Odisha Judicial Service (Mains) 2015

Law of Property · optional paper

3 hours · Full marks: 150

The figures in the right-hand margin indicate marks. Answer six questions, selecting two from Section–A, two from Section–B and two from Section–C.

SECTION—A

1. (a) "The real owner is not allowed to attack the bonafide transfer on the basis of his hidden title." Discuss this in the light of the provisions of Transfer of Property Act. [13]
(b) "An actual sale creates right in rem while the right arising out of a contract for sale is a right in personam, i.e. such a contract binds only the parties to it." Explain and distinguish clearly the terms sale and contract for sale. [12]

2. (a) "The right conveyed under Section 53-A of the Transfer of Property Act, 1882 can be relied upon only as a shield and not as sword." Examine this statement with the help of suitable examples. [11]
(b) 'A' transfers property of which he is the owner, to 'B' in trust for 'A' and his intended wife successively for their lives, and after the death of the survivor for the oldest son of the intended marriage, for life and after his death for A's second son. Explain whether the interest so created for the benefit of the eldest son will take effect or not. [7]
(c) 'A' transfers ₹10,000 to 'B' on condition that he shall marry with the consent of 'C', 'D' and 'E'. 'E' dies, 'B' marries with the consent of 'C' and 'D'. Whether the transfer of ₹10,000 to B is valid? [7]

3. (a) A mortgages his property to 'X' for ₹5,000. He then mortgages the same property to 'Y' for ₹4,000. A makes a further mortgage of the same property to 'Z' for ₹2,000. 'Z' pays ₹3,000 to 'X'. In case the mortgage property is sold. Can 'Z' claim priority over 'Y' and 'X'? [7]
(b) Distinguish between the following. [9 × 2 = 18]
(i) Charge and Mortgage
(ii) Marshalling and Contribution

4. (a) 'A' made gift of all his properties to 'B'. But 'A' retained life interest for himself on a part property. 'B' accepted the gift. Is 'B' a Universal Donee? Explain. [8]
(b) 'A' transfers to 'B' an estate belonging to 'C', and by the same transaction gives C's minor son a gift of ₹2,00,000. 'C' accepts the gift, but refuses to part with his estate in favour of 'B'. Advise 'A' and 'B'. [8]
(c) 'A' and 'B' agreed that property named 'Green fields' and belonging to 'A' should be leased to 'B'. B was already in possession, on the grounds of agreement 'B' built a house on the land. Subsequently 'A' sues to evict 'B'. Can 'A' succeed? Mention reasons. [9]

SECTION—B

5. (a) How is the ownership with or without possession of immovable property protected from interference under the Specific Relief Act, 1963? [11]
(b) 'A' pledges certain Jewels to 'B' to secure a loan. 'B' disposes of them before he is entitled to do so. 'A' without having paid or tendered the amount of loan, sues 'B' for possession of the Jewels. Will 'A' succeed in the suit? [7]
(c) 'A' contracts to sell, and 'B' contracts to buy a certain number of railway shares of a particular

description. 'A' refuses to complete the sale. Can 'B' compel the 'A' for specific performance of the agreement? Explain. [7]

6. (a) State the contract in which the specific performance is enforceable under the Specific Relief Act, 1963. [11]
(b) 'A' is a trustee of land with power to lease it for seven years. He enters into a contract with 'B' to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. Can this contract be specifically enforced? Give reasons in support of your answer. [7]
(c) 'A' draws a bill on 'B' who endorses it to 'C', by whom it appears to be endorsed to 'D' who endorses to 'E'. C's endorsement is forged. Can 'C' get the instrument cancelled? Explain. [7]

7. (a) State the circumstances in which injunction can be refused under the provision of the Specific Relief Act, 1963. [11]
(b) 'A', a purchaser, sues 'B' his vendor for specific performance of a contract for the sale of a patent. Before the hearing of the suit the patent expires. What remedies are available to 'A' against 'B' for non-performance of the contract? [7]
(c) 'A' contracts to grant 'B' an under-lease of property held by 'A' under 'C', and that he will apply to 'C' for a licence necessary to the validity of the under-lease, and that, if the licence is not granted, 'A' will pay 'B' ₹10,000. 'A' refuses to apply for the licence and offers to pay 'B' ₹10,000. Is 'B' entitled for specific performance of the contract? [7]

8. (a) Write notes on the following. [6 + 5 = 11]
(i) Rescission of Contracts
(ii) Cancellation of Document
(b) 'A' contracts to sell to 'B' a piece of land consisting of 100 bighas. It turns out that 50 bighas of the land belong to 'A' and the other 50 bighas to a stranger, who refuses to part with them. 'B' is willing to pay the price agreed upon, and to take the 50 bighas which belong to 'A', waiving all rights to compensation either for the deficiency or for loss sustained by him through A's neglect or default. Is 'B' entitled to a decree directing 'A' to convey those 50 bighas to him? Answer with reasons. [7]
(c) 'A' contracts to let for twenty one years to 'B' the right to use such part of a certain railway made by 'A' as was upon 'B's land, and that 'B' should have a right of running carriages over the whole line on certain terms and might require 'A' to supply the necessary engine power, and that 'A' should during the term keep the whole railway in good repair. Can 'B' get the contract specifically performed? [7]

SECTION—C

9. (a) "Laws of limitation bars the remedy but does not extinguish the right." Elucidate. [13]
(b) "Once limitation starts to run it remains continued." Explain it and also explain the effect of mistake on limitation. [12]

10. (a) Discuss the fundamental principles of law of limitation. [8]
(b) Which time is excluded in computing period of limitation? Give examples. [8]
(c) Write a short note on law of limitation relating to minor. [9]

11. (a) Discuss acknowledgement by part payment. [8]
(b) What are the ingredients of a valid acknowledgement? Can acknowledgement made by a Hindu widow in respect of her deceased husband's debt bind the reversioners? [8]

(c) What provisions are incorporated under the Limitation Act, 1963 for suits by parties under legal eligibility? Enumerate. [9]

12. (a) 'A' mortgaged an immovable property to 'B' on 2nd January, 1910 with a condition that the mortgage is redeemable after five years. After five years, 'A' offers the mortgage money to 'B' and requests for redemption of mortgage. 'B' refuses; 'A' files a suit for redemption of mortgage on 2nd January, 1970. State whether the suit is within limitation or time barred? Support your answer with reasons and statutory provisions. [13]

(b) 'A' takes a loan from a firm of which 'E', 'F' and 'G' are partners. 'E' and 'F' are insane and 'G' is a minor. When can 'A' be sued? [12]

De Facto IAS