Punjab Civil Judge (Mains) 2013

CIVIL LAW II · compulsory paper

Three hours · 200 marks · Owner's question transcript

Question 1

(a) Study the facts described below and answer the given questions:-

i) Riddhi and Rajesh married each other on 05.02.2006. On the very first day of their married life, Riddhi told Rajesh that she married him under compulsion and that she had an affair with another person. She also informed Rajesh that she would not be able to perform her matrimonial obligations. The next morning, Rajesh left Riddhi at her parents' place and told her that he absolved her of all marital obligations. Few months later, Riddhi came back to Rajesh and apologized. She also said that she was willing to continue with the marital bond. They stayed together for a year during which Riddhi conceived a child also. In April 2008, Rajesh had a fight with his wife and in a fit of temper, he told Riddhi that the child did not belong to him. Riddhi took offence to this statement and told her husband to take back his words. This angered Rajesh even more and he turned Riddhi along with the child out of the house. Riddhi started staying with her parents anticipating that Rajesh would apologize at some point of time and call her back. In March 2012, Rajesh sued Riddhi for divorce on the ground of desertion.

Against this backdrop, explain the ingredients of 'desertion' in the context of Hindu Marriage Act, 1955 and decide whether divorce can be granted to Rajesh or not Cite reasons for your answer referring to relevant cases wherever required. [15 marks]

(b) Shalini and Shrot married each other in 2003. Since the beginning, the couple had been staying apart from each other as Shalini was working at Jamshedpur and Shrot at Kolkata. Over the last two years, the couple has had serious fights leading to gradual embitterment of the relationship. in January 2009, Shrot asked Shalini to give up her job in the MNC and join him at Kolkata. Shalini declined on the ground that she wanted to preserve her career which was highly prospective. She then asked Shrot to shift to Jamshedpur as he had several career options in the city and according to her the options were much more lucrative than his current job in Kolkata. When Shalini made the offer to Shrot, she was earning a couple of thousands more than her husband and so, Shrot was hurt by her words. Few days later, Shrot sued Shalini for restitution of conjugal rights. Decide whether a decree can be granted in his favour or not by referring to the Hindu Marriage Act, 1955 and citing relevant case law to substantiate your answer. [15 marks]

(c) Write short notes on any two of the following:-

i) Status of Child Marriage under the Hindu Marriage Act, 1955.

ii) Faulty theory of divorce

iii) 'Suppressio veri' [10 marks]

Question 2

(a) Under the Hindu Adoptions and Maintenance Act, 1956, multiple adoption of children of the same gender has not been permitted. In this connection, discuss the judgments passed by the courts on this issue and analyse the rationale behind the existing principle. Also discuss progressive judicial pronouncements whereby it has been accepted that there is nothing wrong in the principle of multiple adoption of children of the same gender. [15 marks]

(b) In the case of Laxmikant Pandey Vs. Union of India AIR 1986 SC 272, the Supreme Court laid down normative and procedural safeguards for regulating inter-country adoptions. State and assess the guidelines issued by the Supreme Court in this connection. [15 marks]

(c) X and Y had entered into a contract wherein X was to provide some raw materials for the new factory being set up by Y. Y made the due payments in advance and the rest of the payment was to be made on the date of delivery i.e. 14.07.2008. On 10.07.2008, Y suffered a massive heart attack and was paralysed. Taking advantage of his condition, X did not supply him the raw materials and instead sold it to another client. As Y was suffering from severe health problems, he remained almost immobile for a period of two years. He was not in a position to look after his business and could not pay any attention to the same. After getting better around October 2010, Y was declared medically fit by the doctors on 02.11.2010. He was told that he could get back to work but was advised to take it slowly. On 15.12.2011, he filed a suit against X for breach of contract and damages. Decide if the suit is barred by limitation. [10 marks]

Question 3

(a) Differentiate between a Hindu undivided Family and a Hindu Joint Family and explain the primary features of a Mitakshara coparcenary. Also explain the rules in Hindu law for converting separate property into coparcenary property. [15 marks]

(b) Apply the Hindu Succession Act, 1956 as amended from time to time and calculate the shares of each of the heirs in the following situations:

i) X, a Hindu male died intestate in 2000. He is survived by his widow 'W1' whom he had married in 1980 and a son 'S' from her. X had a second wife 'W2' whom he had married in 1993 and a daughter 'D' was born of her. calculate the shares of each of the surviving members. [7 marks]

ii) Z, a Hindu male dies intestate and is survived by his mother, widow, two daughters, the widow of a pre-deceased son and two sons of a pre-deceased daughter. Calculate the shares of each of the surviving members. [8 marks]

iii) A, a female Hindu had inherited property from her brother. Her husband had died during her lifetime. She died intestate and issueless. Y, a heir of her husband and Z a heir of her of her brother from whom she had inherited the property, stake rival claims over the property. Who will succeed? [10 marks]

Question 4

(a) Study the following circumstances and determine the validity of the gift under the Mohammedan Law. Substantiate your answers with reasons:-

i) A Muslim male makes a gift of his house to his son with a condition that one- third of the income derived from the house has to be given to one Mr. X during his lifetime. Is the condition and the gift valid?

ii) A makes a gift to B and delivers its possession to B. He then changes his mind and decides to revoke the gift. Is the revocation valid?

iii) Y makes a gift of his property to Z. After Y's death, his heirs revoke the gift and disentitle Z from the use of Y's property. Is the revocation valid? [15 marks]

(b) In relation to the Islamic rules of inheritance, write short notes on the following:-

i) Doctrine of Representation in Islamic law.

ii) Primary and subsidiary classes of heirs in Hanafi law of inheritance [10 marks]

(c) What are the existing legal provisions in India to ensure that Muslim women receive maintenance after divorce? Can a divorced Muslim woman claim protection under section 125 Cr. P.C? Further, can maintenance of a Muslim woman be regulated by mutual agreement between husband and wife? Substantiate your answer with reasons and case law. [15 marks]

Question 5

(a) X and Y enter into a lease agreement of a button manufacturing factory for a period of five years. They are both residents of Kolkata. They drafted the document in Bengali and presented it for registration. The registering officer, 'A' is from Andhra Pradesh who understands only Telugu and English. 'A' refuses to register the agreement on the ground that it is in a language which he does not understand. X and Y conterid that he (A) cannot have any objection in registering the agreement.
Decide whether the refusal by 'A' is valid or not. [5 marks]

(b) X prepared a will on 02.03.2010 by which he bequeathed all his property to Y, his mistress. The property included his self-acquired property and his ancestral property. he registered the will on 04.02.2012. Upon his death, his relative A got to know about the will and challenged its validity on two grounds:-
i) The will if it is to be registered must be registered within four months from the date of its execution which has not been done in this case.
ii) The will cannot be registered as X did not have the authority to bequeath his ancestral property.
determine the validity of the contentions raised by A. [7 marks]

(c) Whether it is a private person or entity or the State which is seeking condonation of delay under section 5 of the Limitation Act creates a substantial difference in the approach of the court towards the application. When the State has applied for condonation, the court has to apply its mind differently. Respond to the above statement in the light of settled judicial policy. [10 marks]

(d) 'A' files a suit for possession of land against 'B' which is decided in his favour vide judgment dated 21.09.1969. However, the decree sheet in terms of the judgment was prepared only on 01.04.1981. Thereafter, 'A' filed an execution application on 11.06.1984. Referring to the relevant provisions, decide whether the execution application is barred by time or not. [8 marks]

(e) Write critical notes on all of the following:-
i) Notional partition
ii) The element of antiquity in custom [10 marks]