Delhi Judicial Service (Mains) 2017

Paper 2: Civil Law I · compulsory paper

Time allowed: 3 hours. Maximum marks: 200. All questions are compulsory, unless specified. Support each of your answers with reasons, relevant legal provisions and legal principles.

1. Answer any two questions: (10 marks × 2 = 20 marks)

a. When and in which cases principle of vicarious liability can be invoked by the plaintiff suing under the Law of Torts?

b. What are the principles applicable to determine negligence, if any, on the part of a professional (Doctor, Lawyer, Chartered Accountant) towards his client?

c. "The King can do no wrong". Explain this principle in the Indian context of sovereign immunity and acts of the State.

2. 'A' and 'B' entered into an oral contract as per which seller 'A' was to supply 5,000 tennis balls of yellow colour within 10 days for Rs. 10,000/- to buyer 'B'. 'A' supplied white colour tennis balls within the said period instead of yellow colour tennis balls, which delivery was made to the gatekeeper at the shop of 'B' as 'B' was out of station on the said date. 'B' on return inspects the balls after two weeks, and notices that balls were of white colour, though the contract was for supply of yellow colour balls. 'B' does not inform or talk to 'A' but intimates his Bank not to honour the post dated cheque given by him. The post dated cheque issued by 'B' to 'A' gets dishonoured. In the meanwhile, another person 'C' approaches 'B' and the white balls supplied by 'A' are sold by 'B' to 'C' at a mutually agreed price of Rs. 15,000/-. 'A' files a suit for recovery against 'B' for the price as agreed i.e. Rs. 10,000/-. 'B' contests the said suit on the ground that the balls supplied were not as per the agreed contractual terms, and therefore, he is not liable. He also pleads and leads evidence to show that the market price of white colour balls was lower than the market price of yellow colour balls. 'A' submits that 'B' has sold the white balls and made profit of Rs. 5,000/-.

Examine with reference to the provisions of law applicable and decide. || (20 marks)

3. Elucidate with examples difference between 'damages', 'liquidated damages' and 'penalty' under the Indian Contract Act. (15 marks)

4. A forfeiture clause in the employment contract provides that "if a person engages in a competing business/service within two years period after leaving the company, the outstanding incentive amount due to him can be forfeited". Whether the clause is enforceable or is violative of Section 27 of the Indian Contract Act? (10 marks)

5. 'A' enters into a contract with 'B', an interior decorator. 'B' has promised to execute a turnkey project which includes design and supply of furniture and furnishings for Rs. 20,00,000/-. 'A' pays 'B' Rs. 1,00,000/- in advance. 'B' dies within one week after he has received advance payment of Rs. 1,00,000/-, without furnishing drawing, furniture etc. What are the remedies available to 'A' under the Indian Contract Act and law of succession? Whether legal representatives of 'B' are liable to perform the promise made by 'B'? (10 marks)

6. 'A' promises 'B' to drop a prosecution which he has instituted against 'B' for robbery and 'B' promises to restore the value of the things taken. Whether the agreement is valid under the Indian

Contract Act? What would happen if the settlement is arrived before the Mediation Centre/Lok Adalat? (5 marks)

7. What are the principles governing grant of anti-suit injunction? Can an Indian Court grant anti-suit injunction for proceedings/suit pending in a foreign court? (10 marks)

8. A tenant, on 01.01.2018 is forcibly without consent dispossessed by his landlord. On 01.08.2018, the tenant on coming to know that the landlord may induct a third person as a tenant files a suit for declaration that he is the lawful tenant and also prays for injunction restraining the landlord from inducting a fresh tenant. Decide whether the suit can be decreed in terms of the prayers? (7 marks)

9. Can 'A', a plaintiff, sue for specific performance of sale of shares of a public listed company? Examine with reference to provisions of the Specific Relief Act and decide whether you will decree this suit for specific performance? (8 marks)

10. 'A', 'B' and 'C' are partners in the registered partnership firm 'B&B'. In the year 2000, partners 'B' and 'C' bring into the stock of the firm two immovable properties. In 2018, disputes arise amongst the partners. Partner 'A' files a suit for partition of the two immovable properties brought into the stock of the firm by partners 'B' and 'C'. Decide whether you will grant the prayer for partition of immovable properties. (5 marks)

11. 'X', 'Y' and 'Z' are partners in the firm, 'M/s. Best Tailors'. 'Y' goes to the Court and compromises the suit for recovery of damages filed by 'A' against the partnership firm, 'M/s. Best Tailors'. Can 'Y' compromise the matter? Decide with reference to relevant provisions of law. (5 marks)

12. 'A', 'B' and 'C' form a partnership firm for construction of a four-storeyed building on a plot of land. There is a stipulation in the partnership deed that profits will be distributed when the construction is complete and till then each partner will get Rs. 20,000/- per month. After laying roof of the first floor, disputes arise between the partners. Whether 'A' can file a suit for dissolution of partnership claiming that the partnership is 'Partnership at Will'? Decide. (10 marks)

13. 'A' a Hindu male by a Will grants life interest in his self acquired immovable property to his wife 'B' with restriction and bar on 'B's right to sell, transfer and mortgage the property. The Will further stipulates that on 'B's death, the property will be inherited by 'C', his nephew and not by his children. 'A' died in 1968. 'B', during her lifetime in 2017, sells the property for consideration to her children. 'C' files a suit challenging the said transfer by 'B' to her children and the sale deed. Discuss the provisions under the law of succession applicable and decide the contesting claims. (15 marks)

14. When and in which cases, on the death of a Hindu male on or after the enactment of the Hindu Succession Act, his immovable property or interest in immovable property will partly or wholly devolve by survivorship upon surviving members of the coparcenary. (7 marks)

15. On death of her husband, widow 'A' and her daughter inherit the immovable property under the Hindu Succession Act. After death of her husband, widow 'A' by a registered adoption deed adopts 'B' as her son. She dies intestate. Decide whether the property of the deceased husband as inherited by the Hindu widow 'A' would be also inherited by 'B' being the adopted son. (5 marks)

16. Write short notes on any two of the following: (5 marks)

a. Triple Talaq

b. Mutawalli

c. Nikah Halala

17. Write short notes on any one of the following: (5 marks)

a. What is the difference between Valid (Sahih), Irregular (Fasid) and Void (Batil) marriage in Mohammadan Law?

b. What are the essentials to the validity of Hiba or Gift in Mohammadan Law?

18. 'W', a Hindu wife, files a divorce petition under Section 13(1)(i) of the Hindu Marriage Act against 'H' her husband. On 31.08.2009, the petition is allowed. In an appeal by 'H' to the High Court, the operation of the judgment and the decree dated 31.08.2009 is stayed on 20.11.2009. During the pendency of the appeal, the matter is referred to the Mediation Centre. 'W' and 'H' reach a settlement and 'H' opt to withdraw the appeal in terms of their settlement dated 15.10.2011. As per settlement dated 15.10.2011, 'H' files an application within 30 days to withdraw the appeal. On 20.12.2011, the High Court dismisses the appeal in terms of the settlement. In the meantime, on 06.12.2011, 'H' marries 'X'. Discord emerges between 'H' and 'X'. Within one year, i.e. on 06.11.2012, 'X' files a petition under Section 11 of the Hindu Marriage Act to declare the marriage null and void being violative of Section 5(i) of the Hindu Marriage Act. 'X' pleads ignorance about the settlement between 'W' and 'H'. Decide. (15 marks)

19. Whether decree under Section 9 of the Hindu Marriage Act for Restitution of Conjugal Rights is useful and relevant for any of the parties to the marriage in the absence of effective provisions for its enforcement? Comment. (8 marks)

20. What are the principles and law of inheritance of tenancy on death of a tenant under the Delhi Rent Control Act? (7 marks)

21. Whether a co-owner can alone, without impleading other co-owners and without their consent, file an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act? (8 marks)