Bihar Judicial Service (Mains) 2023

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

Time: 3 hours · Full marks: 150

Answer six questions, taking three from each Part

Part I

1. (a) A owned a house in Patna. In 2000, A went on a pilgrimage leaving the house in charge of a relative B. In 2002, B applied to the Municipality that he was not aware of A's whereabouts and whether A is dead or alive, and prayed that his name be recorded as the owner of the house. The application was granted and two years later, B sold the house to C, who purchased in good faith after inspecting the Municipal Register. A returned to Patna in 2005 and claimed the house from C. Discuss whether C is protected under Section 41 of the Transfer of Property Act, 1882. (20 Marks)

(b) Decide giving reasons whether the following are actionable claims.

(i) A claim for rent to fall due in future (2½ Marks)

(ii) A decree passed by the Court (2½ Marks)

2. (a) Explain the 'rule against perpetuity'. State the points of distinction between the Indian and the English rules of 'perpetuity'. Also state the exceptions to 'rule against perpetuity'. (8+4+8 Marks)

(b) A made a gift of a house by a gift deed in favour of B and delivered possession. Before registration of the deed, A died. After the time for registration is over, A's heirs bring a suit for recovery of possession of the house. B resists. Decide. (5 Marks)

3. (a) Elucidate and differentiate between Spes successionis and Doctrine of feeding the grant by estoppel. (20 Marks)

(b) A, mother of a minor son B, transferred property in favour of C on her behalf and on behalf of B. The son B after getting majority challenged the said transfer and the Court held that the transfer up to the extent of share of B is void. Thereafter, before B could take the possession, he died in a road accident and A being legal heir of B inherited the same property. Now C sues A for transfer of the same property to him under Section 43. Decide whether C would succeed. (5 Marks)

4. (a) State the rule of marshalling by subsequent purchaser. Is the rule of marshalling between purchaser and purchaser applicable in India? Also explain the essentials of this rule. (15 Marks)

(b) Explain the doctrine of marshalling and contribution in mortgage. (10 Marks)

5. (a) Define 'mortgage'. Explain the main characteristics of simple mortgage, mortgage by conditional sale and usufructuary mortgage. Also, state the remedies available to 'mortgagee' in the above mortgages. (2+6+6+6 Marks)

(b) A mortgaged his house to B with possession for five years. The rents and profits are to be set off against interest. It was provided that if the mortgage was not redeemed within a period of 20 years from the due date, then B should treat the land as sold to him absolutely. The mortgage further provided that if A redeems the mortgage within one year from the due date, then B would have the option to stay in the house as A's tenant for a period of another 15 years. Discuss the validity of the conditions. (5 Marks)

Part II

6. (a) Define the term 'equity' and explain the distinctive features of equity and common law. (15 Marks)

(b) It is said that "the equitable principles have been adopted in various enactments in India". Discuss stating the relevant provisions of such enactments. (10 Marks)

7. Explain the following maxims :

(a) Equity will not suffer a wrong to be without remedy. (10 Marks)

(b) He who comes into equity must come with clean hands. (10 Marks)

(c) Equity follows the law. (5 Marks)

8. (a) Define and discuss the term 'trust'. Point out the distinction between executory trust and executed trust. Also, explain the various methods required for the creation of a trust. (20 Marks)

(b) A conveys a property to B in trust to apply the profits to use for marriage of minor girls. Decide whether the trust will be valid or not. Also, give reasons. (5 Marks)

9. (a) What is an injunction and what are its kinds? State the grounds for granting a perpetual injunction. (15 Marks)

(b) A bequeaths certain property to B requesting him to "continue property in his family" or to distribute it among such members of C's family as he may consider most deserving. Is it a legal trust? (10 Marks)

10. (a) What is 'preventive relief'? State the circumstances in which an 'injunction' cannot be granted. Also mention the provision relating to grant of 'perpetual injunction' under the Specific Relief Act, 1963. (2+11+7 Marks)

(b) "Delay defeats equity." Explain. (5 Marks)