Odisha Judicial Service (Mains) 2016

Law of Property · optional paper

3 hours · 150 marks

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) "Though the Transfer of Property Act, 1882 deals with transfer inter vivos, yet an interest may be created in favour of an unborn person." Discuss. 10 [25 marks]

(b) What is the meaning of right of redemption ? Who can exercise this right ? Can this right be curtailed by an agreement between the parties ? Explain it. 5+5+5 = 15

2. (a) "The foundation of Doctrine of Election is that no one can approbate and reprobate at the same time." Discuss with illustrations. 15 [25 marks]

(b) "Right of part performance can be exercised as a shield and not as a sword." Explain it. 10

3. (a) Discuss the characteristics of different kinds of mortgages envisaged by Section 58 of the Transfer of Property Act, 1882. 15 [25 marks]

(b) What is the distinction among a mortgage, a hypothecation and a pledge ? Explain. 10

4. (a) State the essential elements of a valid lease. How is a lease created ? 10+5 = 15 [25 marks]

(b) Discuss the doctrine of subrogation. What kinds of subrogations are recognised by the Transfer of Property Act ? 10

Section B

5. (a) "Justice demands that a person wrongfully dispossessed of property shall recover it." Explain how is the Specific Relief Act, 1963 operating for this purpose. 15 [25 marks]

(b) What are the main points of difference between an action for possession under Section 6 of the Specific Relief Act and recovery of possession based on the title ? 10

6. Discuss the general principles on the basis of which the courts have been granting the relief of specific performance of contracts. Also enumerate the contracts which cannot be specifically enforced. 15+10 = 25 [25 marks]

7. (a) What are the essential conditions for obtaining declaratory decree under Section 34 of the Specific Relief Act, 1963? 15 [25 marks]

(b) Will a suit for declaration lie in the following cases ?

(i) A suit that P is a legitimate son 2½

(ii) A suit by first wife to declare her husband's second marriage void 2½

(iii) A suit for correct date of birth 2½

(iv) A suit seeking mere claim of title without possession 2½

8. Explain the general principles on the basis of which temporary injunction is granted. Also discuss various kinds of injunction as provided under Specific Relief Act. State under what conditions can an injunction be refused by the court? 10+10+5 = 25 [25 marks]

Section C

9. "The Limitation Act bars the remedy and not the right but equitable considerations are out of place in any provision of law limiting the period of filing the suits of legal proceedings." Elaborate the statement. [25 marks]

10. (a) Explain the term 'sufficient cause' under Section 5 of the Limitation Act, 1963. 15 [25 marks]

(b) "Once the time has begun to run no subsequent disability or inability to sue can stop it." Explain the above rule and state the exception, if any, to this general rule. 10

11. Discuss under what circumstances a fresh period of limitation shall be computed under the Limitation Act, 1963. Refer to decided cases. [25 marks]

12. In the light of 'computation of period of limitation' under the Limitation Act, 1963 discuss the following: [25 marks]

(a) Exclusion of time in legal proceeding 6

(b) Exclusion of time of proceeding bonafide in court without jurisdiction 7

(c) Effect of death on or before the accrual of the right to sue 6

(d) Effect of fraud or mistake 6