Odisha Judicial Service (Mains) 2023

Law of Property · optional paper

3 hours · 150 marks

The figures in the right-hand margin indicate marks. Answer six questions, selecting two questions from each Section. All questions carry equal marks.

Section—A

1(a). During the pendency of a property dispute in a court of law, Mr. A purchases property from one of the parties involved in the litigation by knowing the fact that the said land is in dispute and the related case is pending in the court of law. The other party, Mr. B, objects to Mr. A's purchase, arguing that the doctrine of lis pendens prevents any new purchaser from having any rights until the suit is resolved. Mr. A, however, believes that as a new purchaser, he has a legitimate interest in the property and seeks to be impleaded in the ongoing suit to protect his rights. Based on the principles of the doctrine of lis pendens under Section 52 of the Transfer of Property Act, 1882, is Mr. A's request to be impleaded in the ongoing suit legally tenable? Can the doctrine of lis pendens bar him from being added as a party to the suit? Substantiate your answer by quoting the relevant legal principles, provisions and case-laws. [10 marks]

1(b). A mother, fully aware of the implications, transferred a significant portion of her property to her stepson, through a gift deed. This transfer was executed with a complete understanding of its impact on her financial stability and the interests of her other heirs, particularly her biological son. The biological son challenged the validity of the transfer, alleging that the mother was unduly influenced or lacked the capacity to make such a decision, and he is the sole heir of the property as a biological son. Discuss the relevant Sections of the Transfer of Property Act, 1882, and related legal principles that would apply to determine whether the gift deed is valid or voidable. Also explain the validity of mother's 'intelligent' transfer of property to her stepson with full appreciation of its effect over her interests. [10 marks]

1(c). What are the different types of mortgages recognized under the Transfer of Property Act, 1882? Briefly explain the key characteristics of each type. [5 marks]

2(a). Mr. A (landlord) and Mr. B (tenant) entered into a lease agreement which contained clauses concerning the maintenance of the leased property, but the specifics regarding the repair obligations and sub-letting were ambiguous. After the lease commenced, the property began to deteriorate, requiring substantial repairs. Additionally, Mr. B sought to sub-let a portion of the property to a third party to offset his costs. Further Mr. B constructed an unauthorized structure outside the tenanted portion of the property. Under Section 108 of the Transfer of Property Act, 1882, who is responsible for carrying out substantial repairs when the leased property begins to deteriorate, and what are the legal implications if the tenant, Mr. B, decides to sub-let a portion of the property without clear provisions in the lease agreement? If a tenant constructs an unauthorized structure outside the tenanted portion of the property, can the landlord seek eviction under Section 108 of the Transfer of Property Act, 1882, on the grounds of this unauthorized construction? Substantiate your answer by explaining the rights and liabilities of lessor and lessee under Section 108 of the Transfer of Property Act, 1882 and also by quoting the relevant case-laws. [15 marks]

2(b). A transfers a house to B with the condition that he will only gain ownership if he secures 90% in his engineering degree. If B does not secure 90% in his engineering degree, the property will revert back to A. Under Section 21 of the Transfer of Property Act, 1882, discuss the validity of the condition imposed by A and explain whether B's interest in the property is vested or contingent. How would the scenario change if B secures 90% in his engineering degree, but before A takes any action to reclaim the property? Additionally, explain the characteristics of contingent contract and the differences between vested and contingent interest. Which Section of the Indian Succession Act, 1925 lays down the exceptions for contingent contracts and what are those exceptions? Substantiate your answer by explaining the relevant provisions, legal principles and quoting the relevant case-laws. [10 marks]

3(a). A wealthy landowner, X, gifts a piece of land to his nephew, Y, through a registered deed. However, X continues to retain possession of the land, stating that he will hand over possession only after Y fulfils certain familial obligations, such as taking care of X in his old age. After a few years, Y fails to fulfil these obligations, and X revokes the gift, claiming that Y has no right to the property as the conditions were not met. Y challenges this revocation in court, arguing that the gift was complete upon registration, and X cannot impose conditions after the gift has been made. Whether the gift made in the given scenario is valid under the Transfer of Property Act, 1882? Discuss the legal implications of X retaining possession of the property after the gift deed is executed. Additionally, examine whether X can legally revoke the gift based on Y's failure to fulfil the familial obligations. Substantiate your analysis by explaining the essential conditions for a valid gift under the Transfer of Property Act, and how they apply to this scenario, and also quote the relevant case-laws. [10 marks]

3(b). A, a landowner, mistakenly believes he owns a piece of land and transfers it to B through a sale. At the time of the transfer, A does not possess any legal title to the land. However, two years later, A acquires the legal title to the land. Can B claim ownership of the land based on the original sale deed? Explain the Doctrine of Feeding the Grant by the Estoppel by referring to the relevant provisions of the Transfer of Property Act, and substantiate your answer by citing pertinent case laws. [8 marks]

3(c). A, a debtor, owns a piece of land worth ₹50 lakhs. A, who owes a substantial amount of money to multiple creditors, enters into a sale agreement to transfer this land to his friend B for ₹10 lakhs, a price significantly below market value. The transfer is completed, and B takes possession of the property. The creditors, upon learning of this transaction, claim that the transfer was made to defraud them and seek to have it set aside under Section 53 of the Transfer of Property Act, 1882. Whether the arguments of the creditors is valid under Section 53 of the Transfer of Property Act, 1882? Substantiate your answer by explaining the essential ingredients of Section 53, and by quoting the relevant case laws. [7 marks]

4(a). A property jointly owned by two brothers, A and B, is the subject of a legal dispute. Brother A decides to sell his undivided share of the property to an outsider, X, without consulting Brother B. After the sale, X demands partition of the property to claim his share. Brother B objects to the sale and the partition, arguing that the sale to X is invalid as he was not given the first right to purchase A's share. X, on the other hand, insists that he has a legal right to demand partition as per the Transfer of Property Act, 1882. Under Section 44 of the Transfer of Property Act, 1882, what legal implications will be there upon A's sale of his undivided share to X? What rights does X have as the transferee of an undivided share in the joint property? Whether B's objections to the sale and the partition are valid?

What remedies are available to B to protect his interests in the property? Substantiate your answer by quoting the relevant legal provisions and case laws. [10 marks]

4(b). A, the owner of a piece of land, decides to sell his property to B. However, the sale is not genuine and is merely an ostensible sale intended to secure a loan that A owes to B. The sale deed is executed, and the property is transferred to B's name in public records. A continues to occupy the property, and both parties agree privately that A can reclaim the property upon repaying the loan. Later, B sold the property to C, who has no knowledge of the agreement between A and B. A, upon learning about the sale, demands the property back from C, claiming that the initial sale to B was only an ostensible sale and not intended to transfer actual ownership. Analyze the scenario in the light of the relevant provisions under the Transfer of Property Act, 1882, by citing the relevant case laws. [10 marks]

4(c). The foundation of 'Doctrine of Election' is that no one can approbate or reprobate at the same time. Explain. [5 marks]

Section—B

5(a). A, proceeding to settle in a foreign country, leaves his car in charge of B, as his agent during his absence. B, without A's authority, pledges the car to C, and C knowing that B had no right to pledge the car, advertises it for sale. Whether C may be compelled to deliver the furniture to A? Whether C is holding the car as A's trustee? Explain by quoting the relevant provisions of the Specific Relief Act, 1963, by citing the relevant case laws. [10 marks]

5(b). K, entered into an agreement with P for the purchase of a piece of land. The agreement specified that the sale was to be completed within a stipulated time frame, subject to K fulfilling certain obligations, including making the full payment. However, K failed to make the payment within the agreed time, leading P to cancel the agreement and refuse to transfer the property. K filed a suit for specific performance, claiming that he was ready and willing to perform his part of the contract and that the delay in payment was due to unforeseen circumstances. Explain, how K's failure to make the payment within the stipulated time affect his claim for specific performance. What defenses might P raise against K's claim for specific performance? Substantiate your answer by quoting the relevant legal provisions, principles and case-laws. [15 marks]

6(a). A contracts to sell land to B for ₹50,000. B takes possession of the land. Afterwards, A sells it to C for ₹60,000. C makes no enquiry of B relating to his interest in the land. Whether B's possession is sufficient to affect C with notice of his interest, and whether he may enforce specific performance of the contract against C? Explain by quoting the relevant legal provisions and case-laws. [10 marks]

6(b). A, the owner of a patent, assigned the same to B through a contract. After the contract was executed, A failed to perform his obligations under the contract by not completing the assignment of the patent to B. A filed a suit against B for specific performance of the contract. Before the court could hear the suit, the patent in question expired. Can A still seek specific performance of the contract under the Specific Relief Act, 1963? Can the court grant compensation for the non-performance of the contract, and can court, if necessary, amend the plaint for that purpose? Discuss by referring to the relevant legal provisions and case-laws. [15 marks]

7(a). A, a tenant, has been in peaceful possession of a commercial property owned by B for several years. B now claims ownership and attempts to evict A by force, alleging that the tenancy agreement has expired. A filed a suit under the Specific Relief Act, seeking to protect his possession of the

property and prevent B from forcibly evicting him without due process. B contended that since he is the rightful owner, he has the right to evict A at will. Whether suit filed by A is maintainable? How does the principle of juris et de jure influence the court's decision in this case? Whether B's arguments are valid? Explain by citing the relevant legal provisions and case the laws. [10 marks]

7(b). X, the owner of a piece of land, discovers that Y, his neighbour, has erected a fence that encroaches upon a portion of his land. Despite repeated requests, Y refuses to remove the fence, claiming that the disputed portion of the land belongs to him. X filed a suit seeking a declaration of his title over the disputed land and permanent injunction to prevent Y from continuing the encroachment and to compel him to remove the fence. What are the requirements needed to be fulfilled by X under the Specific Relief Act, 1963, for successfully seeking a declaration of his title? Whether X fulfils the conditions required under the Specific Relief Act, 1963, to get the relief of permanent injunction in his favour to restrain Y from further encroachment and to mandate the removal of the fence? Discuss by referring the relevant legal principles and case-laws. [15 marks]

8(a). A, inherited an estate from his father. A discovered that B, his cousin, has been claiming ownership of a piece of land from the estate based on a forged will. A asserts that the will is invalid and he is the rightful owner of the land. B, however, continued to assert ownership, creating a cloud over A's legal title to the property. A filed for the declaratory decree in the court. Explain what conditions A is required to fulfil for seeking a declaratory decree under the Specific Relief Act, 1963. Substantiate your arguments by quoting the relevant legal provisions and case-laws. [10 marks]

8(b). X, a senior citizen, transferred his residential property to his nephew Y through a gift deed. Later X realized that Y misled him into signing the gift deed by falsely claiming that the property would remain in X's name for life. X now seeks to cancel the gift deed, claiming fraud and undue influence. X filed for the cancellation of the gift deed in the court. Explain the grounds X has to raise to seek the cancellation of the gift deed under the Specific Relief Act, 1963. Substantiate your arguments by quoting the relevant legal provisions and case-laws. [5 marks]

8(c). X, a contractor, entered into a contract with Y, a property developer, to construct a residential building within 12 months. Despite repeated reminders from Y, X failed to complete the work within the stipulated time. Y, frustrated by X's delay, decided to hire another contractor Z to complete the remaining work and recover the additional expenses from X. Whether Y can substitute the performance of the contract under the Specific Relief Act, 1963? If the answer is 'Yes', what conditions must Y fulfil before opting for substituted performance of the contract? If answer is 'No', state the reasons. Substantiate your answer by quoting the relevant legal provisions and case-laws. [10 marks]

Section—C

9(a). A, a private contractor, filed an appeal in court against a Government order that cancelled his construction contract. Due to unforeseen personal circumstances, A filed the appeal ten days after the limitation period expired. He pleaded before the court for the condonation of delay under Section 5 of the Limitation Act, 1963, which allows courts to extend the limitation period if sufficient cause is shown. Meanwhile, the Government also filed an appeal related to another similar contract issue twenty-five days after the limitation period. In this case, Government argued that it is entitled to special consideration because of its distinct nature and administrative complexities, and that it should receive different treatments from private individuals like A in the application of Section 5 of the

Limitation Act, 1963. Whether Government is valid in it's argument, claiming differential treatment? Explain by describing the relevant legal provisions and case-laws. [10 marks]

9(b). X sought for cancellation of the sale deed dated 10.11.2016 and on the basis of the said sale deed, Y filed a mutation case. In that mutation proceedings, X appeared and filed objection. The objection was rejected and the mutation proceedings were allowed in favour of Y by order dated 11.02.2018. X filed a suit on 14.05.2024 seeking the relief of cancellation of the sale deed. Explain whether X can seek relief in the given scenario under the Limitation Act, 1963. Substantiate your answer by quoting relevant legal provisions and case-laws. [5 marks]

9(c). A, the rightful owner of a piece of land, was dispossessed of the property by B on 1st January, 1950. B continued in possession of the land thereafter. On 1st February, 1964, A filed a suit to recover possession of the property from B. Whether A's suit for recovery of possession is within the limitation period under the Limitation Act, 1963? Substantiate your answer by analyzing the time limits prescribed under the different provisions of the Limitation Act, 1963, and relevant legal principles by quoting the case-laws. [10 marks]

10(a). A, purchased a piece of land from B in 2000. However, due to some personal issues, A did not take possession of the land immediately. In 2022, when A attempted to take possession, B refused, claiming that the statute of limitations had expired. A wants to file a suit for possession of the land. Can A still assert his right to the property, even though the time limit for filing the suit has passed? Explain with reference to the principle that the Limitation Act, 1963, does not extinguish a right but only bars the remedy. Substantiate your answer by quoting the relevant legal principles and case-laws. [13 marks]

10(b). A Hindu man passed away, leaving behind his widow (D2), two sons (one of whom was a minor), and four daughters. The property left by the deceased was ancestral in nature and governed by Mitakshara law. On 20.01.1992 and 28.11.1998, D2 executed a sale deed for the same ancestral property in favour of purchaser (D1). In 1998, the sons and daughters filed a suit to set aside the sale deed and recover possession of the property, claiming the sale was invalid. D2 and D1 were made defendants in the case. The defendants argued that the suit was barred by limitation. The question before the court was, whether the suit was barred by limitation, being hit by Article 60 or Article 109 of the Limitation Act, 1963? And also explain the reckoning date of limitation? Substantiate your answer by describing the relevant legal provisions, principles and case-laws. [12 marks]

11(a). In 1965, X obtained a decree from the court, declaring title and possession over a property. The decree also ordered Y to remove a wooden hut from the property, which was built by him. X, the decree-holder, filed an execution petition in 1977. Upon the death of X in 1985, his legal heirs were impleaded as additional decree holders. The execution petition was dismissed in 08.07.1996. In between, the said suit property was mortgaged in the bank and bank charged towards the satisfaction of the debt sought to be recovered and the family of X suffered another decree passed with regard to the said suit property in 1982. Z purchased the said property in auction. Family of X filed a second execution in 11.09.2001 and impleaded Z therein. Z filed an objection in regard to the maintainability of the said execution petition, contending that the same was barred by limitation. The question raised is whether the time spent by the appellants in prosecuting their appeals in wrong forums should be excluded for the purpose of limitation under Section 14 of the Limitation Act, 1963? If the period of limitation has already expired, can A seek an extension for filing the suit in the proper court under

Section 5 of the Limitation Act, 1963? Substantiate your answer by quoting relevant legal provisions, principles and case-laws. [15 marks]

11(b). X owns a house in which Y, a tenant and a military officer, is residing. When X became entitled to file the suit for recovery of possession of the immovable property, Y was serving in the military, which prevented X from initiating the legal proceedings. After Y's military service ended, X filed the suit, but it was beyond the usual limitation period for recovery of possession. Analyze whether X's suit would be barred by the limitation period. Can X seek any relief under Section 15 of the Limitation Act, 1963? Discuss the provisions of Section 15 of the Limitation Act, 1963, and interpret the given facts in the light of the relevant legal principles and case-laws. [10 marks]

12(a). X owed a sum of ₹1,00,000 to Y on a promissory note. Before the expiry of limitation period prescribed under the Limitation Act, 1963, X paid ₹40,000 to Y towards the promissory note. What is the effect of this payment on the limitation period? Answer referring to relevant legal provisions and case-laws. [8 marks]

12(b). S claims a private right of way over a pathway that runs through Mr. Verma's land, which X blocked by constructing a wall in 2015. Despite the obstruction, S continued using alternative routes to access his property and did not file a suit immediately. In 2023, S finally filed a suit claiming a right of way and seeking removal of the obstruction. S argued that the suit is barred by limitation, as it was filed more than three years after the wall was constructed. Analyze whether S's suit is time-barred under the Limitation Act, 1963. Answer by quoting the relevant legal provisions, principles and case-laws. [7 marks]

12(c). A, a legally disabled person, was involved in a contract dispute with B. Due to her disability, she was unable to manage her legal affairs effectively and did not file a suit for breach of contract within the standard limitation period. The breach occurred on July 1, 2015, and the limitation period under the Limitation Act, 1963, for filing the suit is three years. A, with the help of the legal guardian, filed the suit on August 1, 2023. Considering the provisions of the Limitation Act, 1963, and the relevant case law, analyze whether A's suit is within the limitation period. What are the implications of her legal disability on the limitation period? Discuss how the principle of 'legal disability' applies to extend the limitation period and whether her suit is time-barred. [10 marks]