Bihar Judicial Service (Mains) 2021

Transfer of Property Act, Equity, Trusts and Specific Relief · optional paper

Part I

1. (a) Definition of immovable property in Section 3 of the Transfer of Property Act, 1882 is not complete. It is negative in sense and appears to be an explanation. Explain and give a complete definition in the light of this statement.
(b) B had a licence to collect fish from lake of A, the owner of an estate. B had paid the amount of licence to A, the owner of the lake. The Orissa government passed the Orissa Abolition of Estates Act, 1951, due to this the lake vested in the state of Orissa. Under this Act, the Orissa government did not recognize B's right to collect fish from the lake. In the petition to claim the right, B's contention was that fish is a movable property, hence the Act does not apply. Decide.

2. (a) What do you understand by transfer by ostensible owner? What are the statutory requirements for the application of rule of transfer by ostensible owner? Whether this rule is subject to the provisions of the Benami Transactions (Prohibition) Act, 1988?
(b) A mortgaged his property to B by a registered deed on 1.12.2010 for a consideration of 15,000. The terms of the mortgage transaction were that (i) the mortgagee and his heirs or legal representatives are hereafter entitled to use, enjoy and lease the said property under the ownership right and (ii) that the executant shall pay the amount within a period of 5 years. In case, he fails to repay, he, his heirs or legal representatives will have no right to take back the said property. B was put in possession and he sold the portion of property to C. A filed a suit to take back the property as he filed a suit within 5 years. Decide the nature of the transaction and rights of A and C.

3. (a) What is subrogation? Who can subrogate? Discuss the essential conditions of subrogation.
(b) When does the right to sue for recovery of mortgage money accrue in favour of the mortgagee?

4. (a) How can a lease be determined? Whether notice to the lessee is essential for determination of lease?
(b) What are the conditions of a valid gift? Whether a gift once accepted may be suspended or revoked?

5. (a) Transferability is an essential nature of property, whether by operation of law or act of parties. But no one can transfer a property in such a manner that it will destroy its essential nature. Discuss.
(b) Explain the exceptions, if any, to 'once a mortgage always a mortgage'.

Part II

6. (a) What do equitable rights and interests mean? Explain the nature and characteristics of such rights.
(b) Discuss the classification of equity jurisdiction.

7. Explain the following maxims: (a) Equity looks at the intent rather than the form; (b) Equity aids the vigilant, not the indolent; (c) Where the equities are equal, the first in time shall prevail.

8. (a) Explain conversion and reconversion.
(b) Discuss the equitable relief on the ground of mistake.
(c) Who may be beneficiary?

9. (a) What is a charitable trust? What are the requirements of a charitable trust? Classify the charitable objects.
(b) A Hindu testator A bequeathed his wife as a sole executrix, instituting her as owner and directed that whatever is left of property after her death should go to the testator's two daughters in such a manner as she, the executrix, may like. Whether it is a legal trust?

10. (a) A person against whom the relief of specific performance of contract is claimed, may plead, by way of defence, any ground which is available to him under any law relating to contract. What are those grounds of defence which are available to a person against whom the relief of specific performance is claimed?
(b) Who may obtain specific performance of contract?

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