Bihar Judicial Service (Mains) 2023

Law of Contracts and Torts · optional paper

Time: 3 hours · Full marks: 150

Answer six questions, taking three from each Part.

Part I

(Law of Contracts)

1. (a) Is consideration a necessity for the existence of a simple contract? If yes, why?Discuss the cases when the essentiality of consideration can be waived. (15 Marks)

(b) A owed B ₹ 10,000 but the debt is barred by the Indian Limitation Act, 1963. Subsequently A signs a written promise to pay ₹ 10,000 on account of the previous debt. Decide the validity of this agreement. (10 Marks)

2. (a) A accepted a Vakalatnama from B to act for him in a certain suit on receiving his usual fee. Subsequently B agreed to pay him a certain sum of money as a special reward (Inam) if the suit was decided in his favour. The suit was decided in favour of B, who later did not pay the agreed sum of money to A. Therefore, A brings a suit against B claiming this amount.
Examine the above-mentioned problem and decide. (15 Marks)

(b) An agreement without consideration is void. Analyse this provision. (10 Marks)

3. (a) Fraud, which vitiates the contract, must have nexus with the acts of the parties prior to entering into the contract. Explain. (15 Marks)

(b) What do you mean by preventive relief? Flow can a permanent injunction under the Specific Relief Act, 1963 be obtained? (10 Marks)

4. Write short notes on the following: (5×5=25)

(a) Responsibility of finder of goods
(b) Remedies for breach of contract
(c) Difference between void contract and void agreement
(d) Difference between pledge and bailment
(e) Continuing guarantee

5. Examine the nature of the following agreements. Give reasons in support of your answer: (10+10+5=25 Marks)

(a) A, an accused, is required under the Criminal Procedure Code to furnish a surety in the sum of five thousand rupees for his good behaviour. He deposits the sum with B and persuades him to become surety. B agrees to it. After the period of suretyship is over, the accused A sues B for the amount.

(b) A and B, two wrestlers, agreed to play a wrestling match on the condition that the party failing to appear on the day fixed was to forfeit ₹ 500 to the opposite party and the winner was to receive ₹ 1,500 out of the proceeds. B failed to appear on the day fixed. Thus, A sues B for the amount.

(c) A agrees to supply to B 'a hundred tons of oil' within a specified time. B makes the payment but A does not supply oil to B by the specified time. B sues A for the loss.

Part II

(Law of Torts)

6. (a) "The decision of the Supreme Court of India in Kasturilal's case has not yet been overruled but the subsequent decisions of the Courts have limited the extent of the principle of State immunity to a very limited area and distinction between 'sovereign' and 'non-sovereign' functions of the State has almost been obliterated." Critically evaluate this statement with relevant illustrations. (15 Marks)
(b) "Indian Courts have refused to follow some of the doctrines of law of torts as established by the English Courts in the 19th century." Explain this statement with the help of relevant decisions, especially in the light of 'Strict Liability Rule'. (10 Marks)

7. (a) Define malicious prosecution. What are its essential ingredients? What must a / plaintiff prove for getting success in case of a suit for malicious prosecution? Can a suit of malicious prosecution be filed against the corporation also? if yes, in which circumstances? (15 Marks)
(b), What is the law relating to the vicarious liability of the State for the wrongful acts of its employees? Discuss with the help of relevant case laws. (10 Marks)

8. (a) The tort of defamation consists of publication of a false and defamatory statement concerning the plaintiff without any lawful justification. Explain with the help of illustrations. (15 Marks)
(b) A lives in a city colony. His mother was dead some two years back. B makes a statement that A's mother was a prostitute. A sues B for defamation and claims damages. Examine. (5 Marks)
(c) A company published a notice that on a certain date wife of GM had delivered twin sons. The fact is that the GM and his wife had been married little more than a month before the date announced in the notice. The GM sues company for defamation. Will he succeed? Decide. (5 Marks)

9. Write short notes on the following: (5×5=25)
(a) Pigeon-hole theory
(b) Last opportunity rule
(c) Malice in tort
(d) Volenti non fit injuria
(e) Res ipsa loquitur

10. (a) "An attempt at deceit which does not deceive is not fraud." Do you agree? Whether mere silence with regard to a material fact will amount the tort of deceit? Support your answer with decided cases. (15 Marks)
(b) 'Damnum sine injuria' and 'Injuria sine damnum' are two different principles of law, agreed upon a same principle of law. Comment. (10 Marks)