Punjab Civil Judge (Mains) 2013

CIVIL LAW I · compulsory paper

Three hours · 200 marks · Owner's question transcript

Question 1

(a) A and B entered into a contract under which A was to sell certain shares to B to be delivered on or before 30th December 2012. The shares were offered to B on the said day but he refused to take delivery or pay for them. the difference between the market price and the contract price of the shares as on 30.12.2012 was Rs. 1,50,000/-. Subsequently, between March 2013 to June 2013. A sold the shares in the market and recovered around Rs. 70,000/-. A instituted a suit against B on 01.07.2013 for a compensation of Rs. 1,50,000/-. B contends that A is entitled to claim only Rs. 80,000/- i.e. the actual loss suffered by A after adjusting the price realized by sale of shares. Decide the amount of compensation due from B to A. [10 marks]

(b) The rule regarding a person's responsibility to mitigate his damages is not an absolute rule, Explaining the principle, respond to the above statement. [10 marks]

(c) Enumerate the grounds on which an appeal can be filed in the High Court against a decree passed in appeal by a District Court. Whether such an appeal can be preferred against appellate decree passed ex parte? Also state the kind of case(s) where appeal does not lie to the High Court. [10 marks]

(d) Discussing the applicable decisions of the Supreme Court of India, determine if the Court's power under Section 73 of the Indian Evidence Act to require a person to furnish specimen of his handwriting is violative of Article 20 (3) of the Constitution of India? [10 marks]

Question 2

(a) A is constructing a house in a residential colony. For that purpose, all the raw material like cement, sand, bricks etc. has been kept by him adjacent to the main road of the colony. This pile of raw material creates lot of problems for the residents of the colony especially in the morning when a number of them take out their cars for going to office. B and C, irritated by this, approach the court by filing a suit for injunction against A. The court refuses to entertain the suit. State what remedies are available with B and C under the circumstances. [10 marks]

(b) B is contesting an appeal in the Supreme Court against A to claim the property of C. the appeal was filed by A against B on 01.02.2009. During the hearing in June 2011, to support his claim B seeks to prove a 'will' executed by C in the year 1980. B does not have in his possession the original 'will' and only has a copy of it. the copy, however, is not a certified one. B also has not been able to produce any witness who could testify to the execution of the original 'will'. The judgments of the lower courts also do not make any mention of such a 'will'. B seeks to invoke Section 90 of the Indian Evidence Act and urges the court to presume that the signature in the 'will' is that of C. Determine with reasons if the court is entitled to presume accordingly. [10 marks]

(c) X institutes a suit against Y in the court of Civil Judge (Junior Division) in the district of Amritsar in Punjab. The same suit could also be instituted in U.T. Chandigarh and also in Shimla District of Himachal Pradesh. Y wants to institute an application for transfer of the said suit to Shimla. Decide as to the proper court in which Y may apply for the transfer of the said suit. [10 marks]

(d) A is a govt. servant who resides in X city but is employed at Y town. A files a suit against government for arrears of salary in the court at X after giving due notice to the respective authorities under Section 80 CPC. Decide if such a suit can be filed at X city? [10 marks]

Question 3

(a) With reference to the relevant case law state whether more than one preliminary decree can be passed in a single suit. Also discuss if a preliminary decree can be modified or amended when no appeal has been preferred against such decree. If yes under what circumstances? [15 marks]

(b) The term "carries on business" for the purpose of Section 20 CPC means that the person must be physically conducting business at a certain place. Comment on the above statement in the light of judicial policy adopted in this respect. [10 marks]

(c) Write a critical note on the manner in which and the provisions under which a decree of specific performance may be enforced. [10 marks]

(d) X, an upcoming author, contracts with a publishing house owned by Y to write a trilogy of books on the theme of Indian mythology. The first two books published of the series are very popular but differences arise between X and Y in relation to the plot of the third book. X refuses to write the third book. The first two books had garnered a business of close to Rs. 1 crore and Y was expecting a business of Rs. 50 lakhs from the third book. Y sues for specific performance. Decide if the contract can be specifically enforced. [5 marks]

Question 4

(a) While going to his office, M walks into a shop to purchase a mobile for himself. having selected a mobile, he negotiates on the price of the mobile and reaches an understanding with the shopkeeper for a price of Rs. 40,000/-. The shopkeeper informs M that the mobile would require some fine-tuning including the configuration of the operating system and installation of basic softwares. He tells M that it would take around three hours for doing the same. Both of them agree that M would make the payment and take the delivery of the mobile same day while returning from office. The mobile is duly worked upon and is made ready for delivery after about 3.5 hours. The shopkeeper, however, does not inform M that the mobile is ready but decides to wait for him to come in the evening. In the meantime, one of the shop attendants sells the very same mobile to N by mistake. N saw the mobile on the shelf only and apparently buys it without any knowledge of the earlier transaction by M. Decide M's and N's claim on the goods. [15 marks]

(b) "Specific performance of a contract of service cannot be enforced against an employer and the employer cannot be forced by compulsion of law to retain or reinstate the employee in service." Respond to the above statement in the light of Section 14 of the Specific Relief Act. Can there be any exception to this rule? If so explain with reference to the relevant provisions and case law. [10 marks]

(c) A and B enter into a partnership agreement for running a restaurant. It is provided in one of the clauses of the agreement that in case of death of a partner, the partnership firm shall not stand dissolve and that the legal heir of the deceased shall become the partner. B dies on 04.05.2012. Upon the death of B, A continues to run the partnership firm with B's son C. When filing the returns for the year 2012-2013, A contends the continuance of the partnership firm but the income tax department insists that the firms stood dissolved on 04.05.2012 and it cannot be said that partnership firm has continued business subsequent to it. decide the case. [10 marks]

(d) A and B entered into an agreement for lease of a non-residential house on 01.01.2012 for a period of 11 months. The agreement contained a clause which provided that the agreement could be renewed after the period of tenancy with an increase of rent of Rs. 2000/-. In addition to that A would be required to pay good faith premium of Rs. 5000/- on account of B agreeing to renew the agreement. Till 02.02.2013, A did not make the payment. B demands the payment from A with interest from 01.01.2012. Decide the case. [5 marks]

Question 5

(a) A is the father of B. A is big industrialist who has a very successful business of mining. B has never been very bright since childhood and showed no great sign of business acumen. Over a period of time differences grew between A and B which led to B leaving the house of his father and settling independently. B married C which A did not approve of as C belonged to a poor family. Years passed and B was never able to secure financial stability. When his wife fell severely ill, he swallowed his ego and approached A for financial help. A taking pity on his son decided to transfer the ownership of a hotel of his to B. The hotel is gifted to B on the condition that if B is not able to run the hotel properly or encounters insolvency, he will not be entitled to the ownership of hotel anymore and the same will go back to A. B miserably failed in running the hotel and his debts kept on increasing. Within a year, he applied for bankruptcy. Upon this A has approached the court for getting the ownership of the hotel back from B under Section 31 and 32 of the Transfer of Property Act. B's creditors are objecting to the same as it would impair their remedies to recover their debt. Decide the case. [15 marks]

(b) A owns land X which spreads over 100 acres. B wants to purchase the airspace over the said land for a sum of Rs. 50 lakhs. B contends that the airspace over the land X is within the definition of immovable property and thus there should be no problem in the transaction. Assess the contention of B and the legality of the transaction. [10 marks]

(c) If a document is registered as per the provisions of the Registration Act, 1908 on which the requisite registration fee is not paid in full, can the deficit fee be recovered from a person liable to pay the same? If yes, by which Authority? Is there any time limit to recover such fee? Also describe the mode of recovery as envisaged under the Registration Act? [10 marks]

(d) M and N entered into an agreement for the tenancy of the house of M. The fair rent as fixed earlier in relation to the house by the Rent Controller was Rs. 20,450/-. The tenant in relation to which the fair rent was fixed was O. Under the agreement between M and N, M stipulated that he dis to be paid 6 months' rent in advance. N agreed to the same and undertook to pay the same within one week of taking possession of the house but after taking possession of the house, N contended that M is not entitled to claim more than three months' advance rent. Decide the dispute. [5 marks]