Odisha Judicial Service (Mains) 2019

Law of Property · optional paper

Time: 3 hours. Full Marks: 150 The figures in the right-hand margin indicate marks. Answer Six questions selecting two questions from each Section.

Section A

1. (a) Who is an 'Ostensible Owner' ? Under what circumstances a transfer of immovable property by an Ostensible Owner is binding on the real owner. [10 marks]

1. (b) Discuss the following doctrines: [5+10 = 15 marks] (i) Doctrine of Equitable Estoppel (ii) Doctrine of Lis Pendens

2. (a) What do you mean by 'Doctrine of Part Performance' ? Discuss this Doctrine with reference to the origin, rule in India. [15 marks]

2. (b) What is a Sale under the Transfer of Property Act, 1882 ? Distinguish 'Sale' with 'Contract of Sale'. [10 marks]

3. (a) Define the term Mortgage and its essential ingredients. [10 marks]

3. (b) Explain the kinds of Mortgage enumerated under the Transfer of Property Act, 1882. [15 marks]

4. (a) Explain the 'Right of Redemption' under the Transfer of Property Act, 1882. [10 marks]

4. (b) Define and distinguish 'Marshalling and Contribution'. [15 marks]

Section B

5. (a) Explain the contracts, which cannot be specifically enforceable under the Specific Performance Act, 1963. [15 marks]

5. (b) Who can obtain Specific Performance and against whom under the Specific Performance Act, 1963? [10 marks]

6. (a) Explain the defences available in a suit for Specific Performance under the Specific Performance Act, 1963. [15 marks]

6. (b) Describe the incidences where the contract with 'Non-enforcement except with variation' be applied under the Specific Performance Act, 1963. [10 marks]

7. (a) Explain the circumstances where the distinction between Rectification and Recession of a contract be made under the Act. [15 marks]

7. (b) Whether all contracts is specifically enforced? If not, state exceptions. [10 marks]

8. (a) Define the term Injunction. Discuss the types of injunctions available under the Specific Performance Act, 1963 with suitable illustrations. [15 marks]

8. (b) "Justice demands that a person wrongfully disposed of property should recover it." Explain how the Specific Performance Act, 1963 operates for this purpose. [10 marks]

Section C

9. (a) "It is difficult and undersirable to attempt to define the meaning of 'sufficient cause', it must be determined by the circumstances of the particular case." Discuss this statement with reference to the provisions of the Limitation Act, 1963. [15 marks]

9. (b) (i) What is the difference between 'Limitation' and 'Prescription'? [05 marks]

9. (b)(ii) What are the circumstances for extension of limitation for fulfilling suits? [5 marks]

10. (a) Define and distinguish 'Limitation and Laches'. [10 marks]

10. (b) (i) The limitation period for instituting a suit for 'X' expired when he was still a minor. Can X' file the suit when he becomes a major ? Explain. [08 marks]

10. (b)(ii) "Time commences to run, the moment the right to sue accrues." State the exceptions if any with illustration. [07 marks]

11. (a) "The litigant is entitled, as a right to exclude the period spent in an infructuous proceeding in computing period of limitation." Discuss. [10 marks]

11. (b) What is the effect of death, fraud, and mistake, acknowledgement in writing and substitution or addition of new plaintiff or defendants in counting limitation ? Explain. [15 marks]

12. (a) Explain the mode of acquisition of easement under the Limitation Act, 1963. [10 marks]

12. (b) (i) 'A' files a suit for possession of a vacant site on the 'basis of his title. The defence setup is that, the plaintiff has never been in possession of the said site within 12 years of the suit and as such the suit is barred by time. What is required by the plaintiff to prove his possession and if he has filed the suit within 12 years? Discuss with reference to possession under the Limitation Act, 1963. [10 marks]

12. (b)(ii) 'A' files a suit for breach of contract after expiry of the period limitation for such suits. 'A prays for the condonation of delay in plaint. Can the delay be condoned? Discuss. [05 marks]