Delhi Judicial Service (Mains) 2023 (held April 2024)

Paper 3: Civil Law II · compulsory paper

Instructions: (i) Read the questions carefully and answer as directed. (ii) Fifteen minutes are allowed before the examination begins to read the paper and make notes on it. (iii) The answer to each question should begin on a fresh page. (iv) Support each answer 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 the test is not only of the knowledge of law but also of analytical reasoning. (vi) Write your Roll Number at the top before answering. **Maximum marks: 200.**

Part I: attempt any four questions out of six (4 x 10 = 40 Marks)

1. A suit is filed for recovery of possession of immovable property/rent/mesne profit. Please explain the form and content of decree that a Court can pass, as per Order XX of Code of Civil Procedure, 1908 ('CPC')? 10 Marks

2. Under the CPC, is it possible for a court to pronounce judgment on the first hearing? Please elaborate your answer with examples alongwith the relevant provisions of the CPC? 10 Marks

3. What is the difference between the Fifth Schedule and the Seventh Schedule of the Arbitration & Conciliation Act, 1996? Please elaborate with appropriate case law? 10 Marks

4. What is the meaning of secondary evidence under the Indian Evidence Act, 1872? When is a party permitted to lead secondary evidence? Please elaborate with reference to the provisions of the Indian Evidence Act, 1872 and relevant case-law? 10 Marks

5. What is the difference between an action for Infringement of a registered trademark and an action for passing off? Please elaborate your answer keeping in view the provisions of Trade Marks Act, 1999 and relevant case-law? 10 Marks

6. Plaintiff gave a loan of Rs.10 crores to the Defendant. The loan was repayable within one year. The Defendant defaulted. A suit for recovery of the loan of Rs. 10 crores is filed by the Plaintiff against the Defendant. During pendency of the suit, the Defendant unfortunately expired. What is the remedy, the Plaintiff has, in such circumstances? Please elaborate keeping in view Order XXII, CPC and relevant case-law? 10 Marks

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

7. Can a non-signatory under an arbitration agreement be impleaded as a party to the arbitration proceedings? Please elaborate your answer giving details of the applicable statutory provisions with the latest case-law? 20 Marks

8. 'A' gives a loan to 'B'. The loan is repayable in a specified period. According to 'A', 'B' has defaulted, 'A' files a suit for recovery of the loan amount. 'B' in his written statement claims that the loan was repaid long back. Under the Indian Evidence Act, 1872, the burden of proof would fall on which party in the given facts. Please elaborate with the relevant provisions of the Indian Evidence Act and case-law? 20 Marks

9. Order VI Rule 17, CPC permits a party to alter or amend his pleadings. Please elaborate as to at what stage a court would exercise such powers of amendment with appropriate case law? 20 Marks

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

10. 'A' enters into an Agreement to Sell his immoveable property with 'B' in 1980. Full consideration was paid to 'A'. Possession of the property was also delivered by 'A' to 'B'.
'A' died in 1990. 'A' was survived by his wife and son. In 2020, the wife and son of 'A' decide to sell the immoveable property in question. Through an advertisement they invited offers from interested parties.
'B' filed a suit against the wife and son of 'A' for Permanent Injunction and for Specific Performance of the Agreement to Sell. The wife and son of 'A' raise a preliminary objection in response to the suit that the suit is barred by limitation.
Please decide the preliminary objection. 30 Marks

11. The Plaintiff is a manufacturer of electronic goods and selling the said goods under the aforenoted trademark since 1995. In 1995 the Plaintiff also got its Trademark 'Alpho' registered for electronic goods.
The Defendant commenced production of Televisions in 2010, using the Trademark 'AlphoBest'. The operations of the Defendant were nominal. Over a period of time, the operations of the Defendant started increasing.
In 2020, the Plaintiff filed a suit against the Defendant for infringement of Trademark 'Alpho' and other consequential reliefs.
The Defendant entered appearance and took the preliminary objection that they have been using the Trademark 'AlphoBest' for the last 10 years. It was urged that on account of the long usage of the trademark by the Defendant, the present suit filed by the Plaintiff is barred by Limitation and deserves to be dismissed at the outset. Defendant accordingly filed an application under Order VII Rule 11 CPC for dismissal of the suit.
Please decide the present application. Please elaborate with relevant case-law. 30 Marks

12. The Plaintiff was born out of the wedlock between his mother and the Defendant in the suit. The marriage of the Plaintiff's mother and Defendant was dissolved.
The Plaintiff filed a suit for partition, rendition of accounts and permanent injunction against Defendant for the property situated at Greater Kailash Part-1, New Delhi. It was stated in the plaint that the property in question was bought by the grandfather i.e. father of the Defendant from the sale proceeds of ancestral land.
The Trial Court in 2010 passed a preliminary decree in favour of the Plaintiff. A Local Commissioner was appointed to suggest the means of partition of the property by metes and bounds. Objections filed by the Defendant to the report of the Local Commissioner were dismissed. At that stage the sister of Defendant filed an application under Order I Rule 10 CPC, alleging that their late father during his lifetime had executed a Will, whereby a portion of the suit property was bequeathed to the sister of the Defendant. It was the claim of the said applicant that she is co-owner of the suit property and has been wrongly not impleaded as party to the present suit. She also prayed that the preliminary decree be modified.
The Plaintiff strongly opposed the said application. It was urged that the application of the applicant is in connivance with the Defendant and cannot be allowed. It was further urged that a preliminary decree has already been passed and at that stage it is not possible to modify the preliminary decree that was passed long back.

Please decide the above application of the applicant i.e. the sister of the Defendant, keeping in view the provisions of CPC and the settled case law? 30 Marks

13. Ramesh & Co. claim that they are the owners of the copyright in various devotional songs. It has been urged that they have a large repertoire of copyrighted content comprising of cinematographic films and sound recordings as well as musical and literary works. It is the case of Ramesh & Co. that by owning copyright in respect of the said songs and works, they have rights under Section 14 of the Copyright Act, 1957.
It is further stated that in accordance with Section 52A of the Copyright Act, each DVD/CD/CD etc. produced by Ramesh & Co. contains a notice bringing it to the notice of the public that the Plaintiff has made the sound and video recordings.
Pawan is carrying on business of providing cable network connections to various subscribers in Defence Colony, Delhi. It is the case of Ramesh & Co. that Pawan is having 50,000 connections. Pawan operates various video channels.
As per Ramesh & Co., Pawan had obtained a licence for broadcasting works from Ramesh & Co. for a period of three months. On expiry of the said license, he never renewed his license and continued to use and commercially exploit various works of Ramesh & Co.
In these facts, Ramesh & Co. filed a suit for infringement of copyright seeking an order of permanent injunction to restrain Pawan directly or indirectly from recording, distributing, broadcasting public performance or communicating to the public or in any manner exploiting the cinematograph films, sound recordings owned by Ramesh & Co. An order for rendition of accounts is also sought.
In the suit, Ramesh & Co. sought an interim injunction. The defense raised was that the broadcast was a fair dealing. Please decide the said application. 30 Marks

14. A Builder by the name "AA" enters into a Collaboration Agreement for a property in Vasant Vihar. In terms of the Collaboration Agreement, "AA" became entitled to two floors namely, 1st and 2nd floor of the property which he effectively sold. The 1st floor was sold to "CC". The new owner i.e. "CC" thereafter sought to sell 1st floor of the property to one "BB".
The sub-Registrar however, refused to register the Sale Deed stating that it is in contravention of Section 21 of the Registration Act, 1908. The sub-Registrar stated that the parking area in the said property for the occupant/alleged purchaser of the 1st Floor is not defined and hence he has exercised his power to decline the Registration of the Sale Deed. "CC" seeks to challenge the order of the Sub-Registrar.
Please explain all the legal steps "CC" can take to challenge the order of the Sub-Registrar, refusing to register the Sale Deed in question in accordance of the Registration Act, 1908. 30 Marks

15. Ramesh and Prabhu are two siblings born from the same parents. The parents of Ramesh and Prabhu expired. Prabhu also after sometime expired leaving behind his widow and a minor son. Some years after the death of Prabhu, Ramesh filed a suit for partition against the widow and minor son of Prabhu for the family property.
After five years a decree of partition was passed by the Civil Court dividing the property in a certain defined manner. After the decree was passed Prabhu's minor son become major. He files a suit seeking to set aside the decree of partition passed earlier by the civil court, stating that the first suit filed by Ramesh is in complete violation of Order XXXII Rule 3 CPC. It is the stand of the son of Prabhu that he was impleaded as a Defendant in the suit as a minor, but no guardian was appointed by the court

for the minor Defendant. He urged that under Order XXXII Rule 3 CPC where a Defendant is a minor, the court has to appoint a person to be the guardian for the minor Defendant in such suit. No such appointment was made by the Court and a decree of partition was passed.

Please decide the said suit, elaborating the provisions of CPC and the appropriate case-law to support your stand? 30 Marks