Punjab Civil Judge (Mains) 2022 recruitment · Civil Law I — Solution

2 June 2023 · Three hours · 200 marks · Model answers to the reproduced question paper.

Question 1

1(a). Mr. A owns a piece of land in a residential area. Mr. B, a neighbour, is planning to construct a commercial building on his property, which violates the local zoning regulations. Mr. A is concerned that the construction will negatively impact the value of his property and the peaceful residential character. Mr. A files a suit seeking injunction to halt the construction. What would be the essential principles that need to be satisfied in the above fact situation for the Court to grant temporary injunction? Discuss. [10 marks]

A must show a prima facie case, irreparable injury and that the balance of convenience favours stopping the work.

- Order XXXIX rules 1 and 2 CPC allow interim protection of disputed property and restraint of threatened injury. A should identify the applicable zoning rule, the proposed breach and how it threatens his own legally protected interests.
- Irreparable injury means an injury that damages or some other final remedy would inadequately repair. A claim of lower market value alone may be measurable in money. An imminent, substantial and enduring interference with residential use may be different.
- Balance of convenience compares the harm of refusing the order with the harm of granting it. The court can consider how far work has progressed, the cost of delay and whether allowing construction to continue would make final relief ineffective.

If the evidence supports all three findings, an order preserving the site until a hearing or further order is appropriate. Normally B receives notice under rule 3.

1(b). Write short notes on the following: (i) Misjoinder of parties (ii) Summary suit (iii) Precept (iv) Garnishee..... [10 marks]

- **Misjoinder.** The conditions for joining plaintiffs and defendants appear in Order I rules 1 and 3. Under rule 9 a suit ordinarily survives misjoinder or non-joinder, subject to the exception for a missing necessary party. Under rule 10 the court may remove an improperly joined party or add a party needed to resolve the dispute.
- **Summary suit.** Order XXXVII creates an expedited procedure for the specified instruments and liquidated money claims, including qualifying written contracts. The defendant must enter appearance in time and obtain leave to defend. A substantial defence warrants leave, and a doubtful defence can justify suitable terms.
- **Precept.** Under section 46 CPC the court that passed the decree may direct another competent court to attach identified property of the judgment-debtor. Attachment ordinarily lasts up to two months unless extended or the statutory steps for transfer and sale intervene.
- **Garnishee.** Under Order XXI rules 46 and 46A–46C, a debt owed to the judgment-debtor may be attached. The court can direct the person owing it to pay into court or show cause. If liability is disputed, the court may try the issue.

1(c). Discuss the difference between "Res judicata" and "Constructive Res judicata" in terms of their applicability and effect on litigation Explain the circumstances under which a matter can be considered "Res sub judice". **[10 marks]**

Section 11 CPC gives finality to decided issues, including grounds treated as decided under Explanation IV. Section 10 controls the trial of overlapping pending suits.

Rule	Operation
Res judicata	A matter directly and substantially in issue has already been heard and finally decided by a competent court between the same parties or their privies litigating under the same title.
Constructive res judicata	A ground of attack or defence that might and ought to have been raised in the earlier suit is treated as directly and substantially in issue, even though omitted.
Res sub judice	The directly and substantially disputed matter is also in a previously instituted, pending suit between the same parties or their privies in the same title, before a court of the kind specified in section 10 with jurisdiction to grant the relief.

For section 10, incidental overlap is insufficient. The second court stays the trial, while the institution of the suit and appropriate interlocutory proceedings remain possible. The mere pendency of a suit in a foreign court does not trigger the bar.

1(d). What is 'Set-off' and 'Counter claim'? Explain the difference **[10 marks]**

Set-off credits a cross-demand against the plaintiff's money claim. A counterclaim seeks independent relief against the plaintiff in the same proceedings.

Point	Legal set-off	Counterclaim
Provision	Order VIII rule 6 CPC	Order VIII rules 6A–6G CPC
Demand	An ascertained sum legally recoverable in a suit for money. Both parties must fill the same character as in the suit.	May concern damages or other relief based on a cause of action accruing before delivery of the defence or expiry of the time for delivering it.
Effect	The court can account for both money demands and enter judgment for the balance.	Operates as a cross-suit. The plaintiff can answer it and the court can decide it even if the principal suit is stayed, discontinued or dismissed.

Both must remain within the court's pecuniary jurisdiction. The plaintiff may ask to exclude a counterclaim that should be decided independently. Equitable set-off is distinct from rule 6 and may arise out of closely connected cross-demands.

Question 2

2(a). The law provides for a preliminary and a final decree. Explain the object behind these two kinds of decrees. **[10 marks]**

A preliminary decree settles rights that require further proceedings to implement. A final decree completes the adjudication by carrying those rights into effect.

- Under section 2(2) CPC, a decree formally expresses an adjudication that conclusively determines rights as to all or any matters in controversy in the suit. A preliminary decree is conclusive as to matters it decides, although further steps remain.
- For partition under Order XX rule 18, the court may first declare the parties' shares. In an appropriate case it can then divide the property and allot specific portions through a final decree. In mortgage suits, Order XXXIV similarly enables adjudication followed by the order that implements it when the relevant conditions arise.
- Section 97 prevents a party who fails to appeal an appealable preliminary decree from disputing its correctness on appeal from the final decree.

The two stages let the court decide entitlement before spending time on valuation, accounts or division. A decree may be partly preliminary and partly final if it completes one part of the dispute while further inquiry is needed on another.

2(b). In a dispute between two parties, the parties are encouraged to settle their dispute outside the court. Elaborate on the alternative mechanisms through which the parties may settle their dispute as per the Code of Civil Procedure, 1908. **[10 marks]**

Section 89 CPC and Order X rules 1A–1C provide for arbitration, conciliation, judicial settlement including Lok Adalat, and mediation.

- **Arbitration.** A neutral arbitrator adjudicates the dispute. Reference requires an arbitration agreement or consent. The award has the effect provided under the Arbitration and Conciliation Act, 1996.
- **Conciliation.** A conciliator helps the parties seek agreed terms under the 1996 Act. The process depends on consent.
- **Judicial settlement and Lok Adalat.** The court may refer a suitable dispute to a proper institution or person. A Lok Adalat works towards compromise and its award on settlement has the statutory effect of a decree.
- **Mediation.** A neutral mediator helps parties negotiate. The terms are the parties' own. An unresolved dispute returns to court for adjudication.

The court screens the suit for settlement potential after clarifying the dispute. If a reference fails or is unsuitable, rule 1C enables the matter to resume before court. If the parties agree to lawful terms, the court can record the settlement as the applicable procedure permits.

2(c). Discuss the right to recover immediate possession of residential building or scheduled building and/or non-residential building in relation to the Non-resident Indians under the East Punjab Rent Restriction Act, 1949. **[10 marks]**

The paper asks about the former 1949 Act. For a Punjab proceeding in 2023, the repeal and savings provisions determine whether that former route remains available.

- The 1995 Act commenced on 30 November 2013. Section 75(1) repeals the 1949 Act while preserving accrued rights and related proceedings or remedies. Check whether the claim concerns an accrued right preserved by that subsection.
- Section 75(2) continues the former Act for cases concerning earlier lettings of premises covered by that subsection. It excludes premises owned by a non-resident Indian from that general continuation.
- Section 24(3) of the 1995 Act gives an owner who is an NRI and returns for permanent residence a route to the Rent Authority for immediate possession of residential or non-residential premises let out on or before commencement. The owner must require the premises for their own use or that of a person ordinarily living with and dependent on them. The explanation defines the necessary Indian origin and circumstances of settlement outside India.

Identify the time of letting, the owner's status, the date the right accrued and the need for occupation before choosing the applicable remedy.

2(d). "A Force Majeure clause in a contract may relieve the parties from the uncertainties regarding the consequences of an event on which they have no control. Also, if an alternative mode of performance is provided in the contract, then the party has to switch to this mode instead of calling for the application of a force majeure clause." Discuss. **[10 marks]**

A force majeure clause allocates a specified risk by agreement. Relief depends on the clause, the impact of the event on performance and the contractual alternatives still available.

- Where the contract itself provides the result of a contingency, section 32 of the Contract Act governs its agreed effect. The party relying on it should establish that the event falls within the clause, caused the stated impediment and that any notice or other contractual condition was met.
- If the parties provided an alternative route that remains practicable, the rise in cost or inconvenience of using that route does not by itself excuse performance. The clause may suspend only affected obligations, extend time or permit termination, depending on its text.
- For an intervening event outside the agreed allocation, section 56 addresses a supervening change that makes the promised act impossible or unlawful. Mere difficulty or reduced profit is generally inadequate.

> **Energy Watchdog v CERC** distinguished contractual force majeure under section 32 from frustration under section 56 and treated the possibility of performance through alternative means as significant.

Determine what the contract requires the party to do before granting any excuse.

Question 3

3(a). What is meant by Novation of Contract? How is it different from 'Accord and Satisfaction' under the Indian Contract Act, 1872? Explain. [10 marks]

Novation discharges the original contract by substituting a valid agreement. Accord and satisfaction discharges the original claim through a settlement that is given effect.

Point	Novation	Accord and satisfaction
Provision	Section 62 of the Contract Act	Section 63 of the Contract Act, particularly acceptance of another satisfaction
Mechanism	All necessary parties assent to a new obligation replacing the former one. It may involve a substituted debtor or creditor.	The parties agree to settle the obligation and the promisee accepts the agreed substitute in satisfaction. A compromise may itself be accepted as satisfaction, depending on its terms.
Illustration	A, B and C agree that C will owe B in place of A. The earlier duty of A is discharged.	B accepts a lesser sum in full settlement of A's debt. The discharge follows even though B accepted less than the amount due.

The intention to discharge matters in both. A discussion of revised commercial terms does not by itself establish substitution or completed settlement.

3(b). "Risk prima facie passes with the property." Explain this statement in the light of the Sale of Goods Act, 1930. [10 marks]

Section 26 ordinarily puts the accidental risk on whoever owns the goods, even when physical delivery occurs at a different time.

- Until ownership passes, the goods are at the seller's risk. Once ownership passes, the buyer ordinarily bears it. Sections 18 and 19 distinguish ascertainment and the parties' intention as to transfer. Sections 20–24 provide rules for finding that intention.
- The parties can agree to a different allocation, such as passing risk at delivery even though title passes earlier.
- Where delivery is delayed through either party's fault, that party bears the risk of loss that would not have occurred without the delay. Duties and liabilities as bailee also remain in force.

Suppose an identified machine in a deliverable state is sold unconditionally and the parties postpone collection. If title has passed and the seller has taken proper care, accidental loss falls on the buyer in the absence of a different agreement. If the seller's culpable delay caused the loss, the section's qualification applies.

3(c). Comment upon the principle 'Nemo Dat Quod Non Habet under the Sale of Goods Act, 1930. [10 marks]

A purchaser ordinarily takes only the title the seller has authority to transfer. Good faith alone is insufficient.

- Section 27 protects the owner unless the owner's conduct precludes denial of authority. A mercantile agent who possesses the goods or title documents with the owner's consent can confer title through a sale in the ordinary course of business to a good-faith buyer without notice.
- Section 28 protects a good-faith buyer without notice who buys from a joint owner in sole possession with the other joint owners' permission.
- Under section 29 a seller who obtained possession under a voidable contract can pass title to a good-faith buyer without notice before the contract is rescinded.
- Section 30 protects qualifying later recipients where a seller remains in possession after sale, or a buyer obtains possession with the seller's consent. Section 54 also protects a purchaser at a qualifying resale by an unpaid seller.

A thief ordinarily cannot pass title. An agent entrusted with the goods may do so where the conditions of the statutory exception are met. The source and character of possession therefore matter.

3(d). A, B and C are partners in a firm. As per terms of the partnership deed. A is entitled to 30 percent of the partnership property and profits. A retires from the firm and dies after 15 days. B and C continue business of the firm without settling accounts. What are the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932? [10 marks]

Section 37 of the Partnership Act gives A's representatives an election between profits attributable to the use of A's share and interest at six per cent per annum on that share.

- The election applies where a partner ceases to be a partner and the continuing partners carry on the business with firm property without finally settling accounts. It is subject to any contrary agreement.
- Identify A's share in the partnership assets under the deed and take an account from retirement. The first option is the profit attributable to the use of that share. The 30% interest is relevant to the inquiry, but the statute directs attribution and does not fix an automatic percentage of the whole later profit.
- The alternative is statutory interest on the amount of the outgoing share. A valid option to purchase the share, duly exercised in accordance with the contract, displaces further participation in profits under the proviso.

A died after retirement, so the date of cessation is retirement. The estate can demand an account and choose the statutory alternative once the position is known.

Question 4

4(a). What is the relevance of 'Public Notice' under the Indian Partnership Act, 1932? When and how could a Public notice be given under the Act? State the consequences if such a Public notice is not given? **[5 marks]**

Public notice informs outsiders of a change in the firm and helps fix the point at which apparent authority and associated liability cease.

Section 72 requires notice to the Registrar under section 63, publication in the Official Gazette and publication in at least one vernacular newspaper circulating in the district of the principal place of business for retirement or expulsion from a registered firm, dissolution of a registered firm, or a minor's election on majority in a registered firm. Other cases require the Gazette and newspaper steps.

Under sections 32 and 45, omission may leave partners exposed for later acts that would previously have bound the firm, subject to exceptions. Under section 30, a minor admitted to benefits must give the prescribed notice within the statutory period to elect whether to become a partner. Failure to give it makes the minor a partner at expiry of that period.

4(b). Mr. X was in settled possession of a piece of land. However, he has been forcibly dispossessed from the land. What is the remedy available to him and the period within which he can avail the same. Explain. **[10 marks]**

X can seek summary recovery under section 6 of the Specific Relief Act within six months of dispossession.

- X must show prior possession, dispossession without consent and that the dispossession was otherwise than in due course of law. The suit protects possession against self-help, so the opposing party's title does not answer the summary claim.
- Under section 6(2), proceedings must begin within six months and cannot be brought against the Government. Section 6(3) bars appeal and review from an order or decree under the section.
- Section 6(4) preserves an ordinary suit to establish title and recover possession. If six months have passed, consider the ordinary possessory or title-based proceeding and the relevant Limitation Act article.

The stated facts support an immediate summary claim. X should plead the date, nature and continuity of prior possession and the circumstances of the forcible ouster. Proof could include occupation, boundary use and witness evidence.

4(c). Discuss the impact of DNA technology upon the presumption of legitimacy embodied under Section 112 of the Indian Evidence Act, 1872. **[10 marks]**

Section 112 strongly protects legitimacy. DNA evidence can matter decisively in an appropriate case, but a request for testing is subject to careful judicial scrutiny.

- Birth during a valid marriage, or within 280 days of dissolution while the mother remains unmarried, is conclusive proof of legitimacy unless non-access is shown at the relevant time. Access concerns the opportunity for intercourse.
- A court considers the factual foundation for non-access, the necessity of testing, available evidence and the impact on the child's privacy and status. A speculative request is insufficient.
- A reliable genetic result may bear strongly on biological paternity once it is properly before the court. The practical distinction is between deciding whether to order a test and evaluating a valid test already on record.

> **Goutam Kundu v State of West Bengal** cautions against routine tests. **Nandlal Wasudeo Badwaik v Lata Nandlal Badwaik** gave effect to reliable DNA evidence on its facts.

The exception in section 112 and the facts in dispute govern whether genetic evidence changes the outcome (BSA section 116).

4(d). Previous judgments are not relevant in any subsequent case or proceeding unless they are judgments in rem. Explain. **[10 marks]**

Sections 40–44 of the Evidence Act assign relevance to several kinds of earlier decisions. The conclusive effect in section 41 is a special rule.

- **Section 40.** An earlier decision is relevant when it legally prevents a second suit or trial, for example by res judicata or a bar to successive trial.
- **Section 41.** A final judgment of a competent court in probate, matrimonial, admiralty or insolvency jurisdiction can be conclusive as to the legal character or absolute entitlement covered by the section.
- **Section 42.** Other decisions are relevant when they concern a matter of a public nature relevant to the inquiry. They do not provide conclusive proof.
- **Section 43.** Other decisions are generally irrelevant unless the existence of the decision is itself in issue or is relevant under another provision. For instance, a decree may be relevant as a fact in a later suit complaining of fraudulent procurement.

Section 44 allows specified objections such as incompetence of the earlier court, fraud or collusion. Apply the particular ground of relevance before deciding what weight the decision carries (BSA sections 34–38).

4(e). The provision of judicial notice under the Indian Evidence Act, 1872 is best explained as a requirement of expediency. Discuss. **[5 marks]**

Judicial notice spares litigants from formally proving matters that the court is required to recognise.

Under sections 56–57 of the Evidence Act, a fact judicially noticeable need not be proved. Section 57 lists matters such as laws in force in India and the ordinary divisions of time. A court can consult appropriate information and may require a party requesting notice to produce the material needed before taking notice.

This saves time and costs without requiring the court to accept a contested allegation simply because a party asserts it. Distinguish judicial notice from section 58, under which an admission can dispense with proof, subject to the court's power to require it (BSA sections 51–53).

Question 5

5(a). What is a 'mortgage'? Evaluate the difference between a mortgage by conditional sale and a sale with a condition of repurchase. **[10 marks]**

Under section 58(a) of the Transfer of Property Act, a mortgage transfers an interest in specified immovable property as security for a monetary obligation.

Feature	Mortgage by conditional sale	Sale with repurchase condition
Object	The ostensible sale secures a debt or monetary obligation.	The transaction transfers ownership with a contractual right to buy back.
Instrument	Section 58(c) requires the condition to be in the instrument effecting or purporting to effect the sale.	A separate repurchase agreement cannot convert the sale into a mortgage by conditional sale. A condition in the same instrument still requires construction of the transaction.
Consequence	The borrower has the statutory equity of redemption under section 60, subject to lawful extinguishment.	The right depends on the contract and its conditions for exercise.

Examine the deed as a whole, including the existence of a debt and whether the payment serves as security or a price. Labels alone cannot decide the character of the transaction.

5(b). What is meant by 'Vested Interest' and 'Contingent Interest'? Discuss. **[10 marks]**

An interest is vested where entitlement is fixed, although enjoyment may be postponed. A contingent interest depends on an uncertain event.

Point	Vested, section 19 TPA	Contingent, section 21 TPA
Condition	Immediate entitlement, or entitlement tied to an event that must happen, unless a contrary intention appears.	Entitlement is conditional on a specified uncertain event happening or failing to happen.
Effect of death	Death before possession does not defeat the vested interest.	Death can prevent fulfilment where the condition requires the transferee personally to survive or act.
Example	To B for life, then to C. C's enjoyment waits until B's death.	To C if C qualifies as an advocate. C's interest vests if the condition is fulfilled.

Postponement of enjoyment and a prior interest do not alone suggest contingency. Under the exception in section 21, giving the transferee the income in the meantime, or directing its application for that person's benefit, can make an age-related interest vested.

5(c). Comment upon the 2018 amendments relating to 'Specific Performance in the Specific Relief Act, 1963 with illustrations. **[10 marks]**

The 2018 amendment made specific enforcement the general direction under section 10, subject to the statutory limits in sections 11(2), 14 and 16.

- Section 14 still excludes, among others, contracts requiring continuous duties the court cannot supervise, contracts dependent on personal qualifications, determinable contracts and contracts already performed by substitution under section 20.
- Under section 16 the claimant must prove performance or continuous readiness and willingness to perform essential terms, except where performance was prevented or waived by the defendant.
- Section 20 permits substituted performance through a third party or the claimant's own agency after at least thirty days' written notice to the party in breach. Once substitution has actually been obtained, specific performance against the breaching party is barred. Compensation rights are preserved.
- Section 20A limits injunctions that would impede or delay specified infrastructure projects. Sections 20B–20C provide for special courts and a statutory timetable.

If a contractor defaults and the customer obtains substitute performance after proper notice, the customer may recover qualifying expenses and pursue compensation. In a suitable sale contract without substitution, specific enforcement may be granted if the purchaser proves statutory readiness and willingness.

5(d). He who seeks equity must do equity. How far does this maxim provide relief in cases of improvements made by bonafide holders under defective title? Explain. **[10 marks]**

Section 51 of the Transfer of Property Act protects a qualifying transferee who improved property in a good-faith belief of absolute entitlement and is later evicted by a person with better title.

- The person claiming the benefit must be a transferee who made improvements to immovable property. Mere possession with knowledge of the title defect gives no entitlement.
- On eviction the transferee may require the person with better title to have the value of the improvement estimated and paid or secured. The alternative contemplated by the section is sale of the better title to the transferee at its then market value, apart from the value of the improvement.
- Value of improvement is assessed at the time of eviction. The statutory protection also covers the qualifying holder's standing crops and access to gather them.

Suppose a purchaser builds a permanent improvement while honestly believing ownership passed, and another claimant later establishes superior title. The claimant can enforce that title subject to the section's equitable adjustment. The provision addresses good-faith improvement while respecting the superior interest.