Delhi Judicial Service (Mains) 2022

Paper 3: Civil Law II · compulsory paper

Duration: 3 hours · Maximum Marks: 200

Important Instructions: (i) Please read the questions carefully and answer them as directed. (ii) You are allowed 15 minutes time before the examination begins, during which you should read the question paper and, if you wish, highlight and/or make notes on the question paper. However, you are not allowed, under any circumstances, to open the answer sheet and start writing during this time. (iii) The answer to each question should begin on a fresh page. (iv) Support each of your answers with reasons, relevant legal provisions and principles and also relevant case laws. (v) Even if you do not know the answer, it is advisable to attempt as much, as the test is not only of the knowledge of law but also of analytical reasoning.

Part I: Write short notes on any four out of the following six questions (4 x 10 = 40 Marks)

1. Distinction between the action of infringement of trademark and action for passing off. 10 Marks

2. The concept of Res judicata and estoppel. 10 Marks

3. What is the effect of non registration of a document which requires compulsory registration under the Registration Act, 1908? Its effect and implication on the continuity of proceedings before courts and tribunals. 10 Marks

4. Section 52 of the Copyright Act, 1957 provides for certain exceptions to infringements of copyright and the said provision allows limited use of copyrighted works without the permission of the copyright holder. What are the acts which are not to be treated as infringement of copyright? 10 Marks

5. Discuss the principle and scope of Primary and Secondary evidence. Give two examples of each. 10 Marks

6. Registration of trademarks subject to disclaimer and its effect. Explain whether any remedy for injunction would still be available as per law. 10 Marks

Part II: Attempt any two out of the following three questions (2 x 20 = 40 Marks)

7. Explain when foreign judgments are not conclusive and under which circumstances there could be a presumption as to a foreign judgment. Quote relevant provision of law and give two examples. 20 Marks

8. Is the object of Section 9(1)(ii)(b) and Section 17(1)(ii)(b) of Arbitration and Conciliation Act, 1996 similar to the object of Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908? Please explain when and under what circumstances and situations, the court or Arbitral Tribunal can exercise its powers to pass orders in order to secure the amount in dispute? Give two examples. 20 Marks

9. Explain the following - "Principles on which Section 91 and Section 92 of the Indian Evidence Act, 1872 are based and the difference between them. Please explain by giving four illustrations." 20 Marks

Part III: Attempt any four out of the following six questions (4 x 30 = 120 Marks)

10. The plaintiff filed a suit for recovery of amount against defendant in the year 2016 in Delhi Court. In his written statement, the defendant has taken the objection about territorial jurisdiction. Despite the objection, the plaintiff continued the suit. Issues were duly framed, including the issue of territorial jurisdiction, evidence led and the suit was finally decreed in the year 2020. At the first date of hearing of appeal, the plaintiff withdraws the suit to file a fresh suit in the court having territorial jurisdiction in Mumbai. An objection was raised by the defendant that the suit was now time barred. The period

spent by the plaintiff in the earlier suit cannot be excluded under Section 14 of the Limitation Act, 1963 as it was not prosecuted with due diligence and in good faith. 30 Marks

Please discuss the law and give reasons as to whether the period spent in the earlier suit can be excluded under Section 14(3) of the Limitation Act, 1963 or is it the discretion of the court to exclude or not to exclude the said period?

11. The plaintiff filed a suit for passing off of its trademark and for infringement of the copyright. The defendant filed the written statement claiming four years continuous use of the same mark and copyright within the knowledge of the plaintiff. The defendant pleaded long delay, acquiescence and estoppel in view of positive knowledge of such use by the plaintiff. Admittedly, the defendant was working with the plaintiff. The defendant was also unable to explain the reason why he had adopted a similar mark and copyright. 30 Marks

Please discuss the law and decide the application for injunction giving reasons as to whether the plaintiff is entitled for injunction or not?

12. 'A', who is the owner of property at Lajpat Nagar, New Delhi executed agreement to sell on 25th January, 2017 with 'B' for a sale consideration for sum of Rupees five crores. 'B' paid ten percent as advance of sale consideration to 'A'. The agreement to sell was neither stamped nor it was registered under the Registration Act, 1908. The possession was never transferred by the 'A' to 'B' at the time of execution of documents. After expiry of two months, 'A' refused to sell the property to 'B' in view of better offer received from 'C'. 'B' had no option but to file the suit for Specific Performance against 'A' along with prayer for injunction and for damages. The suit was strongly contested before Court by 'A' who also filed an application under Order 7 Rule 11(d) for rejection of plaint on the ground that the suit was barred by law. 30 Marks

Please discuss the law and decide the application filed by 'A' for rejection of suit as to whether suit is barred by law or not by giving reasons?

13. The plaintiff filed a suit for infringement of trademark and copyright against the defendant in the City Civil Court, Hyderabad being suit no 238/88. The Court dismissed the suit mainly on the ground that there was no infringement. Thereafter, second suit no. 123 of 1992 including a fresh prayer for the relief of passing off action was filed. It was alleged in the second suit that the same was being filed on the basis of fresh and recurring cause of action. The defendant has denied any passing off and also alleged that second suit is not maintainable and is barred by Order 2 Rule 2(3) of Code of Civil Procedure, 1908. The plaintiff denied all averments of the defendant and stated that it is not barred under Order 2 Rule 2 of CPC. 30 Marks

Please discuss the law and decide whether the second suit is barred under Order 2 Rule 2(3) of Code of Civil Procedure, 1908 or not. Also discuss as to whether it was a fresh and recurring cause of action and whether the second suit is maintainable or not? Give reasons.

14. The claimant filed an application under Section 31(6) of Arbitration and Conciliation Act, 1996 for passing an interim award on the basis of admission about the completion of work at the site made by the respondent in the statement of defense. The prayer is opposed by the respondent stating that there is no specific admission in the statement of defense. Now, the said application has to be decided. Admittedly, as per the scheme of Section 31(6) of Arbitration and Conciliation Act, 1996, the courts and Arbitral Tribunal are empowered to pass interim awards on the basis of the facts and admission

made by the respondent. On the other hand, the provisions of Order XII Rule 6 of the Code of Civil Procedure, 1908 require an "unequivocal", "unconditional" and "unqualified" admission by the concerned party. 30 Marks

In view of above facts, decide the application and explain the distinction between the scope of section 31(6) of Arbitration and Conciliation Act, 1996 and Order XII Rule 6 of the Code of Civil Procedure, 1908.

15. 'A' is a well known author who had written a Hindi novel. 'B' is a director of Hindi movies. 'A' assigned all rights pertaining to copyright in its novel in favour of 'B', who intends to make a Hindi movie of the theme of the novel. After completion of movie and before its release in theaters, 'A' filed a suit for injunction and compensation against 'B'. The complaint of 'A' was in respect of mutilation and distortion of the theme of novel. Such details were provided to the court. 'B' denied all allegations. His defence was that there were merely cosmetic changes in the theme of the novel as per usual practice in the film industry. The controversy before the court was the question of demarcating the boundaries of the rights of the author 'A' despite assignment of copyright and that of a director of the film 'B' who had spent huge sum for making the movie. 30 Marks

In view of the above facts, decide the application for injunction as to whether 'B' has violated the moral right within the meaning of Section 57 of the Copyright Act, 1957 and whether 'A' is entitled for injunction or not?