Subject Name: SRA
Topic Name: Cancellation of Instrument

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Cancellation of Written Instruments

Section 31 allows for the cancellation of a written instrument that is either void or voidable, upon the request of any person who reasonably fears serious injury if the instrument remains in effect. The court, at its discretion, may adjudge the instrument void or voidable and order its delivery up and cancellation.

If the instrument has been registered under the Indian Registration Act, 1908, the court must send a copy of its decree to the relevant officer, who will then note the cancellation on the registered copy of the instrument.

Illustrations provided under Section 31 demonstrate scenarios where cancellation may be sought, such as when fraudulent inducement leads to insurance or when forged instruments affect property ownership.

This section is grounded in the principle of protective justice, aiming to prevent potential harm by removing instruments that could be misused or cause suspicion over title or interest.

However, it's noteworthy that a person affected by a void instrument can opt to ignore it and seek substantive relief without seeking its declaration as void or its cancellation.

Additionally, if a plaintiff is out of possession but entitled to claim possession, the court may refuse to cancel an instrument that, if genuine, would not grant title to the land, instead leaving the plaintiff to pursue a suit for possession.

Section 31's remedy focuses on removing a potential threat to title rather than adjudicating between competing titles.

Conditions for Cancellation of Instruments

The conditions for the cancellation of an instrument under Section 31 are as follows:

1. Void or Voidable Instrument: The written instrument must be either void or voidable against the plaintiff. This relief can be sought not only by a party to the instrument but also by any person against whom the instrument is void or voidable. For example, in a scenario where joint family property is sold by one member, other members of the coparcenary can sue for cancellation of the sale deed, as their interests would be affected if it remains unchallenged.

2. Reasonable Apprehension of Serious Injury: The plaintiff must have a reasonable apprehension of suffering serious injury if the instrument is left outstanding or unchallenged. This relief can be granted preemptively, before any violation of the plaintiff's rights or any actual injury is sustained.

3. Reasonable and Necessary: The court must consider it reasonable and necessary to cancel the instrument based on the circumstances of the case. Since the relief is discretionary, the court may impose conditions on the plaintiff or put them on terms, adhering to the principle that "he who seeks equity must do equity" or "must come with clean hands." In cases where both parties are equally at fault, the court may refrain from granting relief and allow the consequences to remain.

For instance, if a well-placed individual seeks to rescind a sale made to their mistress on the grounds of immorality and future cohabitation, arguing that the transaction is void due to being against public policy, the court may refuse to grant relief under Section 31. This refusal may stem from the principle that the court will not assist a party in an illegal transaction.

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Limitations on the Applicability of Section 31

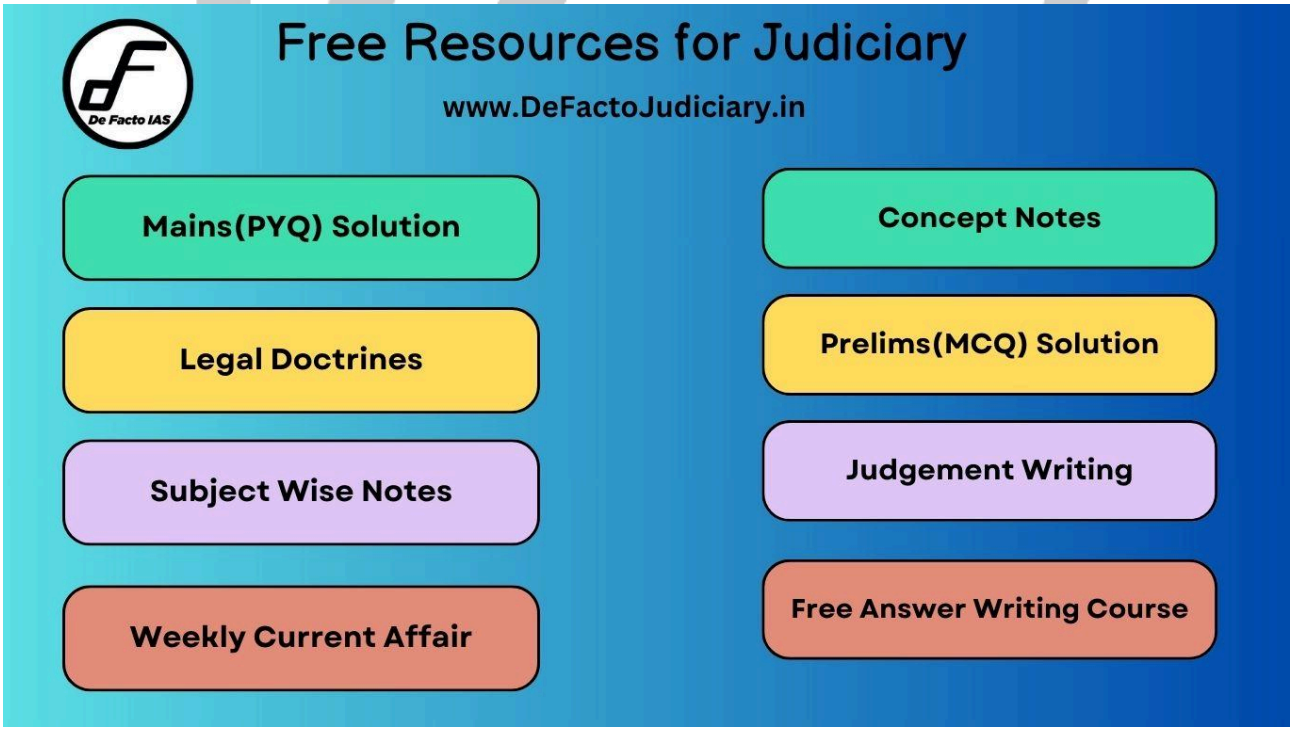
Sec. 31 has limitations on its applicability in certain scenarios:

1. Judgments and Awards: Sec. 31 cannot be invoked to challenge judgments of a court or awards of a tribunal, even though they may technically fall under the category of "written instruments." Once a judgement or award has been formally adjudged by a court or tribunal, it cannot be subjected to a separate suit for cancellation. For instance, a suit cannot be maintained to challenge the validity of an award.

2. Consent Decrees: However, a suit may be brought under Sec. 31 to challenge a consent decree, which is essentially a contract between the parties. If a consent decree is obtained through fraud or coercion, a party may seek its adjudication as void under Sec. 31.

3. Documents Executed by Third Parties: Sec. 31 does not apply when a document is executed by a third person claiming title adverse to the person whose rights are affected by the document. For example, if a sale deed is executed by someone claiming ownership against the true owner, the affected party should file a suit for a declaration of their title instead of seeking cancellation of the document.

4. Defensive Use of Instrument: In cases where a document is being used defensively by one party in response to a suit brought by the other party, Sec. 31 may not be applicable. For example, if Party A sues Party B on a bond that Party B claims is void, and Party B countersues for cancellation of the bond pending the outcome of the first suit, Party B may not be entitled to cancellation. This is because the very plea for cancellation is the defence in the original suit, and there may not be a legitimate apprehension of serious injury if the cancellation suit is not pursued.



Partial Cancellation of Instruments

Sec. 32 provides a mechanism for partial cancellation of an instrument when it evidences different rights or obligations, allowing the court to cancel only the relevant part while allowing the rest to remain valid. This provision is particularly relevant when the rights or obligations represented by the instrument are distinct and separable.

For example, suppose A draws a bill on B, who endorses it to C, and then it is endorsed to D and subsequently to E. If C's endorsement is found to be forged, C has the right to have the enforcement of that particular endorsement cancelled, while the rest of the bill remains valid.

Similarly, if A executes a deed of mortgage in favour of B, but later retrieves the deed from B through fraud and forges B's signature on a receipt for Rs. 1,200, B is entitled to have the forged endorsement cancelled, while allowing the deed to remain valid for its intended purpose.

Restoration of Benefits and Compensation

Sec. 33 of the Indian Contract Act pertains to the restoration of benefits and compensation upon the cancellation of an instrument. When a court adjudges the cancellation of an instrument, it may impose certain obligations on the party to whom the relief is granted, typically the plaintiff.

Here's how Sec. 33 operates:

1. Restoration of Benefits: The court may require the party who receives the relief, usually the plaintiff, to restore any benefit they may have received from the other party. This ensures that any unjust enrichment resulting from the instrument's cancellation is rectified.

2. Compensation: The court may also order the party receiving the relief to make compensation to the other party as justice may require. This compensation aims to address any losses or damages suffered by the other party due to the cancellation of the instrument.

If the defendant successfully defends against a suit on the grounds that the instrument is voidable, they may be required to restore any benefits received or compensate the other party accordingly.

Similarly, if the defendant proves that the instrument is void, they may be obligated to restore benefits to the extent that they or their estate have benefited from the instrument.

Importantly, Sec. 33 applies equally to minors. If a minor brings a suit for the cancellation of an instrument, they may be required to restore benefits and provide compensation if the court deems it necessary. Likewise, if a minor is the defendant in such a case and successfully resists the enforcement of the suit, they may still be obligated to restore benefits to the extent that they or their estate have benefited from the instrument.

The term "estate has benefited" refers to any permanent benefits derived from the instrument, such as acquiring assets or depositing money in a bank account. This includes expenses related to

education or training. Therefore, compensation in the form of money may also be required from a minor if deemed appropriate by the court.