	16th July, 2022	14th July, 2022
(C)	12th July, 2022	16th July, 2022
(D)	14th July, 2022	16th July, 2022

4. G Ltd. offered a reward of ₹ 10,000 by advertisement to anyone who infected influenza after using their smoke ball in the specified manner. Mr. Upma uses smoke ball in the specified manner, but still infected by influenza. She claims the reward. Decide the case under the Indian Contract Act, 1872.

(A) Agreement of smoke ball is void in India.

(B) Mr. Upma can get the reward of ₹ 10,000.

(C) Mr. Upma can get the reward of ₹ 10,000 plus medical expenses incurred to cure infection.

(D) Mr. Upma will get nothing.

5. Amit's son absconded. He sent Suresh, his servant in search of the boy. When Suresh had left, Amit, by hand bills, offered to pay ₹ 5,555 to anyone

TAXMANN®

finding his son. Suresh found the son and after coming to know about the offer, claimed the amount.

(A) Suresh cannot get the reward.

(B) Suresh will get his regular salary only.

(C) Suresh cannot get the reward of ₹ 5,555

(D) Offer cannot be made by hand bills.

6. X, the uncle of Y, promised to pay ₹ 2,00,000 to Y if he refrained from drinking for two years, Y does not drink for two years and thereby saves his money.

Select correct answer from the following options keeping in view the provisions of the Indian Contract Act, 1872.

(A) There is no consideration to X and hence agreement is void.

(B) X has saved the life of his uncle Y.

(C) Y should permanently stop from drinking.

(D) Forbearance of uncle 'not to drink' is consideration to X.

7. Indentify which of the flowing is valid and enforceable contract?

(A) Salman Khan verbally promised the Secretary of the Mosque Committee to subscribe ₹ 5,000 for rebuilding a mosque and Mosque Committee incurs liability, on the basis of promise made by Salman Khan. Later, Salman Khan declined to pay the said amount

(B) Madhuri gets into difficulties while swimming in public swimming pool and cries for help. Anil hears the cry, removes his coat and dives into water and rescues Madhuri. Madhuri, who is full of gratitude, promises to pay Anil ₹ 20,000 but fails to do so. The promise of Madhuri is not in writing.

(C) Father promised to pay his son a sum of ₹ 1 lakh. This agreement is written & duly registered. Father failed to pay the amount as promised.

(D) All of the above

8. Anil, a minor, by fraudulently representing himself to be a major, induced another person, Bhakti, to lend him ₹ 4,000. Anil refused to pay it and Bhakti sued him for recovery of money lend. Will she succeed in his suit?

(A) Bhakti will succeed as Anil has made fraud with her.

(B) Minor cannot be promisor.

(C) Court may ask Anil to repay the money.

(D) Agreement is void and not enforceable.

9. Hemant held out a threat of committing suicide to his wife Ashwini, if she does not sale certain property in her name to Hemant's brother. Wife transferred the property. In this case, contract is voidable at the option of Ashwini due to –

(A) Undue influence by Hemant

(B) Coercion (duress) by Hemant

(C) Fraud by Hemant

(D) All of the above

10. Arun Dayal applies to a banker of a loan at a time where there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. Arun Dayal accepts the loan on these terms.

TAXMANN®

(A) Contract is induced by undue influence by Banker and hence void.

(B) No presumption of undue influence arises in the relationship of banker & client.

(C) It is not a case of undue influence, and contract hence can be enforced.

(D) Both (B) & (C) are correct.

ANSWERS:

1.	(C)	**2.**	(A)	**3.**	(D)	**4.**	(B)	**5.**	(A)	**6.**	(D)	**7.**	(D)
8.	(D)	**9.**	(B)	**10.**	(D)								

17 : LAW RELATING TO SALE OF GOODS

1. Which of the following is 'Goods' as per section 2(7) of the Sale of Goods Act, 1930?

(W) Computer software

(X) Lottery tickets

(Y) Standing trees

(Z) Electrical energy

Select correct answer from the options given below:

(A) Z & W only

(B) Y, X & Z only

(C) Z, W & X

(D) X & Z only

2. Which of the following is valid contract of sale under the Sale of Goods Act, 1930?

I. X and Y are part-owner. X renouncing his right give the whole property to Y for a consideration.

II. Distribution of goods among partners on dissolution.

III. Mr. X, partner in XYZ & Co. buy goods from the firm.

IV. X contract to sell 100 mobiles to Y, if Y gives 100 calculators and ₹ 3,000 per mobile.

Select correct answer from the options given below:

(A) III & IV only

(B) III only

(C) I, III & IV only

(D) II & IV only

3. Doctor Pandey, a dentist agreed to supply a set of artificial teeth to Mr. Shubhas, a patient. The entire material found by Doctor Pandey. Which of the following is correct under the Sale of Goods Act, 1930?

(A) It is contract of 'sale'.

(B) It is contract for 'work and labour'.

(C) It is 'agreement to sale'.

(D) It is not a contract at all.

4. Richa agrees to sell to Tanu 100 bags of flour which are in her store-room. Before the date of delivery the storeroom got flooded with water.

TAXMANN®

Consequently the 100 bags of flour got destroyed.

(A) Due to destruction of specific goods *i.e.* 100 bags of flour, contract had become void.

(B) Richa is liable to deliver 100 bags of flour to Tanu on due date failing which she will be held liable for breach of contract.

(C) Tanu can purchase the 100 bags of flour from another dealer.

(D) Richa is liable to pay damages to Tanu.

5. X brought a bike from Y. Y had no title to the bike. He had stolen bike from Z. X had to hand over it true owner, Z. which of the following is correct in relation this case?

(A) There is breach of implied condition as to title from Y.

(B) X can recover the price of bike

(C) X can claim damages from Y.

(D) All of the above

6. X bought radio from Y. The radio was defective and did not work even after several repairs. This amounts to breach of implied conditions as to merchantability and X can repudiate the contract and recover the price from Y.

(A) X cannot repudiate contract and he has get Radio repaired from Y for one more time.

(B) There is breach of implied conditions as to merchantability and X can repudiate the contract and recover the price from Y.

(C) There is breach of implied condition as to quality or fitness and X can recover only damages from Y.

(D) X may opt to purchase another goods for defective Radio.

7. Tarun purchased a typewriter at a public auction. Neither the auctioneer nor Tarun knew at that time that the typewriter was a stolen property.

Which of the following statement is correct under the Sale of Goods Act, 1930?

(A) Tarun gets the valid title of the property in typewriter.

(B) True owner can recover the typewriter from the Tarun.

(C) The auctioneer is liable to the true owner.

(D) All of the above

8. X sells some goods to Y for ₹ 5,000. X is still in possession of goods. He gives notice to Y to pay for the goods and take the delivery. Y does not pay for the goods. Which of the following is correct keeping in view the provisions of section 54 of the Sale Goods Act, 1930?

(A) If X resale the goods at market price which is ₹ 4,500 he can still recover ₹ 500 from buyer.

(B) If X resale at market price which is ₹ 6,000, he is not bound to repay excess amount *i.e.* ₹ 1,000 to buyer.

(C) Seller cannot resell the goods already sold.

(D) Both (A) and (B) are correct.

9. As per sales order A is to supply 20 MT of sugar to B. A however supplied 22 MT and billed accordingly.

(A) Buyer can reject in full.

(B) Buyer can accept agreed quantity and reject the excess.

TAXMANN®

(C) Buyer can accept the whole goods.

(D) Any of the above

10. Avyukt purchased 100 kg. of wheat from Bhaskar at ₹ 30 per kg. Bhaskar says that wheat is in his warehouse in the custody of Kishore, the warehouse keeper. Kishore confirmed Avyukt that he can take the delivery of wheat from him and till then he is holding wheat on Avyukt's behalf. Before Avyukt picks the goods from warehouse, the whole wheat in the warehouse has flowed in flood.

(A) Avyukt can recover the price paid on the contention that no delivery has been done by Bhaskar.

(B) Avyukt cannot claim the price back.

(C) When Kishore (warehouse keeper) acknowledges that he holds the goods on behalf of Avyukt, it is known as constructive delivery.

(D) Both (B) and (C) are correct.

ANSWERS:

1.	(C)	**2.**	(C)	**3.**	(A)	**4.**	(A)	**5.**	(D)	**6.**	(B)	**7.**	(B)
8.	(D)	**9.**	(D)	**10.**	(D)								

18 : LAW RELATING TO NEGOTIABLE INSTRUMENTS

1. Lalita promises by way of a promissory note to pay Babita, her partner, a sum of ₹ 1,00,000 in the event of latter's retirement from the partnership firm.

(A) Promissory note is not valid.

(B) It is valid promissory note as there is conditional undertaking to pay.

(C) Lalita must pay ₹ 1,00,000 to Babita on her retirement.

(D) Babita can recover the amount of ₹ 1,00,000 even before retirement.

2. Which of the following instrument(s) is/are valid promissory notes under the Negotiable Instruments Act, 1881?

(1) X promises to pay Y, by a promissory note, a sum of ₹ 5,000, fifteen days after the death of B.

(2) X promises to pay Y, by a promissory note, a sum of ₹ 500 and all other sum, which shall be due.

(3) X promises promise to pay Y ₹ 50,000 seven days after his marriage with Z.

Select correct answer from the options given below –

(A) (3) only

(B) (1) only

(C) (2) only

(D) (2) & (3) only

3. In which of the following situations, 'Madan' can be called as a "holder" under the Negotiable Instruments Act, 1881:

(1) 'Madan' the payee of the cheque, who is prohibited by a Court order

TAXMANN®

from receiving the amount of the cheque.

(2) 'Madan' the agent of 'Suresh' is entrusted with an instrument without endorsement by 'Suresh' who is the payee.

Select correct answer from the options given below:

(A) Both (1) and (2)

(B) (1) only

(C) Neither (1) nor (2)

(D) (2) only

4. X a major, and M, a minor, executed a promissory note in favour of P. Examine with reference to the provisions of the Negotiable Instrument Act, 1881 which of the following is incorrect?

(A) A minor may draw, endorse, deliver and negotiate any negotiable instrument so as to bind all parties except himself.

(B) The instrument is valid.

(C) The instrument is binding on X but not on M.

(D) None of the above

5. A draws and B accepts the bill payable to C or order. C endorses the bill to D and D to E, who is 'holder in due course'. Accordingly, E, a holder in due course can recover the amount from –

(A) D & C (the endorsers)

(B) B (an acceptor)

(C) A (the drawer)

(D) Any of the above

6. Pavan draws a bill on Chetan for ₹ 10,000. Chetan accepts the bill. On maturity the bill was dishonoured by non-payment. Pavan files a suit against Chetan for payment of ₹ 10,000. Chetan proved that the bill was accepted for value of ₹ 7,000 and as an accommodation to the plaintiff for the balance amount *i.e.* ₹ 3,000. Chetan had cash ₹ 5,000 with him.

(A) Pavan would succeed in recovering the whole amount of the bill *i.e.* ₹ 10,000.

(B) Pavan will be able recover only ₹ 7,000.

(C) Pavan will be able recover only ₹ 5,000.

(D) It is void instrument as Chetan had signed a bill partly for consideration and partly for without consideration (as an accommodation) and hence Pavan cannot recover anything.

7. Promissory note dated 1st February, 2019 payable two months after the date was presented to the maker for payment to 10 days after maturity. What is the date of maturity?

(A) 4th April, 2019

(B) 3rd April, 2019

(C) 1st April, 2019

(D) 5th April, 2019

8. Section 80 of the Negotiable Instruments Act, 1881 provides that when no rate of interest is specified in the negotiable instrument, interest on the amount due thereon shall be calculated at the rate of _____, from the date at which the same ought to have been paid by the party charged till the realization of the amount due thereon.

(A) 18% p.a.

(B) 12% p.a.

(C) 10% p.a.

(D) 6% p.a.

TAXMANN®

9. When bank *must* refuse to honour the cheque?

(A) When cheque is post dated and presented before the date mentioned on the cheque.

(B) Cheque is undated.

(C) When balance in the account of drawer is insufficient.

(D) Cheque presented after 6 months.

10. Which of the following alteration(s) is/are material alterations under the Negotiable Instruments Act, 1881?

(A) D in possession of an inchoate instrument where the amount has not been written on the instrument, write the amount.

(B) K, in possession of uncrossed cheque received from A, writes 'Payee's Account Only' on the face of the instrument.

(C) A bill payable to X is converted into a bill payable to X and Y.

(D) The holder of the bill inserts the word "or order" in the bill.

ANSWERS:

1.	(A)	**2.**	(B)	**3.**	(C)	**4.**	(D)	**5.**	(D)	**6.**	(B)	**7.**	(A)
8.	(A)	**9.**	(A)	**10.**	(C)								

TAXMANN®