Odisha Judicial Service (Mains) 2012

Law of Property · optional paper

JS – 12/5 · 3 hours · 150 marks

Answer six questions, selecting two from each of Sections A, B and C.

Section A

1. (a) Ashish, a Hindu, who was separated from his father, sells to Santosh three fields A, B and C representing that he is authorized to transfer the same. Field - C does not belong to Ashish, as it was retained by his father at the time of partition, but after his father's death Ashish being the heir obtained Field-C. Santosh did not rescind the contract of sale and asked Ashish to deliver Field-C to him. Whether Santosh will succeed ? Decide.
(b) Write short notes on the following:
(i) Doctrine of marshalling
(ii) Once a mortgage, always a mortgage
(iii) Forfeiture of lease [25 marks]

2. (a) Ashok has the properties - Property 'A' and Property 'B'. He sells property 'B' to Bikash and puts a condition that Bikash should not construct on property - B more than one storey so that Ashok's property- A which he retains should have good light and free air. Is such a condition valid ? Give reasons in support of your answer.
(b) Explain the following :
(i) Doctrine of 'lis pendens'
(ii) Doctrine of 'part-performance' [25 marks]

3. (a) Discuss the rights of an ostensible owner to transfer property under Transfer of Property Act
(b) Discuss briefly the law relating to subrogation provided in the Transfer of Property Act, 1882. [25 marks]

4. (a) Bhavani effects an insurance policy on his own life with the Life Insurance Corporation of India (LIC) and deposits it with a bank for securing payment of an existing debt. Bhavani dies and Bank claims the amount from LIC contrary to the claims of Bhavani's heirs. Decide whether the claim of the bank is maintainable.
(b) Akhil makes a gift of some immovable property of Sunita. But before the registration of gift document Akhil dies. Can the document be presented for registration after his death ? If yes, what will be the effect of registration ?
(c) "An absolute restraint on disposition is a clog on ownership." Explain this fully with reference to provisions of the Transfer of Property Act. [25 marks]

Section B

5. (a) Dr. Sunil agrees to perform a certain operation and takes an advance of Rs. 50,000 from the patient. Later on, Dr. Sunil refuses to operate. Decide, giving reasons, whether a patient can get a decree of performance from the court against Dr. Sunil.
(b) Write a critical comment on provisions relating to Preventive Relief. [25 marks]

6. (a) Adarsh without Brajesh's authority contract to sell to Sanjay an estate which Adarsh knows belong to Brajesh. Can Adarsh enforce specific performance of this contract if Brajesh is willing to

confirm it.
(b) What are the prerequisities for ordering for a specific performance ? [25 marks]

7. (a) Explain the salient features of the Specific Relief Act, 1963.
(b) State when the court will order "Rectification of Instrument". [25 marks]

8. (a) Sujata, a singer agreed to sing at Anapurna's theatre from September to December, 2009 and not to sing anywhere else during that period. Afterwards, she entered into a contract to sing at Lakshmi's theatre during the said period and refused to sing at Anapurna's theatre during that period. Anapurna filed an injunction application to appropriate court. What relief Anapurna is entitled to get, and for which part court may refuse to grant injunction ? Decide giving reasons.
(b) Explain:
(i) Declaratory Decree
(ii) Specific Performance [25 marks]

Section C

9. (a) Explain that the Limitation Act is statute of repose, peace and justice, yet it is at times arbitrary and inequitable.
(b) Discuss the effect of acknowledgement on the period of limitation. [25 marks]

10. (a) Aswini has taken Rs. 5,000 as a loan from Bhushan and has promised to return the loan amount within one year. Aswini failed to return the loan amount within the stipulated period, but he has written a letter to Bhushan that he would pay the amount within a month. Whether the period of limitation will start after expiry of one year or from the date when Bhushan received the letter ? Give reasons.
(b) What do you mean by 'Sufficient cause' as explained in the Limitation Act ? What are the condition precedent for its application ? [25 marks]

11. (a) Explain the general principles of Limitation under the Limitation Act.
(b) Explain the effect of legal disability on the operation of the period of limitation with relevant illustration. [25 marks]

12. (a) Examine the grounds on which the courts have the power to extend the period of limitation.
(b) "Every suit instituted, appeal preferred or application made after the period prescribed therefore be the 1st schedule shall be dismissed". Discuss. [25 marks]