Rajasthan Civil Judge (Mains) 2025: Law Paper I — Solution

Model answers to Law Paper I. Rajasthan High Court, Jodhpur, Civil Judge Cadre Main Examination held 11-12.10.2025. Twenty-two questions (100 marks); every question and every part is answered here. Law as on 11 October 2025.

Questions 1 to 8 (3 marks each)

Q1. Execution of a document under a decree [3 marks]

Explain the procedure of execution of documents in compliance of the decree passed by the court.

Where the decree is for execution of a document or endorsement of a negotiable instrument and the judgment-debtor refuses, the court itself executes it under Order XXI Rule 34 CPC.

- The decree-holder prepares a draft in accordance with the decree and delivers it to the court.
- The court serves the draft on the judgment-debtor with a notice fixing a time for objections.
- If he objects, the objections are made in writing and the court approves or alters the draft.
- The decree-holder delivers a copy of the final draft on proper stamp paper, if stamp is required, and the Judge (or officer appointed) executes it in the form "C.D., Judge of the Court of ..., for A.B., in a suit by E.F. against A.B.". This has the same effect as execution by the party.
- Where the law requires registration, the court or its authorised officer has the document registered (Rule 34(6)); otherwise the court may order registration if the decree-holder wishes, and decide who bears the expenses.

Q2. Civil suit in public interest [3 marks]

Analogous to Public Interest Litigation, the Civil court is also empowered to entertain the suit of public interest. Explain in detail the competence and procedure to file such suit.

Sections 91 and 92 of the Code of Civil Procedure allow representative suits for the public, without proof of personal injury.

- **Section 91 (public nuisance or other wrongful act affecting the public):** a suit for declaration and injunction, or other appropriate relief, may be filed by the Advocate-General, or by two or more persons with the leave of the court, even without special damage to them. Any person who suffers special damage can sue in his own right without leave, and section 91(2) saves every independent right of suit.
- **Section 92 (public charities):** for breach of an express or constructive trust created for public religious or charitable purposes, or where the court's direction is needed for its administration, the Advocate-General or two or more persons interested in the trust, with leave of the court, may sue in the principal civil court of original jurisdiction (or a court empowered by the State Government) within whose limits the trust property lies. Reliefs: removal or appointment of trustees, vesting of property, accounts and inquiries, settling a scheme, and other relief. Cy-pres application is permitted under section 92(3).
- **Procedure:** the plaintiffs apply for leave, state the public interest and the wrong, then file the plaint in the proper court; the suit is conducted in a representative capacity, so the decree binds the public or beneficiaries.

Q3. External aids to construction [3 marks]

What is external aid to construction of an Act? Explain.

External aids are materials outside the text of the statute that a court may consult to find its true meaning when the words are ambiguous; internal aids are the title, preamble, headings, marginal notes, definitions, provisos and explanations found within the Act.

- **Historical setting:** the state of the law before the Act, the mischief it was meant to cure, and reports of commissions and committees that led to it.
- **Legislative history:** the Statement of Objects and Reasons and the Bill's evolution; statements in the legislature are used with caution and only to understand the background, not to control plain words.
- **Other statutes and judicial decisions:** statutes in pari materia, earlier decisions on the same words, and contemporaneous exposition by long-standing official practice.
- **Dictionaries and technical works** for the ordinary meaning of words.

Where the language is plain and unambiguous, the court gives effect to it and does not resort to external aids.

Q4. Part-payment of a time-barred debt [3 marks]

Once a debt is barred by limitation, part-payment thereof does not operate to extend or revive the limitation period. Explain the legality of this statement. Under which circumstances debt can be restored after lapse of the limitation period.

The statement is correct. Under section 19 of the Limitation Act, 1963 a fresh period starts from a payment on account of the debt only if the payment is made "before the expiration of the prescribed period" by the person liable (or his authorised agent), and an acknowledgment of the payment appears in his handwriting or a writing signed by him. Likewise, section 18 gives a fresh period only for an acknowledgment signed before the period expires. Once the period has run, limitation extinguishes the remedy, and a later payment or acknowledgment cannot revive the suit.

Revival after limitation

- A fresh promise made in writing and signed by the debtor (or his authorised agent) to pay the time-barred debt, wholly or in part, is a valid contract without consideration under section 25(3) of the Indian Contract Act, 1872. The creditor sues on that promise, with its own limitation.
- Voluntary payment by the debtor can be appropriated by the creditor towards the barred debt, and the creditor may keep any security he already holds, because only the remedy by suit is barred, not the debt.

Q5. Time as the essence in contracts for immovable property [3 marks]

"Time is not essence of the contract in case of contracts relating immovable property." Explain this statement with the help of decided case law. Also state the exceptions to this statement.

Under section 55 of the Indian Contract Act, 1872, failure to perform at the fixed time makes a contract voidable only if the parties intended time to be of the essence; otherwise the promisee gets compensation for the delay. For sale of immovable property, courts presume that time is not of the essence unless a contrary intention appears.

> **Chand Rani v. Kamal Rani** holds that in contracts for sale of immovable property time is not ordinarily of the essence, even if a date is fixed; **K.S. Vidyanadam v. Vairavan** adds that a buyer must still perform within a reasonable time, and that rising prices do not alone make time essential.

Exceptions

- The contract expressly makes time essential.
- The nature of the property or the surrounding circumstances (for example a commercial or urgent purpose, or property of fluctuating value) show that time was intended to be essential.
- The time was non-essential at the start, but one party gives a reasonable notice fixing a new period and the other fails to perform within it.

Section 16(c) of the Specific Relief Act, 1963 still requires the plaintiff to prove continuous readiness and willingness.

Q6. Court fees in a partition suit [3 marks]

Under following conditions, how the court fees shall be calculated in the suit for partition and to determine the separate share of joint undivided property of the family?
A. By a plaintiff who has been excluded from possession (suit for separate possession).
B. Where the suit is filed for partition of the plaintiff's share in the jointly possessed property.

The Rajasthan Court Fees and Suits Valuation Act, 1961 governs the fee.

- **A. Plaintiff excluded from possession (section 35(1)):** fee is computed on the market value of the plaintiff's share, at the ad valorem scale in Article 1 of Schedule I. The same rule applies to a suit for joint possession by an excluded plaintiff (section 36).
- **B. Plaintiff in joint possession (section 35(2)):** a fixed fee is payable by the value of his share: Rs. 30 where it is Rs. 5,000 or less; Rs. 100 where it is above Rs. 5,000 up to Rs. 10,000; Rs. 200 where it exceeds Rs. 10,000.
- A defendant who claims partition in his written statement pays half the ad valorem fee if excluded from possession, or half the fixed rate if in joint possession (section 35(3)). A separate fee is payable on any relief of cancellation of a decree or document (section 35(4)).

Q7. Unauthorised occupation of revenue land [3 marks]

Explain the penalty/punishment and provisions thereof, for the unauthorized occupant of revenue land, in case of appearance after notice and non-appearance after notice, under the provisions of Rajasthan Land Revenue Act, 1956.

Section 91 of the Rajasthan Land Revenue Act, 1956 treats an occupant without lawful authority as a trespasser who may be summarily evicted by the Tehsildar.

- **Notice:** before eviction the Tehsildar serves a notice to vacate by a date or appear and show cause (section 91(3A)).
- **Non-appearance:** if the trespasser neither vacates nor appears, the Tehsildar orders removal and takes possession; if he is obstructed, a Magistrate enforces surrender (section 91(4)).
- **Appearance:** if he appears but shows no cause, or his plea is rejected after inquiry, the Tehsildar orders removal, unless the trespasser undertakes to vacate within a week and does so.
- **Consequences in both cases:** any crop, building or construction not removed in the time fixed is liable to forfeiture (the Tehsildar may order demolition instead); a penalty up to fifty times the annual rent or assessment for each agricultural year of occupation, recoverable as land revenue arrears; for a subsequent trespass, civil prison up to three months and penalty (section 91(1) and (2)).
- **Prosecution:** a person who occupies without authority and does not remove the occupation within fifteen days of a written notice is punishable on conviction with simple imprisonment of one month to three years and fine up to Rs. 20,000 (section 91(6)(a)).

Q8. Unregistered agreement in a suit for specific performance [3 marks]

In a suit of specific performance of unregistered agreement of immovable property, defendant took a defence that the suit is not maintainable because the document is not registered. Explain with the help of case laws about the admissibility and use of such unregistered agreement in evidence.

The defence fails. An agreement to sell does not itself create any interest in the property (section 54 TPA), so it is not compulsorily registrable merely as an agreement. In Rajasthan, however, section 17(1)(f) of the Registration Act (State amendment) makes an agreement to sell immovable property, possession of which has been handed over to the purchaser, compulsorily registrable.

- Even then, the proviso to section 49 of the Registration Act allows an unregistered document affecting immovable property to be received as evidence of a contract in a suit for specific performance, and as evidence of any collateral transaction not required to be effected by a registered instrument.
- It cannot be used to prove a transfer or to claim an interest in the property on its own strength.
- The Supreme Court in **S. Kaladevi v. V.R. Somasundaram** allowed an unregistered agreement of sale to be admitted as evidence in a suit for specific performance.
- The document must also bear the stamp duty the stamp law requires (an insufficiently stamped document is impounded and admitted on payment of duty and penalty).

The court can therefore receive the agreement, decide readiness and willingness, and decree specific performance, with the sale deed to be registered.

Questions 9 to 17 (4 marks each)

Q9. Landlord's right to immediate possession [4 marks]

In which cases the landlord has a right to recover immediate possession. Explain with the help of relevant provision of the Rajasthan Rent Control Act, 2001.

Section 10 of the Rajasthan Rent Control Act, 2001 gives the landlord (the owner of the residential premises) a right to petition the Rent Tribunal for immediate possession, notwithstanding any contract or other law, in these cases only:

- A landlord who is or was a member of the armed or paramilitary forces of the Union, petition filed within one year before or after retirement, release or discharge (or within one year from commencement of the Act, whichever is later); section 10(1)(i)(a).
- A landlord who is or was an employee of the Central or State Government, local body or State-owned corporation, petition within the same time limit before or after retirement; clause (b).
- A landlord who has become a senior citizen, petition filed after three years from letting; clause (c).
- A dependent legal representative of a landlord who was a member of the armed or paramilitary forces and died in service, within one year of the death; clause (ii).
- The widow of a landlord, within one year of her husband's death; clause (iii).
- A landlord who, after letting ground-floor premises, has suffered permanent disability preventing him from using stairs, on a Government Medical Board certificate and proof that he has no suitable ground-floor residence in the same municipal area (section 10(3)); if the tenant offers to exchange with the landlord's upper-floor premises, possession is ordered on that condition.

Where several premises are let, the petition lies for one premises only, and only if the petitioner does not reside in his own premises in the same municipal area (section 10(2)). The landlord cannot let the premises to another for three years after recovery; the tenant may apply for restoration (section 10(4)). Procedure is in section 16 (petition with affidavits, reply within thirty days, hearing within ninety days of service, and disposal within the time the section fixes).

Q10. Limitation on a bank loan: balance sheet as acknowledgment [4 marks]

'A', a nationalized bank gave loan to 'B', a company on 01.01.2015 ... Bank 'A' filed suit on 01.01.2019 against 'B' for recovery of loan amount. 'B' contended that the suit is barred by limitation. Decide with the help of relevant case laws.

Issue. Is the suit filed on 01.01.2019 within limitation?

Rule. For money lent (Articles 19 and 21 of the Schedule to the Limitation Act, 1963) the period is three years from the date the loan is made. Section 18 gives a fresh period from the date of an acknowledgment of liability made in writing and signed by the party liable, if made before the period expires; the acknowledgment may be good even if it does not state the exact amount or is coupled with a plea that time for payment has not come (Explanation (a)); a signature by an authorised agent suffices (Explanation (b)).

Application. The period ran from 01.01.2015 and would have expired on 01.01.2018. The recall notice of 01.01.2017 did not extend time, and silence in reply is not an acknowledgment. The balance sheet and account statement signed by the Directors on 10.10.2017, sent to the bank, show the loan and the outstanding amount without any qualification. That is a written acknowledgment of liability signed on behalf of the company before the period expired. The Supreme Court in **Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal** held that entries in a signed balance sheet can amount to acknowledgment under section 18 and give a fresh period; **Bengal Silk Mills Co.** explains that a balance sheet is examined in its context, and an unqualified admission of the debt amounts to acknowledgment.

Conclusion. A fresh period of three years began on 10.10.2017 and ran to 10.10.2020. The suit of 01.01.2019 is within time and B's plea of limitation fails.

Q11. Infrastructure projects under the Specific Relief Act [4 marks]

What are the categories of infrastructure projects specified in the schedule of Specific Relief Act? What are the special provisions for contract relating to infrastructure projects. Explain with the help of relevant provisions.

The Specific Relief (Amendment) Act, 2018 (in force from 1 October 2018) added section 20A and the Schedule.

Categories in the Schedule

- **Transport:** roads and bridges, ports, shipyards, inland waterways, airports, railway tracks and stations, urban public transport.
- **Energy:** electricity generation, transmission and distribution, oil pipelines, oil/gas/LNG storage, gas pipelines.
- **Water and sanitation:** solid waste management, water supply pipelines, water treatment plants, sewage systems, irrigation, storm water drainage, slurry pipelines.
- **Communication:** telecommunication networks, towers and telecom services.
- **Social and commercial infrastructure:** education institutions, sports infrastructure, hospitals, certain tourism infrastructure, common infrastructure for industrial and other parks, post-harvest storage, terminal markets, soil-testing laboratories, cold chain, affordable housing.

Special provisions

- Section 20A(1): no injunction in a suit under the Act on a contract relating to a scheduled infrastructure project where it would impede or delay the progress or completion of the project; section 41(ha) likewise bars a perpetual injunction on that ground.
- Section 20A(2): the Central Government may amend the Schedule by notification, laid before Parliament.
- Section 20B: the State Government, in consultation with the Chief Justice of the High Court, designates Special Courts to try such suits.
- Section 20C: such suits must be disposed of within twelve months of service of summons, extendable by not more than six months in all, for reasons recorded in writing.

Q12. Short notes on constitutional doctrines [4 marks]

Write a short note upon any two of the following: A. Doctrine of Pith and Substance; B. Doctrine of Colourable Legislation; C. Doctrine of Eclipse.

A. Pith and substance. Where a law passed by one legislature appears to trench on a subject in another's list (Articles 245-246 and the Seventh Schedule), the court looks at its true nature and character, not its incidental effect. If its pith and substance falls within the competence of the enacting legislature, the law is valid even if it incidentally touches a subject of the other list. See **State of Bombay v. F.N. Balsara** and **Prafulla Kumar Mukherjee v. Bank of Commerce, Khulna**.

B. Colourable legislation. A legislature cannot do indirectly what it cannot do directly. If, under the guise of legislating on a subject within its power, it in substance legislates on a subject beyond its competence, the law is a fraud on the Constitution (a "colourable" exercise of power) and void. The question is one of competence, not of motive; if the subject is within competence the motive is irrelevant. See **K.C. Gajapati Narayan Deo v. State of Orissa**.

C. Eclipse. Under Article 13(1), a pre-Constitution law inconsistent with a fundamental right is void only to the extent of the inconsistency; it is not dead but overshadowed, and its enforceability is revived if the inconsistency is removed (for example by a constitutional amendment). See **Bhikaji Narain Dhakras v. State of M.P.**. A post-Constitution law that violates Part III is void from the start and is not revived by amendment (**Deep Chand v. State of U.P.**). The eclipsed law continues to operate for past transactions and for persons not entitled to the right.

Q13. Equality and valid classification [4 marks]

"Equality is a dynamic concept with many aspects and dimensions, it cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits." Explain in the light of above statement the test for valid classification with the help of relevant case law.

The quoted passage is from E.P. Royappa v. State of Tamil Nadu, which added that equality is opposed to arbitrariness: an arbitrary State action offends Article 14, and the guarantee is wider than classification. Maneka Gandhi v. Union of India carried this forward.

Article 14 forbids class legislation but permits reasonable classification, which must satisfy two tests (**State of West Bengal v. Anwar Ali Sarkar**; **Ram Krishna Dalmia v. Justice Tendolkar**):

- **Intelligible differentia:** the persons or things grouped must be distinguishable from others left out by a real and substantial distinction.
- **Rational nexus:** that differentia must have a reasonable relation to the object the law seeks to achieve.

The object itself must be lawful, and the classification must not be arbitrary or merely a device to favour. In **D.S. Nakara v. Union of India** a pension classification by date of retirement failed the test because the differentia had no nexus with the object. The law need not be perfect or mathematically exact; a presumption of constitutionality applies and the burden is on the challenger.

Q14. Proof of mistake by oral evidence [4 marks]

Ram instituted a suit against Suresh for specific performance of a written contract and also seeks relief that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. Whether Ram can prove by oral evidence that such a mistake was made? Explain with the help of relevant provisions of Bharatiya Sakshya Adhiniyam, 2023.

Yes, Ram can prove the mistake by oral evidence.

- Section 94 of the Bharatiya Sakshya Adhiniyam, 2023 requires the terms of a contract reduced to writing to be proved by the document itself, and section 95 bars oral evidence of any agreement or statement for the purpose of contradicting, varying, adding to or subtracting from its terms as between the parties.
- The first proviso to section 95 allows any fact to be proved that would invalidate a document or entitle a person to a decree or order relating to it, such as fraud, intimidation, illegality, want of due execution, want of capacity, want or failure of consideration, or mistake in fact or law.
- Illustration (e) to section 95 is on the same facts: A sues B for specific performance and prays that the contract be reformed as to a provision inserted by mistake; A may prove that such a mistake was made as would by law entitle him to reformation.
- The substantive right is in section 26 of the Specific Relief Act, 1963: where, through fraud or mutual mistake, a written contract does not express the parties' real intention, the plaintiff may claim rectification in a suit, and under section 26(3) the contract may first be rectified and then specifically enforced.

The mistake must be a mutual mistake (or fraud) and proved by clear evidence; a unilateral mistake of Ram alone would not support rectification.

Q15. Exceptions to uniform rules of evidence [4 marks]

Rules of evidence are generally the same in civil and criminal proceedings. Give the exceptions, if any, with the help of relevant provisions.

The Bharatiya Sakshya Adhiniyam, 2023 applies to both, but it draws the following differences.

- **Admissions:** in civil cases an admission is not relevant if made on an express condition that evidence of it shall not be given (section 21); there is no such rule in criminal cases.
- **Confessions:** sections 22-24 (confession caused by inducement, confession to police, confession affecting co-accused) apply only to criminal proceedings.
- **Character:** in civil cases, character to prove conduct is irrelevant (section 46) and relevant only to damages (section 50); in criminal cases the accused's good character is relevant (section 47), bad character is irrelevant unless in reply (section 49), and in sexual offences the victim's character or past sexual experience is irrelevant on consent (section 48).
- **Competence of spouses:** in civil suits parties and their spouses are competent; in criminal proceedings the spouse of the accused is a competent witness (section 126).
- **Standard of proof:** a civil case is decided on preponderance of probability, a criminal charge must be proved beyond reasonable doubt; the burden of proof of the accused's guilt remains on the prosecution, with the exceptions in sections 106-109 and the presumption as to dowry death in section 118.
- **Accomplice:** the accomplice is a competent witness against the accused (section 138), a rule that operates in criminal cases.

Q16. Short notes: firm, caveat emptor, lien, stoppage in transit [4 marks]

Explain briefly any two of the following: A. Effects of non-registration of firm; B. Doctrine of Caveat Emptor and its exceptions; C. Right of Lien and termination of unpaid seller; D. Duration of the unpaid seller's right of stoppage of goods in transit.

A. Non-registration of firm (Indian Partnership Act, 1932, section 69). A partner of an unregistered firm cannot sue the firm or its partners to enforce a right arising from a contract or the Act, unless the firm is registered and he is shown in the Register as a partner; and the firm cannot sue a third party on a contract (section 69(1), (2)). The bar extends to set-off claims but does not affect suits for dissolution or accounts of a dissolved firm, or realising the property of a dissolved or insolvent firm; it does not apply to claims not exceeding Rs. 100 of Small Cause nature (section 69(3), (4)). Third parties can still sue the firm.

B. Caveat emptor (Sale of Goods Act, 1930, section 16). The buyer must beware: there is no implied condition as to quality or fitness except as stated. Exceptions: (1) where the buyer makes known the particular purpose and relies on the seller's skill or judgment, the goods must be reasonably fit (not for a specified article sold under a patent or trade name); (2) goods bought by description from a seller who deals in them must be of merchantable quality (no condition as to defects an examination ought to have revealed); (3) usage of trade may annex an implied condition. An express warranty does not negative an implied one unless inconsistent with it (section 16(4)).

C. Lien (sections 47-49). An unpaid seller in possession may retain the goods until payment or tender of the price where goods were sold without credit, the credit period has expired, or the buyer is insolvent; part delivery does not end it unless waived. It ends when he delivers the goods to a carrier without reserving the right of disposal, when the buyer lawfully takes possession, or on waiver; a decree for the price does not end it.

D. Stoppage in transit (sections 50-52). If the buyer becomes insolvent, the unpaid seller who has parted with possession may resume it while the goods are in transit. Transit lasts from delivery to a carrier or other bailee for transmission until the buyer or his agent takes delivery (section 51(1)); it ends if the buyer obtains delivery earlier, or if after arrival the carrier acknowledges holding for the buyer; it continues if the goods are rejected and the carrier keeps them. The seller exercises the right by taking possession or giving notice to the carrier (section 52).

Q17. Qarabat and Musaharat in Muslim marriage [4 marks]

Explain in detail the "KARABAT" and "MUSHARAT" in the context of Muslim marriage.

Qarabat (consanguinity, blood relationship) and Musaharat (affinity, relationship created by marriage) are two grounds of absolute prohibition to marriage in Muslim law, along with Rada (fosterage). A marriage in breach of any of them is void and not merely irregular.

- **Qarabat:** a man cannot marry his mother or grandmother (however high); his daughter or granddaughter (however low); his sister, whether full, consanguine or uterine; his niece or great-niece; or his aunt or great-aunt, paternal or maternal.
- **Musaharat:** a man cannot marry his wife's mother or grandmother (even if the marriage was not consummated); his wife's daughter or granddaughter (only if the marriage with the wife was consummated); the wife of his father or paternal grandfather; or the wife of his son or son's son or daughter's son.
- **Rada:** fosterage creates the same prohibitions as blood, with a few exceptions.

These bars are perpetual, unlike the temporary bars (unlawful conjunction: two wives so related that, if one were male, they could not marry; difference of religion; the fifth wife), which make the marriage only irregular (fasid). Children of a void marriage are not legitimate, and no mutual rights of inheritance arise.

Questions 18 to 22

Q18. Short notes under the Code of Civil Procedure [6 marks]

Write a short note on any three of the following: A. Substituted Service; B. Attachment before judgement; C. Legal Representative; D. Settlement of disputes outside the court; E. Restitution.

A. Substituted service (Order V Rule 20). Where the defendant is keeping out of the way to avoid service or the summons cannot be served in the ordinary way, the court orders service by affixing a copy in a conspicuous place in the court-house and at the defendant's last residence or place of business, or in another manner it thinks fit, including a daily newspaper circulating where he last resided or worked. It is as effectual as personal service and the court fixes the date of appearance.

B. Attachment before judgment (Order XXXVIII Rules 5-9). Where the defendant, to obstruct or delay execution of a decree, is about to dispose of or remove his property, the court may direct him to furnish security or show cause and may order conditional attachment; the plaintiff must specify the property. An attachment made without compliance with Rule 5(1) is void. If cause is not shown or security not furnished, the property is attached; it is released on security or dismissal of the suit.

C. Legal representative (section 2(11)). A person who in law represents the estate of a deceased person, including one who intermeddles with the estate and, in a representative suit, the person on whom the estate devolves. He is brought on record under Order XXII and is liable only to the extent of the estate received (section 52).

D. Settlement outside court (section 89). Where elements of an acceptable settlement exist, the court formulates the terms, takes the parties' observations and refers the dispute to arbitration, conciliation, judicial settlement including Lok Adalat, or mediation, under the Arbitration and Conciliation Act, 1996 and the Legal Services Authorities Act, 1987.

E. Restitution (section 144). When a decree or order is varied or reversed in appeal or revision, or set aside in a suit, the court which passed it must on application restore the parties to the position they would have held, ordering refund of costs and payment of interest, damages, compensation and mesne profits.

Q19. Rights and liabilities of buyer and seller of immovable property [6 marks]

What are the rights and liabilities of buyer and seller? Explain with the help of relevant provisions under the Transfer of Property Act, 1882.

Section 55 of the Transfer of Property Act, 1882 states them, in the absence of a contract to the contrary, for sale of immovable property (sale itself is defined in section 54).

Seller	Buyer
Liabilities (s. 55(1)): disclose material defects in the property or title known to him and not to the buyer; produce title documents on request; answer relevant questions; execute a proper conveyance on tender of price; take reasonable care of property and documents until delivery; give possession; pay public charges and rent up to the date of sale and discharge existing incumbrances unless sold subject to them. He is deemed to contract that his interest subsists and he has power to transfer it (s. 55(2)); on full payment he must deliver the title documents (s. 55(3)).	**Liabilities (s. 55(5)):** disclose to the seller any fact about the nature or extent of the seller's interest that he knows and the seller does not, and which materially increases its value; pay or tender the price at the time and place of completion (he may retain sums for incumbrances in a sale free of them); after ownership passes, bear loss from destruction or decrease in value not caused by the seller, and pay public charges and the principal and interest of incumbrances subject to which it was sold.
Rights (s. 55(4)): the rents and profits until ownership passes; and, where ownership has passed before full payment, a charge on the property in the buyer's hands for the unpaid price and interest (not against a transferee for consideration without notice).	**Rights (s. 55(6)):** after ownership passes, the benefit of improvements and the rents and profits; unless he improperly declined delivery, a charge on the property for purchase-money paid in advance and interest, and where he properly declines delivery also for earnest money and costs awarded in a suit for specific performance or rescission.

Omission to make the disclosures in section 55(1)(a) and 55(5)(a) is fraudulent.

Q20. Short notes on Hindu law [8 marks]

A. Voidable marriage under Hindu Marriage Act, 1955; B. General rules of succession in the case of female Hindu, died intestate; C. Facts to be kept in mind by the court while determining the amount of maintenance under the Hindu Adoptions and Maintenance Act, 1956; D. Guardians of the person and property of a minor under Hindu Minority and Guardianship Act, 1956.

A. Voidable marriage (section 12). Valid until annulled, on grounds: (a) non-consummation owing to the respondent's impotence; (b) contravention of section 5(ii) (incapacity to consent from unsoundness of mind, mental disorder making the party unfit for marriage and procreation, or recurrent attacks of insanity); (c) consent obtained by force, or by fraud as to the nature of the ceremony or any material fact concerning the respondent; (d) the respondent pregnant by another person at the time of marriage. Limits: for (c), a petition within one year after the force ended or fraud was discovered, with no voluntary cohabitation afterwards; for (d), the petitioner ignorant at the time, petition within one year of the marriage, and no marital intercourse after discovery.

B. Succession to a female Hindu (Hindu Succession Act, 1956, sections 15-16). Her property goes (a) first to sons, daughters (and children of a predeceased son or daughter) and the husband; (b) then to the husband's heirs; (c) then to the mother and father; (d) then to the father's heirs; (e) lastly to the mother's heirs. If she leaves no child, property inherited from her father or mother goes to the father's heirs, and property inherited from her husband or father-in-law goes to the husband's heirs (section 15(2)). Under section 16, earlier entries exclude later ones, heirs in one entry take together, and children of a predeceased child take that child's share.

C. Maintenance (section 23 of the Hindu Adoptions and Maintenance Act, 1956). For a wife, children or aged or infirm parents: the position and status of the parties; reasonable wants of the claimant; whether a claimant living separately is justified; the claimant's property and income; and the number of persons entitled to maintenance. For a dependant: the net value of the deceased's estate after debts; any provision in his will; the degree of relationship; reasonable wants; past relations; the dependant's own property and income; and the number of dependants. The amount may later be altered on a material change of circumstances (section 25).

D. Guardians (Hindu Minority and Guardianship Act, 1956). A minor is under eighteen (section 4(a)). Natural guardians (section 6): for a boy or unmarried girl, the father and after him the mother (custody under five ordinarily with the mother); for an illegitimate child, the mother and after her the father; for a married girl, the husband. Testamentary guardians are appointed by will by the father or the entitled mother (section 9); the court may appoint or declare a guardian, the minor's welfare being paramount (section 13). A de facto guardian cannot deal with the minor's property (section 11). The natural guardian cannot without court permission transfer or charge the minor's immovable property, or lease it beyond five years, and a contravening disposal is voidable at the minor's instance (section 8). No guardian is appointed for a minor's undivided interest in joint family property managed by an adult member (section 12).

Q21. Reasoned order on a temporary injunction application [10 marks]

The applicant/plaintiff has filed a civil suit seeking permanent injunction against the non-applicant/defendant (Municipality), restraining it from dispossessing him from the suit land. Along with the plaint, the applicant also filed an application under Order XXXIX Rules 1 and 2 CPC for grant of temporary injunction ... On the basis of the above facts, write a reasoned order.

IN THE COURT OF CIVIL JUDGE .....

Civil Suit No. ... of ... : Applicant/Plaintiff v. Municipality, Non-applicant/Defendant

Application under Order XXXIX Rules 1 and 2 read with section 151 CPC

ORDER

1. The case. The plaintiff sues for a permanent injunction restraining the Municipality from dispossessing him from the suit land, and applies for a temporary injunction. He says he has been in possession for several years and has raised temporary structures; the Municipality threatens to demolish them without due process; the balance of convenience and irreparable loss favour him. The Municipality says the land is municipal property as per the revenue records, the plaintiff is an unauthorised occupant, he came to court late and only after eviction proceedings began, he suppressed material facts, an eviction order has already been passed against him, and that order is appealable under the municipal law.

2. Points. Prima facie case, balance of convenience, irreparable injury, and entitlement to equitable relief.

3. Law. Under Order XXXIX Rule 1(c) the court may grant a temporary injunction where the defendant threatens to dispossess the plaintiff or cause him injury in relation to the suit property. The three requirements are prima facie case, balance of convenience and irreparable injury, and all must be satisfied (**Dalpat Kumar v. Prahlad Singh**). The relief is discretionary and equitable: under section 41(h) of the Specific Relief Act, 1963 an injunction is refused where equally efficacious relief can certainly be obtained by any other usual mode of proceeding, and under section 41(i) where the plaintiff's conduct disentitles him to the court's assistance.

4. Prima facie case. The plaintiff does not claim title. His case rests on possession on land which the revenue records show as the Municipality's. A trespasser cannot take advantage of his own wrong, and long possession of public land without title gives no equity against the owner. His claim that dispossession is without due process cannot be accepted at this stage, because the pleadings of both sides show that eviction proceedings have been taken and an eviction order has already been passed. The statutory authority has thus acted under the municipal law, and the order stands unless set aside in the appeal the law provides. Whether that order is valid is a matter for the appellate authority, and a civil court should not use a temporary injunction to override a statutory order against which an appeal lies.

5. Balance of convenience and irreparable injury. The structures are temporary, and the loss is capable of being compensated in money. On the other side, restraint would block the Municipality from recovering public land and using it for public purposes. The balance does not favour the plaintiff. Delay and suppression: the plaintiff came to court only after eviction proceedings were initiated and did not disclose the eviction order, so he has not come with clean hands. This alone justifies refusal of discretionary relief.

6. Alternative remedy. Since the eviction order is appealable under the municipal law, the plaintiff has an equally efficacious statutory remedy, in which he can seek stay of the order.

7. Order. The application under Order XXXIX Rules 1 and 2 CPC is dismissed. The Municipality shall proceed against the plaintiff only in accordance with law. The plaintiff is free to avail the statutory appeal and to ask the appellate authority for interim protection. The findings are tentative, given only for deciding this application, and do not bind the trial on the merits. Costs shall follow the result of the suit. Pronounced in open court.

Civil Judge

Q22. Issues and judgment: invalid adoption of a married man and sale by the widow [10 marks]

The plaintiff, Saurabh, claims to be the adopted son of late Hari Shankar and his widow, Shakuntala ... On the basis of the above facts, frame the issues and write a reasoned judgement.

Issues

- 1. Whether the plaintiff was validly adopted by Shakuntala in 2018 under the Hindu Adoptions and Maintenance Act, 1956? (burden on plaintiff)
- 2. Whether any custom or usage applicable to the parties permitting a married person to be taken in adoption is pleaded and proved? (burden on plaintiff)
- 3. If the adoption is valid, whether by the doctrine of relation back the sale deed of 2020 executed by defendant No. 1 is void and not binding on the plaintiff? (burden on plaintiff)
- 4. Whether defendant No. 2 is a bona fide purchaser for value without notice? (burden on defendant No. 2)
- 5. Whether the plaintiff is entitled to cancellation of the sale deed and a declaration? Relief and costs.

Judgment

Facts. Hari Shankar died in 2015, leaving his widow Shakuntala as sole heir. In 2018 she adopted the plaintiff, then a married man, by a registered deed, and in 2020 sold her husband's immovable property to Ramesh by a registered deed. The plaintiff seeks cancellation of the sale deed and a declaration of his rights.

Issues 1 and 2. Under section 5(1) of the Act, an adoption made in contravention of Chapter II is void, and under section 6 an adoption is valid only if the person adopted is capable of being taken in adoption. Section 10(iii) lays down that no person is capable of being taken in adoption if he has been married, unless a custom or usage applicable to the parties permits married persons to be adopted. The plaintiff was admittedly married in 2018. Shakuntala, a widow of sound mind and major, had capacity to adopt (section 8), and the registered deed attracts the presumption under section 16 that the adoption complied with the Act, but that presumption is rebuttable and cannot cure a bar on the capacity of the person adopted, which appears from the plaintiff's own case. No custom or usage permitting adoption of a married person has been pleaded, let alone proved; the burden to prove it lay on the plaintiff. Issues 1 and 2 are decided against the plaintiff: the adoption is void. Under section 5(2), a void adoption creates no rights in the adoptive family in favour of any person.

Issue 3. Even if the adoption were valid, the plaintiff could not succeed. Section 12 provides that an adopted child is deemed the child of the adoptive parents from the date of the adoption and, by proviso (c), shall not divest any person of any estate which vested in him or her before the adoption. On Hari Shankar's death in 2015 the property vested in Shakuntala as his widow and sole heir, and by section 14(1) of the Hindu Succession Act, 1956 she held it as full owner, not a limited owner. The adoption took place three years later. The doctrine of relation back, as the plaintiff states it, would take the adoption back to 2015 and divest the widow of an estate already vested, which is exactly what proviso (c) forbids. As full owner she had the right to sell in 2020, and a registered sale deed by her is not void or voidable at the instance of a stranger to her title. Issue 3 is decided against the plaintiff.

Issues 4 and 5. Since the plaintiff has no title or right in the property, there is no instrument that is void or voidable as against him within section 31 of the Specific Relief Act, 1963, and he has no cause

of action for cancellation or declaration. Issue 4 needs no finding; in any event nothing shows that Ramesh, who bought by registered deed from the full owner, had notice of any claim of the plaintiff.

Order. The suit is dismissed. The sale deed of 2020 stands. The parties shall bear their own costs. Decree to be drawn accordingly.

De Facto IAS