Haryana Civil Judge (Mains) 2010

Civil Law I · compulsory paper

1. (a) Explain constructive res judicata with the aid of suitable illustrations.

(b) In a previous ex parte decree against the municipality only, B, who had obtained a lease of the same land from the municipality prior to the institution of such suit, was not, however, made a party to that suit. B brought a subsequent suit against A and the municipality disputing A's right to remain on the land and interfere with the construction works. Will the decree passed in favour of A operate as res judicata against B in the subsequent suit?

(c) What do you understand by set-off? Explain equitable set-off. Distinguish between legal and equitable set-off.

(d) What is the proper place of suing in the following cases?

(i) a suit by a guardian for the custody of his ward; (ii) a suit for damages for the custody of his ward; (iii) a suit against a corporation; (iv) a suit for mesne profits; (v) a suit for specific performance of a contract of sale of immovable property; (vi) a suit for a tort.

2. (a) What is the procedure to be adopted in case of execution of a decree against the Government or a public officer?

(b) For how much period can a person be detained in the civil prison in execution of a money decree, and when is he to be released from such detention? Can he be released from such detention before the expiration of the said period?

(c) Can a Member of either House of Parliament, or a Member of a Legislative Assembly, or a Member of any Parliamentary Committee be arrested and detained under the civil process? If no, under which contingencies?

(d) On what grounds can the sale of immovable property in execution of a decree be set aside? At whose instance can such sale be set aside?

3. (a) An agreement is unlawful if the Court regards it as opposed to public policy. In the light of this statement discuss (i) the meaning of public policy and (ii) when an agreement is said to be against public policy. Have the Courts evolved any new head of public policy for giving relief to the weaker section of society in standard form contracts?

(b) Mr. A, who lives in Ambala, gives his motor-cycle to his friend B for taking it to Kurukshetra. B, instead of going to Kurukshetra, drives the motor-cycle to Chandigarh. He drives the motor-cycle with reasonable care. While coming back from Chandigarh to Ambala he meets with an accident and the motor-cycle is totally damaged. Can A claim damages from B? Give reasons.

(c) In a document executed between A, B, C and D, it was provided that D would be in charge of the firm and get Rs. 200 per month and devote his whole time to it; he would also get 10 per cent of the net profits of the firm, but would get no share in the surplus profits of the firm, which were to be equally divided between A, B and C only. Is D a partner of the firm?

(d) How and when may a partner retire? What are the liabilities of a retiring partner and what is the effect of such a retirement on the rights of the parties?

4. (a) Explain what is preventive relief. What are the provisions governing the grant of injunction?

(b) Examine whether or not a perpetual injunction shall be granted in the following cases:

(i) Where the plaintiff prays that his standing crop is likely to be harvested very soon by the defendant; (ii) where the injunction prayed for is for enforcement of an obligation arising from a breach of contract which cannot be specifically enforced; (iii) where an alternative efficacious remedy is available; (iv) where the plaintiff's conduct is unconscionable.

(c) Carefully distinguish between a "condition" and a "warranty" and enumerate the circumstances in which a "condition" can be treated as a "warranty".

(d) A contracts to sell a heap of bones to B, weighs and delivers them at 100 rupees per ton. B agrees to take and pay for them on a certain day. Part of the bones is weighed and delivered to B. On whose risk does the residue lie?

5. (a) What do you understand by "Privileged Communications"? Answer with the aid of suitable illustrations.

(b) A witness is compelled to state a matter which will expose him to a criminal charge. If he speaks the truth, can he be prosecuted on the basis of his own statement in the Court? If he makes a false statement, can he be prosecuted for giving false evidence?

(c) "The rules of Evidence are in general the same in Civil and Criminal Proceedings." Comment and state if there are any exceptions to this rule.

(d) (i) Can the functions of receiving and registering cases and appeals be assigned to an Additional District Judge and, if so, by whom? (ii) Who may define the local limits of Civil Judges (Sr. Division) and Civil Judges (Junior Division)? Give your answers with the aid of illustrations.