Andhra Pradesh Civil Judge (Mains) 2022: Paper I: Civil Laws — Solution

Model answers to Paper I: Civil Laws. High Court of Andhra Pradesh at Amaravati, Civil Judge (Junior Division) Written Examination held 18.03.2023. Ten questions of 10 marks each; every question and every part is answered here. Law as on 18 March 2023.

Questions 1 to 10

Q1. Definitions (2½ marks each)

Each term is defined in section 2 of the Code of Civil Procedure, 1908.

(a) Decree (section 2(2)). A decree is the formal expression of an adjudication which, so far as the court expressing it is concerned, conclusively determines the rights of the parties on all or any of the matters in controversy in the suit. It may be preliminary (further proceedings are needed before the suit is completely disposed of, for example a decree for partition declaring shares) or final (the suit is completely disposed of); it may be partly both. It includes the rejection of a plaint and the determination of any question under section 144 (restitution). It excludes (i) an adjudication from which an appeal lies as an appeal from an order, and (ii) an order of dismissal for default. Test: a decision in a suit, on the rights of the parties, that is conclusive and formally drawn up.

(b) Mesne profits (section 2(12)). These are the profits which the person in wrongful possession of property actually received, or might with ordinary diligence have received, together with interest, but excluding profits due to improvements he made. The liability is that of a wrongful possessor, so it is not confined to what he actually collected. In a suit for possession the court may decree possession and either fix the mesne profits for the period before the suit or direct an inquiry, and may direct a further inquiry into mesne profits from the institution of the suit until delivery of possession, relinquishment with notice through the court, or three years from the decree, whichever happens first (Order XX Rule 12).

(c) Legal representative (section 2(11)). A person who in law represents the estate of a deceased person. It includes anyone who intermeddles with the estate, and, where a party sues or is sued in a representative character, the person on whom the estate devolves on that party's death. He is brought on record on a party's death under Order XXII, and is liable only to the extent of the estate he has received (section 52).

(d) Judgment-debtor (section 2(10)). Any person against whom a decree has been passed or an order capable of execution has been made. The corresponding term for the person in whose favour the decree or order is made is the decree-holder (section 2(3)). Execution proceeds against the judgment-debtor and his legal representative under sections 36 to 74 and Order XXI.

Q2. Distinguish (5 marks each)

(i) Stay of suit (section 10) and res judicata (section 11)

Point	Stay of suit (s 10)	Res judicata (s 11)
Earlier proceeding	A previously instituted suit, still pending	A former suit that has been heard and finally decided
Effect	The later suit is stayed, not dismissed; it can revive if the first suit ends without deciding the matter	The later suit or issue is barred and is dismissed
Matter	Matter in issue directly and substantially the same	Matter directly and substantially in issue (Explanations I to VIII widen it; constructive res judicata under Explanation IV)
Parties	Same parties or those under whom they claim, same title	Same parties or those under whom they claim, litigating under the same title
Court	Court need only have jurisdiction to grant the relief claimed	Former court must be competent to try the later suit
Foreign court	Pendency of a suit in a foreign court does not stay (Explanation)	A foreign judgment is conclusive under section 13
Object	Avoid conflicting decrees and multiplicity	No one to be vexed twice for the same cause; finality

(ii) Commissioner and Receiver

Point	Commissioner	Receiver
Provision	Section 75 and Order XXVI	Order XL Rule 1 (and section 94(d))
Purpose	To do a particular task for the court: examine a witness, make a local investigation, examine accounts, make a partition, hold a scientific or expert investigation, sell perishable property, or perform a ministerial act	To take possession of and manage property in dispute, to protect and preserve it for whoever is ultimately entitled
Possession	Does not take over the property	Removes a person from possession and holds the property for the court, with the powers the court confers
Duration	Ends on filing the report, which forms part of the record	Continues until discharged; furnishes security, accounts and pays the amount due; remunerated by the court (Rules 2, 3)
Test	Court's need for assistance	"Just and convenient"; a prima facie right and danger to the property

(iii) Inherent, pecuniary and territorial jurisdiction

Kind	Meaning
Inherent (subject-matter)	The power of a court to try a class of cases, fixed by the statute creating it. Section 9 gives civil courts jurisdiction over all suits of a civil nature unless barred expressly or impliedly. A decree by a court without subject-matter jurisdiction is a nullity and can be challenged at any stage. "Inherent powers" under section 151 are different: they are procedural powers to do justice.
Pecuniary	Limited by the value of the subject-matter (section 6). Under the Andhra Pradesh Civil Courts Act 1972, section 16, a Junior Civil Judge tries suits not exceeding Rs 20 lakhs, a Senior Civil Judge those above Rs 20 lakhs up to Rs 50 lakhs, and the District Judge those above Rs 50 lakhs. An objection must be taken at the earliest opportunity (section 21).

Territorial	Limited by the local limits of the court: immovable property where it lies (section 16), movable property and wrongs where the defendant resides or the wrong is done (section 19), other suits where the defendant resides or the cause of action arises (section 20). Objection must be taken at the first opportunity before issues are settled, failing which it is waived (section 21).

Q3. Explain (5 marks each)

(i) Attestation (Transfer of Property Act, section 3). An instrument is "attested" when it is signed by two or more witnesses, each of whom (a) has seen the executant sign or affix his mark, or has seen another person sign in his presence and by his direction, or has received from the executant a personal acknowledgement of his signature or mark, and (b) has signed the instrument in the presence of the executant. Only one witness need be present at a time, and no form of attestation is needed. The attesting witness must therefore know that the executant executed the document and sign as proof of it; merely signing as a scribe or identifier, without seeing or hearing the executant, is not attestation. Attestation is compulsory for a mortgage by a deed (section 59), a gift of immovable property (section 123) and a will (Succession Act, section 63). Proof of a document required by law to be attested needs at least one attesting witness to be called (Evidence Act, section 68).

(ii) Actionable claim (section 3, section 130). It is a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, actual or constructive, of the claimant, which civil courts recognise as affording grounds for relief, whether the debt or beneficial interest is existing, accruing, conditional or contingent. Examples: an unsecured debt, a book debt, arrears of rent, a right to claim under an insurance policy. A debt secured by mortgage is not an actionable claim, nor is a mere right to sue for damages.

- Transfer only by a written instrument signed by the transferor or his agent; registration is not needed (section 130). It is complete on execution, and the transferee can sue in his own name; notice to the debtor is needed only to bind him (section 131).
- The transferee takes subject to all liabilities and equities of the transferor (section 132), and the transferor warrants the existence of the debt at the time (section 133).

(iii) Charge (section 100). Where immovable property of one person is, by act of parties or by operation of law, made security for payment of money to another, and the transaction does not amount to a mortgage, the latter has a charge on it. A charge does not transfer any interest in the property: it only creates a right to be paid out of it. By act of parties it arises where a document, such as a will or settlement, charges a legacy or maintenance on land; by operation of law, the unpaid seller's charge for the price (section 55(4)(b)) and the buyer's charge for earnest money and price paid (section 55(6)(b)) are examples. Provisions on simple mortgage apply to a charge as far as may be, so the holder enforces it by suit for sale. Save as expressly provided, a charge cannot be enforced against a transferee for consideration without notice of it. The charge of a trustee for expenses properly incurred is outside the section. A mortgage differs because it is a transfer of an interest in the specific property.

Q4. Elucidate (5 marks each)

(i) Doctrine of part performance (section 53A). It protects a transferee who has taken possession under an unregistered or incomplete contract to transfer immovable property. Where the transferor contracts to transfer for consideration, by writing signed by him or on his behalf from which the terms can be ascertained with reasonable certainty, and the transferee has taken possession (or, being in possession, continues in possession) in part performance and has done some act in furtherance of the contract, and has performed or is willing to perform his part, the transferor and those claiming under him are debarred from enforcing against the transferee any right in the property other than a right expressly provided by the contract.

- Conditions: (1) a written contract to transfer; (2) for consideration; (3) of immovable property; (4) possession taken or continued in part performance, with some act in furtherance; (5) the transferee has performed or is willing to perform.
- It is a shield, not a sword: it is available as a defence to resist the transferor's suit for possession, but gives the transferee no title and no right to sue on it. A transferee who can plead it in defence may do so even after a suit for specific performance has become time-barred (*Shrimant Shamrao Suryavanshi v Pralhad Bhairoba Suryavanshi*).
- It does not affect a transferee for consideration without notice of the contract or the part performance (proviso).
- Since the 2001 amendment, a contract to transfer immovable property relied on under this section must be registered; an unregistered contract executed after that date has no effect for section 53A (Registration Act, section 17(1A)).

(ii) Usufructuary mortgage (section 58(d)). The mortgagor delivers possession, or binds himself to deliver possession, of the mortgaged property to the mortgagee and authorises him to retain it until the mortgage-money is paid, and to receive the rents and profits and appropriate them in lieu of interest, or in payment of the principal, or partly in each. Features: (1) possession passes to the mortgagee; (2) rents and profits are his only source of payment; (3) no personal covenant to pay unless the mortgagor so binds himself; (4) the mortgagee cannot sue for foreclosure or sale (section 67 proviso); (5) he must account for the profits and manage the property as a prudent owner, and he may not commit waste; (6) once the mortgage-money is paid out of the rents and profits, or is deposited in court, the mortgagor may recover possession (section 62). The mortgagor's suit to redeem or recover possession lies within thirty years from when the right accrues (Limitation Act, Article 61(a)).

(iii) Gift (sections 122 to 129). A gift is the transfer of certain existing movable or immovable property, made voluntarily and without consideration by one person, the donor, to another, the donee, and accepted by or on behalf of the donee (section 122). Acceptance must be made during the donor's lifetime and while he is capable of giving; if the donee dies before acceptance the gift is void.

- Mode: for immovable property a registered instrument signed by or on behalf of the donor and attested by at least two witnesses; for movable property either such an instrument or delivery (section 123).
- A gift of existing and future property is void as to the future property (section 124). A gift to two or more donees, of whom one does not accept, is void as to his share (section 125).
- Suspension or revocation: only on an agreed event not depending on the donor's will, or in a case in which a contract could be rescinded (save want or failure of consideration); a gift revocable at the

donor's mere will is void (section 126).

- Onerous gifts (section 127) and universal donees (section 128) are governed by special rules; gifts in contemplation of death and Muslim gifts are outside the Chapter (section 129).

Q5. Evidence

(i) Primary and secondary evidence (Evidence Act, sections 62 to 66; 5 marks). Primary evidence is the document itself produced for the court's inspection (section 62); where a document is executed in several parts, each part is primary evidence of the document, and where it is executed in counterpart, each counterpart is primary as against the party who signed it. Secondary evidence (section 63) is: certified copies; copies made by mechanical processes which ensure accuracy; copies made from or compared with the original; counterparts against parties who did not execute them; and oral accounts of the contents given by a person who has himself seen the document. Documents must be proved by primary evidence except in the cases the Act mentions (section 64).

Secondary evidence of the existence, condition or contents of a document is admissible under section 65 when: (a) the original is in the possession of the person against whom it is sought to be proved, or of a person out of reach of the court's process or legally bound to produce it, and he does not produce it after notice under section 66; (b) its contents have been admitted in writing by the person against whom it is proved; (c) the original is destroyed or lost, or cannot be produced in reasonable time for a reason not arising from the offerer's default; (d) it cannot easily be moved; (e) it is a public document (section 74); (f) a certified copy is permitted by law to be given in evidence; (g) the originals are numerous accounts or documents which cannot conveniently be examined and the fact to be proved is the general result. Electronic records are proved under sections 65A and 65B, which require the certificate under section 65B(4) as a condition of admitting a computer output (*Anvar P V v P K Basheer*; confirmed in *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal*). The foundation for secondary evidence must be laid first: the party must show the case falls within section 65.

(ii) Presumptions under section 114 (5 marks). 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 relation to the facts of the case. The nine illustrations are that the court may presume: (a) that a man in possession of stolen goods soon after the theft is the thief or a receiver, unless he accounts for the possession; (b) that an accomplice is unworthy of credit unless corroborated in material particulars; (c) that a bill of exchange, accepted or endorsed, was for good consideration; (d) that a thing shown to exist within a period shorter than that within which such things usually cease to exist is still in existence; (e) that judicial and official acts have been regularly performed; (f) that the common course of business has been followed; (g) that evidence which could be produced and is not, would be unfavourable to the person withholding it; (h) that if a man refuses to answer a question he is not compelled to answer, the answer would be unfavourable; (i) that where a document creating an obligation is in the obligor's hands, the obligation has been discharged. These are discretionary ("may presume"), unlike "shall presume" (for example sections 79 to 85) and conclusive proof (sections 41, 112 and 113). The court must also weigh facts that may displace the maxim, as the paragraph after the illustrations notes.

Q6. Specific Relief Act, 1963 (5 marks each; as amended in 2018)

(i) Personal bars to specific performance (section 16). Specific performance cannot be enforced in favour of a person:

- (a) who has obtained substituted performance of the contract under section 20 (that section lets a party, after notice of at least thirty days, get the work done through a third party or by his own agency and recover the cost from the defaulter; having done so, he cannot also ask for specific performance);
- (b) who has become incapable of performing, or violates, any essential term that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with or in subversion of the relation intended to be established by the contract; or
- (c) who fails to prove that he has performed or has always been ready and willing to perform the essential terms to be performed by him, other than terms whose performance has been prevented or waived by the defendant.

Explanation: where the contract involves payment of money, the plaintiff need not tender or deposit it in court unless directed; and he must prove performance, or readiness and willingness, according to the true construction of the contract. Readiness and willingness must be pleaded and proved throughout, from the date of the contract to the decree. Since 2018 the court has no general discretion to refuse relief: the remedy is a matter of right once the plaintiff is outside these bars and sections 11(2), 14 and 16 are satisfied.

(ii) Infrastructure projects (sections 20A to 20C, 41(ha), Schedule). An "infrastructure project" means the categories and sub-sectors in the Schedule: transport (roads and bridges, ports, shipyards, inland waterways, airports, railway tracks and stations, urban public transport); energy (power generation, transmission and distribution, oil and gas pipelines and storage); water and sanitation (solid waste, water supply and treatment, sewerage, irrigation, storm-water drainage); communication (telecom networks, towers and services); and social and commercial infrastructure (education institutions, sports facilities, hospitals, tourism infrastructure, industrial parks, post-harvest storage, terminal markets). The Central Government may amend the Schedule by notification laid before Parliament.

- No injunction may be granted in a suit involving a contract relating to such a project where it would impede or delay its progress or completion (section 20A(1)); section 41(ha) likewise refuses an injunction in that case.
- The State Government, in consultation with the Chief Justice of the High Court, designates one or more civil courts as Special Courts to try such suits (section 20B).
- The suit must be disposed of within twelve months from service of summons on the defendant, extendable by not more than six months in aggregate for reasons recorded in writing (section 20C).
- Section 14A lets the court engage experts and receive their reports, and section 20 allows substituted performance.

Q7. Easement and contract (5 marks each)

(i) Easement by prescription (Indian Easements Act 1882, section 15). An easement is a right which the owner or occupier of land has, as such, for the beneficial enjoyment of that land, to do or prevent something being done in respect of other land not his own (section 4). A right can be acquired by long enjoyment. Under section 15: (a) access and use of light or air to and for a building, peaceably enjoyed as an easement without interruption for twenty years; (b) support from one person's land or things affixed to it, peaceably received by another's land under artificial pressure, as an easement without interruption for twenty years; and (c) a right of way or any other easement peaceably and openly enjoyed by a person claiming title to it, as an easement and as of right, without interruption for twenty years, becomes absolute. Where the servient land belongs to the Government the period is thirty years.

- Enjoyment must be without force, without secrecy and not by permission (as of right), peaceable, open (for a right of way and other easements), and continuous.
- Each twenty-year period must end within two years next before the suit in which the claim is contested.
- Explanation I: enjoyment under an agreement showing that the right was not granted as an easement, or was granted for a limited period or subject to a condition, is not enjoyment for this purpose. Explanation II: an interruption means an actual cessation caused by someone other than the claimant and submitted to for a year after notice. Explanation III: suspension by agreement of the owners is not interruption. Explanation IV: for easement to pollute water, the period starts when pollution first perceptibly prejudices the servient land.

(ii) Void and voidable contracts (Contract Act, section 2). An agreement not enforceable by law is void (section 2(g)); an agreement enforceable by law at the option of one or more, but not of the other or others, is a voidable contract (section 2(i)); a contract which ceases to be enforceable by law becomes void (section 2(j)).

Point	Void	Voidable
Status	No legal effect from the start (or from the event making it void)	Valid and binding until the party entitled avoids it
Causes	Incompetent party such as a minor (*Mohori Bibee v Dharmodas Ghose*); both parties under a mistake of fact essential to the agreement (section 20); unlawful consideration or object (section 23); agreements in restraint of marriage, trade or legal proceedings (sections 26 to 28); uncertainty (section 29); wagering (section 30); impossible act (section 56)	Consent obtained by coercion (section 15), undue influence (section 16), fraud (section 17) or misrepresentation (section 18)
Who may act	No one need rescind; no one can enforce	Only the aggrieved party can rescind, within a reasonable time (sections 19, 19A, 64)
Third parties	No title passes	Rights acquired by a third party in good faith and for value before rescission are generally protected (compare section 178A on a pledge)

Restitution	Benefit received is restored (section 65)	A party who rescinds must restore any benefit received (section 64)

Q8. Essentials of a valid and enforceable contract (10 marks)

A contract is an agreement enforceable by law (section 2(h)). Under 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 void.

- **Offer and acceptance.** A proposal (section 2(a)) accepted (section 2(b)) absolutely and unconditionally, communicated in the manner prescribed or in a usual and reasonable manner (sections 3 to 9). A general offer can be accepted by performing the conditions (*Carlill v Carbolic Smoke Ball Co*). Acceptance may be by conduct (*Lalman Shukla v Gauri Dutt*).
- **Intention to create legal relations.** Social and domestic arrangements are normally not contracts; commercial agreements are presumed to be.
- **Competent parties (sections 11, 12).** A person who is of the age of majority (eighteen, or twenty-one where a guardian has been appointed by a court, under the Indian Majority Act), of sound mind and not disqualified by law. A minor's agreement is void ab initio (*Mohori Bibee v Dharmodas Ghose*).
- **Free consent (sections 13 to 22).** Consent is free unless caused by coercion, undue influence, fraud, misrepresentation or mistake. Where caused by the first four, the contract is voidable; a mistake of fact by both parties on an essential matter makes it void (section 20).
- **Lawful consideration and object (sections 2(d), 23, 25).** Something in return, from the promisee or any other person, past, present or future, which need not be adequate (section 25, Explanation 2). Unlawful if forbidden by law, defeating a law, fraudulent, injuring a person or property, or immoral or opposed to public policy. A promise without consideration is void, with the exceptions in section 25 (natural love and affection in a registered written agreement, compensation for past voluntary service, a promise to pay a time-barred debt in writing).
- **Not expressly declared void (sections 24 to 30).** Agreements in restraint of marriage, trade or legal proceedings, uncertain agreements, wagers, and agreements to do impossible acts (section 56) are void.
- **Certainty and possibility of performance (sections 29, 56).**
- **Legal formalities (section 10, second paragraph).** Where a law requires writing, attestation or registration (for example a sale or mortgage of immovable property), the contract must satisfy it to be enforceable.

Conclusion: an agreement is a valid contract only if all these elements are present; if some law requires writing or registration, it is enforceable only after that is done.

Q9. Divorce under the Hindu Marriage Act, 1955 (10 marks)

A petition for divorce lies in the district court (section 19). Section 13 allows either spouse to seek divorce on the following fault grounds against the other, and gives the wife four additional grounds. Divorce by mutual consent is under section 13B.

Grounds available to either spouse (section 13(1))

- (i) Adultery: voluntary sexual intercourse with any person other than the spouse after the marriage.
- (ia) Cruelty: physical or mental, of such a kind that it is unsafe or harmful to live together (*Samar Ghosh v Jaya Ghosh* lists illustrations of mental cruelty).
- (ib) Desertion for a continuous period of not less than two years immediately before the petition, without reasonable cause and without consent, including wilful neglect (Explanation).
- (ii) Conversion to another religion, so that the respondent has ceased to be a Hindu.
- (iii) Incurable unsound mind, or mental disorder of such a kind and extent that the petitioner cannot reasonably be expected to live with the respondent (the Explanation defines mental disorder and psychopathic disorder).
- (v) Venereal disease in a communicable form. (The ground of virulent leprosy was removed in 2019.)
- (vi) Renunciation of the world by entering a religious order.
- (vii) Not heard of as being alive for seven years or more by those who would naturally have heard.

Further grounds

- Section 13(1A): no resumption of cohabitation for one year or more after a decree of judicial separation, or no restitution of conjugal rights for one year or more after a decree for it.
- Section 13(2), the wife only: (i) the husband had another wife before the Act, who was alive and the petition was presented while she was alive; (ii) the husband has been guilty of rape, sodomy or bestiality; (iii) after a decree or order for maintenance under section 18 of the Hindu Adoptions and Maintenance Act or section 125 of the Code of Criminal Procedure, cohabitation has not resumed for one year; (iv) her marriage, solemnised before she reached fifteen, was repudiated by her after fifteen but before eighteen.
- Section 13B: both parties jointly petition on the ground that they have been living separately for one year or more, that they have not been able to live together, and that they have mutually agreed to dissolve the marriage; the court passes the decree after the motion is repeated not earlier than six months and not later than eighteen months from the petition, and on being satisfied. The six-month period may be waived by the court in a suitable case (*Amardeep Singh v Harveen Kaur*).

Limits: no petition within one year of the marriage without leave (section 14); the court must refuse relief where the petitioner is taking advantage of his own wrong, or there has been connivance, condonation or unreasonable delay (section 23). Irretrievable breakdown of marriage is not a statutory ground; the Supreme Court has urged Parliament to add it (*Naveen Kohli v Neelu Kohli*), and in rare cases has used its powers under Article 142 to dissolve a marriage that has completely broken down.

Q10. Stamps and limitation (5 marks each)

(i) Procedure when a document not duly stamped is produced in evidence (Indian Stamp Act, 1899).

- **Duty to examine and impound (section 33).** Every person having authority to receive evidence, including a civil court (and a criminal court only in the cases the section names), must examine an instrument produced before him. If it appears to him that it is chargeable with duty and not duly stamped, he must impound it.
- **Inadmissible unless stamped (section 35).** An instrument chargeable with duty is not admitted in evidence for any purpose, nor acted upon, registered or authenticated, unless duly stamped. The proviso lets it be admitted on payment of the duty or the deficit, together with the penalty fixed by the Act (five rupees or ten times the duty or deficit, if that is more; the Act also deals with unstamped receipts and letters forming a contract).
- **Sending to the Collector (section 38).** Where the court admits it on payment of penalty or duty, it sends to the Collector an authenticated copy with a certificate of the amount of duty and penalty levied, and the amount. In every other case it sends the original to the Collector, who may stamp it on payment of duty and penalty (section 40).
- **Endorsement (section 42).** On payment under section 35, 40 or 41, the document is endorsed to show that duty has been paid and is then admissible and can be acted upon.
- **Finality and revision.** Once the court has admitted the instrument in evidence, the admission cannot be questioned later in the same suit or proceeding on the ground of insufficient stamping (section 36), though the court to which appeals lie may revise the order under section 61.

(ii) Computation of limitation under section 12, Limitation Act 1963.

- Section 12(1): in computing the limitation for any suit, appeal or application, the day from which the period is reckoned is excluded.
- Section 12(2): for an appeal, an application for leave to appeal, a revision or a review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order are excluded.
- Section 12(3): where a decree or order is appealed from or sought to be revised or reviewed, the time requisite for obtaining a copy of the judgment is also excluded.
- Section 12(4): for an application to set aside an award, the time requisite for obtaining a copy of the award is excluded.
- Explanation: any time the court takes to prepare the decree or order before an application for a copy is made is not excluded. Only the time actually requisite for getting the copy is excluded.

Illustration: judgment pronounced on 1 March; copy applied for on 5 March and delivered on 20 March; for an appeal with a ninety-day period the day of judgment is left out and the days from 5 March to 20 March are not counted, so the last day falls ninety days after that.