LAW OF EVIDENCE AND PROCEDURE

GROUP- A

1. (a) Explain the meaning of the following: (i) Mesne profit

According to Section 2(12) of the Code of Civil Procedure, 1908, mesne profit is defined as "those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession."

It is important to recognize that mesne profit is contingent upon the presence of wrongful possession. Wrongful possession implies an unauthorized occupation or use of property, either by a trespasser or an individual who continues to possess the property despite a lack of legal entitlement to do so.

The concept of mesne profit extends beyond a mere acknowledgment of the loss suffered by the rightful owner. It goes further by seeking to compensate the owner for the actual profits the person in wrongful possession received or could have received had they exercised ordinary diligence. In other words, mesne profit aims to restore the rightful owner to the position they would have been in if their property had not been wrongfully possessed.

To illustrate the practical application of mesne profit, let us consider an example. Suppose Mr. A wrongfully occupies a property owned by Mr. B for a period of two years. During this time, Mr. A receives rental income from tenants who reside on the property. Upon legal intervention and the restoration of the property to Mr. B, the court may award mesne profit to Mr. B. The mesne profit would consist of the actual rental income Mr. A received during his wrongful possession, or the amount he could have received if he had acted with ordinary diligence.

1(a)(ii) Indigent Person

According to Order XXXIII, a person is deemed an indigent person under two conditions:

(a) The person is not possessed of sufficient means, excluding property that is exempt from attachment in execution of a decree and the subject matter of the suit, to enable them to pay the fee prescribed by law for filing the plaint in that particular suit.

(b) In cases where no fee is prescribed by law, the person is not entitled to property worth one thousand rupees, apart from the property that is exempt from attachment in execution of a decree and the subject matter of the suit.

Explanation II provided in Order XXXIII states that any property acquired by an individual after submitting an application for permission to sue as an indigent person, but before the decision on the application, must be taken into account when determining the person's indigent status. This means that if an applicant acquires property during the application process, it could affect their eligibility to be considered an indigent person.

Furthermore, Explanation III clarifies that when the plaintiff sues in a representative capacity, such as acting on behalf of a group or organization, the determination of whether they qualify as an indigent person should be based on the means possessed by them in that representative capacity.

1(b) Describe in detail the law relating to place of filing a civil suit.

Sections 15 to 20 of the Code of Civil Procedure, 1908 relate to the place of filing a civil suit in India

Section 15: This section states that every suit should be instituted in the court of the lowest grade that has the competence to try it. It emphasizes that the appropriate court should have the jurisdiction to hear and adjudicate upon the particular matter.

Section 16: According to this section, suits concerning certain matters related to immovable property should be filed in the court within the local limits of whose jurisdiction the property is located. These matters include:

(a) Recovery of immovable property with or without rent or profits

(b) Partition of immovable property

(c) Foreclosure, sale, or redemption in the case of a mortgage or charge upon immovable property

(d) Determination of any other right to or interest in immovable property

(e) Compensation for wrong to immovable property

(f) Recovery of movable property actually under distraint or attachment

The section also provides a proviso that if the relief sought in a suit regarding immovable property held by or on behalf of the defendant can be completely obtained through the defendant's personal obedience, the suit may be filed in the court within the local limits of whose jurisdiction the defendant resides, carries on business, or personally works for gain.

Section 17: This section applies when a suit seeks relief or compensation for a wrong done to immovable property situated within the jurisdiction of different courts. In such cases, the suit can be instituted in any court within the local limits of whose jurisdiction any portion of the property is situated. However, it is important to note that the entire claim of the suit must fall within the jurisdiction of the chosen court.

Section 18: When there is uncertainty regarding the local limits of jurisdiction of two or more courts in which an immovable property is situated, this section provides a solution. If any of those courts is satisfied with the alleged uncertainty, it can record a statement to that effect and proceed to entertain and dispose of any suit relating to that property. The decree passed by that court will have the same effect as if the property were situated within its local limits of jurisdiction. However, the proviso states that the court should be competent to exercise jurisdiction over the nature and value of the suit.

Section 19: This section deals with suits for compensation for wrongs done to the person or to movable property. If the wrong was committed within the local limits of one court's jurisdiction and the defendant resides, carries on business, or personally works for gain

within the local limits of another court's jurisdiction, the plaintiff has the option to file the suit in either of those courts.

Section 20: This section states that subject to the aforementioned limitations, a suit should be instituted in a court within the local limits of whose jurisdiction either the defendant (or each of the defendants) resides, carries on business, or personally works for gain at the time of the commencement of the suit. Alternatively, if the cause of action, either wholly or in part, arises within the local limits of a court's jurisdiction, the suit can be filed there. The section also provides explanations regarding the jurisdiction of a corporation based on its sole or principal office in India or a subordinate office where the cause of action arises.

2. (a) What is a temporary injunction? When and under what circumstances can it be granted?

A temporary injunction is a legal order issued by a court that requires a party to either do or refrain from doing a particular act for a specified period of time. It is a preliminary or interim measure intended to preserve the status quo and prevent irreparable harm or damage until a final decision can be made on the underlying legal dispute.

Temporary injunctions are typically granted when the court determines:

1. There is a prima facie case.

2. Irreparable injury will be caused to the applicant.

3. Balance of convenience lies in favor of the applicant.

Under Order XXXIX of the Code of Civil Procedure, a temporary injunction can be granted by a court under the following circumstances:

1. Danger to Property: If it is proved by affidavit or otherwise that the property in dispute in a suit is in danger of being wasted, damaged, alienated, or wrongfully sold in execution of a decree, the court may grant a temporary injunction to restrain such acts.

2. Fraudulent Disposition of Property: If the defendant threatens or intends to remove or dispose of their property with the intention to defraud their creditors, a temporary injunction may be granted to prevent such actions.

3. Threats or Injury to Plaintiff: If the defendant threatens to dispossess the plaintiff or cause injury to the plaintiff in relation to any property in dispute in the suit, the court may grant a temporary injunction to protect the plaintiff's interests.

4. Breach of Contract or Injury: In a suit where the plaintiff seeks to restrain the defendant from committing a breach of contract or any other injury, the plaintiff may apply for a temporary injunction to prevent such breach or injury from occurring.

The court has the discretion to grant a temporary injunction based on the evidence and circumstances presented.

2(b) Enumerate various properties which are exempted from attachment in execution of a decree under Code of Civil Procedure.

Section 60 of the Code of Civil Procedure provides a list of properties that are exempted from attachment and sale in the execution of a decree. These exempted properties include:

1. Tools of Trade: Tools, books, vehicles, or any other equipment that are necessary for the livelihood of the judgment debtor.

2. Necessary Wearing Apparel: Wearing apparel, beds, and bedding of the judgment debtor and their family.

3. House and Personal Effects: The dwelling house (including any buildings attached thereto) or any part thereof, and the household furniture and utensils in the actual use of the judgment debtor and his family, as well as any implements of husbandry or tools of artisans.

4. Agricultural Land: Land used for agricultural purposes.

5. Stipends and Salaries: Any stipend or salary allowed to the judgment debtor for the purpose of his personal maintenance.

6. Pension: Any pension granted or continued by the government or a local authority to the judgment-debtor.

7. Any right of the judgment-debtor to future maintenance.

8. Proceeds of Insurance: The interest of the judgment-debtor in a policy of insurance on his life or the life of any other person, where the policy is expressed to be for the benefit of the judgment-debtor or his family.

9. Statutory Exemptions: Any other property declared exempt from attachment or sale under any law for the time being in force.

3. (a) Distinguish between the following:

(i) Decree and Order

Decree:

- A decree is a final decision or judgment given by a court in a civil suit. It determines the rights and obligations of the parties involved in the lawsuit.
- A decree usually comes at the conclusion of a trial or hearing and is based on the merits of the case and the applicable laws.
- A decree is binding and enforceable, and it can be executed to enforce its terms or seek remedies.

Order:

- An order is a decision or direction given by a court at any stage of a legal proceeding. It may be an interim or final ruling.
- Orders deal with procedural matters, case management, or temporary relief during the course of litigation.

- Orders may address issues such as granting or denying an injunction, scheduling hearings, admitting evidence, or appointing a receiver.

3(a)(ii) Review and Revision

Review:

- Review refers to a process by which a court reconsiders its decision.
- Review is generally available when there is an error apparent on the face of the record or a substantial miscarriage of justice.
- The purpose of review is to correct errors of law, fact, or procedure that may have occurred in the original decision.

Revision:

- Revision, on the other hand, is a process by which a higher court exercises its supervisory jurisdiction over lower courts.
- Revisionary powers are used to correct jurisdictional errors, illegalities, or irregularities in the exercise of judicial authority.
- A revision petition is filed before the High Court, seeking a reexamination of the lower court's decision.
- Revision is not concerned with reevaluating the evidence or merits of the case but focuses on the legality and propriety of the lower court's decision.

3(b) Distinguish between the following:

(i) Counterclaim and set off

Counterclaim:

- A counterclaim is a claim brought by a defendant against the plaintiff in the same lawsuit.
- It is a separate and independent claim.
- A counterclaim allows the defendant to assert their own rights and seek relief against the plaintiff.
- If a counterclaim is successful, it can result in the defendant obtaining a judgment against the plaintiff.

Set-off:

- Set-off is a mechanism used to adjust or cancel out mutual debts or claims between two parties.
- It is a defense raised by a defendant to reduce or eliminate their liability to the plaintiff by setting off a debt owed by the plaintiff to the defendant.
- Set-off involves a reciprocal or mutual dealing between the parties, where the defendant seeks to balance the scales of indebtedness by offsetting their claim against the plaintiff's claim.

3(b)(ii) Commission and Receiver:

Commission:

- A commission refers to the appointment of a person by a court to perform a specific task or function related to a suit.
- The appointed person, known as a commissioner, acts as an agent of the court and is responsible for carrying out tasks assigned to them.
- Commissions are typically used for various purposes, such as taking evidence, examining witnesses, inspecting property, or conducting a sale of assets.
- The commissioner's role is temporary and limited to the specific task or function assigned by the court.

Receiver:

- A receiver is a person appointed by a court to take control and manage the property or assets that are the subject of a legal dispute.
- The appointment of a receiver is typically made to preserve and protect the property pending the final determination of the lawsuit.
- Receivers are appointed to ensure that the property is managed effectively, to prevent its dissipation or deterioration, and to safeguard the interests of the parties involved.
- A receiver has broader authority and responsibility compared to a commissioner, as they may be required to manage, operate, and even sell the property under their control.

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GROUP- B

4. (a) What is Dying Declaration? When is a Dying Declaration admissible in evidence?

A dying declaration refers to a statement made by a person who is on the verge of death, explaining the circumstances surrounding their impending death. It is considered as evidence in legal proceedings, particularly criminal cases, as it provides a firsthand account of the events leading to the person's death.

Under the Indian Evidence Act, 1872, a dying declaration is admissible as evidence under certain circumstances. Section 32(1) of the Indian Evidence Act states that a statement made by a person as to the cause of their death, or as to any of the circumstances surrounding their death, is considered a relevant fact.

For a dying declaration to be admissible, the following conditions must be satisfied:

1. The statement must relate to the cause of the person's death or the circumstances surrounding their death.

2. The statement must be made by the person who is actually dying.

3. It is not necessary that the person making the statement must be aware that their death is imminent.

4. It is also not necessary that the statement should be made in the presence of a Magistrate or a police officer or any other person who can be considered an independent witness.

However, it is necessary for the court to assess the dying declaration carefully, considering factors like the mental and physical condition of the declarant, any possible inducement or threat that may have influenced the statement, and whether the declaration is consistent with other evidence in the case. The court will evaluate the credibility and reliability of the dying declaration before considering it as substantive evidence in the trial.

Khushal Rao v. State of Bombay, AIR 1958 SC 22: The Supreme Court held that a dying declaration should be scrutinized carefully and evaluated in light of the surrounding circumstances.

In **Smt. Paniben v. State of Gujarat, 1992 SCC (2) 474**, the Supreme Court of India laid down certain guidelines for evaluating the evidentiary value of a dying declaration. Here are the key points from the Paniben case:

1. The court recognized that a dying declaration is an exception to the hearsay rule and can be admitted as substantive evidence if it inspires confidence.
2. The court held that there is no absolute rule that a dying declaration can only be relied upon if it is made to a Magistrate or a police officer. The statement can be made to any person, provided it is free from suspicion and made in the belief of imminent death.
3. The court emphasized that the person recording the dying declaration should ensure that the declarant is in a fit state of mind to make a statement. The declarant should have the opportunity to understand the questions put to them and to give rational answers.
4. The court clarified that minor inconsistencies or discrepancies in the dying declaration do not render it unreliable, as they may be due to the stress of impending death or the varying power of expression of the declarant.
5. The court stated that corroboration of a dying declaration is not a legal requirement, and it can form the sole basis for conviction if it is found to be reliable, trustworthy, and corroborated by surrounding circumstances.

4(b) Write notes on the following:

(i) Hostile Witness

A hostile witness is a witness who appears in court to testify but exhibits a demeanour or attitude that is adverse or antagonistic towards the party that called them to testify. Essentially, a hostile witness is uncooperative or unwilling to provide favourable testimony to the party that called them.

In India, the law relating to hostile witnesses is primarily governed by the Indian Evidence Act, 1872. Section 154 of the Indian Evidence Act allows the party calling a witness to cross-examine them if they are considered hostile. Cross-examination is a process in which the party calling the witness is given the opportunity to question the witness and challenge their testimony.

It's important to note that the law does not specifically define the term "hostile witness," but it is a term commonly used in legal proceedings to describe a witness who exhibits uncooperative behaviour or gives testimony contrary to the expectations of the party that called them. The court has the authority to determine whether a witness should be treated as hostile based on their demeanour, attitude, or testimony.

Attar Singh vs State of Maharashtra: Merely because a witness becomes hostile it would not result in throwing out the prosecution case, but the Court must see the relative effect of his testimony. If the evidence of a hostile witness is corroborated by other evidence, there is no legal bar to convict the accused.

(ii) Leading question

A leading question is a question that suggests the answer or puts words into the mouth of the person being questioned. The purpose of the rule against leading questions is to ensure that the testimony provided by witnesses is unbiased and based on their own recollection of events, rather than being influenced by the way the questions are asked.

Under Section 141 of the Indian Evidence Act, leading questions are generally not allowed in the examination-in-chief of a witness. Examination-in-chief refers to the questioning of a witness by the party who called the witness. The general rule is that the party calling the witness should not ask leading questions during the examination-in-chief.

However, there are exceptions to this rule. Leading questions may be allowed in certain circumstances, such as:

1. Hostile witnesses: If a witness is declared hostile by the party who called them, the party can ask leading questions during their examination-in-chief.

2. Cross-examination: Leading questions are generally permitted during cross-examination, which is the questioning of a witness conducted by the opposing party. Cross-examination aims to test the credibility of the witness and challenge their version of events.

The court has the discretion to allow or disallow leading questions depending on the circumstances of the case. The purpose is to ensure fair and impartial proceedings and to prevent any party from unduly influencing the testimony of a witness.

5. Distinguish between the following:

(a) Latent and Patent Ambiguity

Definition:

- Patent Ambiguity: It refers to an ambiguity or defect in the language of a document that is apparent on the face of the document itself.
- Latent Ambiguity: It refers to an ambiguity that arises when the language of a document appears clear on its face but becomes ambiguous when applied to the existing facts or circumstances.

Noticeability:

- Patent Ambiguity: It is readily noticeable or evident upon reading the document.

- Latent Ambiguity: It may not be apparent on the face of the document and requires external evidence or context to identify the ambiguity.

Admissibility of Evidence:

- Patent Ambiguity: Evidence to explain or amend a patent ambiguity is generally excluded under the Indian Evidence Act. External evidence cannot be used to show the intended meaning or supply the defects in the language.
- Latent Ambiguity: Evidence may be admitted to clarify a latent ambiguity. External evidence can be presented to establish the peculiar or special meaning of the language in reference to the existing facts or circumstances.

5(b) Judgment in rem and judgment in personam

A judgment in rem refers to a judgment that is binding on the whole world or a particular class of persons, regardless of whether they were parties to the original proceedings. It is a judgment that determines the status, ownership, or validity of a particular property or right.

A judgment in personam, on the other hand, refers to a judgment that is binding only on the parties involved in specific proceedings. It is a judgment that determines the rights and liabilities between the parties to the litigation.

Under the Indian Evidence Act, the relevancy of judgments is governed by Sections 40 to 44. These sections outline the conditions under which judgments can be considered relevant and admissible as evidence in subsequent legal proceedings.

Section 40 - Previous judgments relevant to the matter in issue: According to this section, previous judgments that have been pronounced by a court of competent jurisdiction are relevant if they relate to the matter at issue in a subsequent legal proceeding.

Section 41 - Relevancy of judgments in in probate, etc., jurisdiction. According to Section 41, a final judgment, order, or decree of a competent court in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction is relevant in situations where it confers or takes away a legal character from a person or declares a person's entitlement to a specific thing absolutely and not just against a specified person.

Section 42 - According to Section 42, judgments, orders, or decrees other than those mentioned in Section 41 are considered relevant if they relate to matters of a public nature that are relevant to the enquiry at hand. However, Section 42 also clarifies that such judgments, orders, or decrees are not conclusive proof of the facts or matters they state.

Section 43 - Section 43 states that judgments, orders, or decrees that fall outside the scope of Sections 40, 41, and 42 are considered irrelevant. The section does acknowledge that if the existence of the judgment, order, or decree itself becomes a fact in issue in the case, then it may be considered relevant and admissible.

5(c) Discuss the relevancy of evidence of character in criminal and civil cases.

The relevancy of evidence of character in criminal and civil cases is addressed in Sections 52 to 55 of the Indian Evidence Act.

In civil cases, as per Section 52, the character of any person concerned is generally irrelevant to prove conduct imputed to them, unless such character is established through facts that are otherwise relevant.

On the other hand, in criminal cases, Section 53 states that evidence of a person's good character is relevant. This means that the fact that the accused person has a good character can be considered as a relevant factor in criminal proceedings.

It is important to note that Section 54 provides that evidence of the accused person's bad character is irrelevant unless evidence has been given that the accused person has a good character. In such cases, evidence of bad character can be considered as a rebuttal or a response to evidence of good character presented by the accused.

Additionally, Section 53A specifies that in certain criminal cases involving offences related to sexual assault, evidence of the victim's character or previous sexual experience is not relevant when the issue of consent is in question. This provision aims to prevent the victim's character or previous sexual history from being used against them in cases involving sexual offences.

Lastly, Section 55 recognizes that the character of any person involved may be relevant to determine the amount of damages in a civil case. This means that a person's character, which includes both reputation and disposition, can be considered when assessing the appropriate compensation or damages that person should receive.

6. (a) What do you understand by Burden of Proof? On whom the burden lies in following instances:

(i) A has given a loan of 1000 to B. B says that he returned 1000 to B in presence of C.

(ii) A has killed B. The defence of B is that he has exercised his right of private defence.

Burden of proof refers to the responsibility of a party to provide sufficient evidence to support their claim or assertion in a legal proceeding. It determines which party is required to present evidence and the level of persuasion needed to reach a favorable decision.

The burden of proof typically rests on the party who is making an assertion or seeking to prove a fact. In criminal cases, the burden of proof rests on the prosecution, which must prove the guilt of the accused beyond a reasonable doubt. This means that the prosecution must present evidence that is so convincing that there is no reasonable doubt in the minds of the jurors or judge about the defendant's guilt.

In civil cases, the burden of proof is usually lower and is often referred to as the "preponderance of the evidence" standard. In such cases, the party with the burden of proof must present enough evidence to show that it is more likely than not that their version of events is true.

A has given a loan of 1000 to B. B says that he returned 1000 to A in the presence of C.

In this case, the burden of proof would initially lie on B, the borrower, who asserts that he has returned the loan amount of 1000 to A. B has the affirmative claim that the debt has been discharged. Therefore, B would have to present evidence to prove that he indeed repaid the loan to A in the presence of C.

A has killed B. The defense of B is that he has exercised his right of private defense.

In this case, the burden of proof initially lies on the prosecution, which is A in this scenario. The prosecution has the burden of proving beyond a reasonable doubt that A is guilty of killing B.

(b) What are the facts which need not be proved by the parties?

Based on Sections 56 to 58 of the Indian Evidence Act, the following are the facts that need not be proved by the parties:

1. Judicially noticeable facts (Section 56): Facts of which the court will take judicial notice need not be proved. This includes facts such as all laws in force in the territory of India, public acts passed by Parliament of the United Kingdom, articles of war for the Indian Army/Navy/Air Force, the course of proceedings of various parliaments, seals of courts, existence and title of recognized states or sovereigns, divisions of time, geographical divisions of the world, public festivals, and holidays notified in the Official Gazette, among others.

2. Admitted facts (Section 58): If the parties or their agents agree to admit certain facts at the hearing or agree to admit them in writing before the hearing, those facts need not be proved. This can be done through an agreement between the parties or by their pleadings. However, the court may still require proof of admitted facts at its discretion.

GROUP-C

7. (a) Discuss the grounds for setting aside an arbitral award.

Under the Indian Arbitration and Conciliation Act, 1996, there are specific grounds upon which an arbitral award can be set aside by the courts. These grounds are outlined in Section 34 of the Act and are as follows:

1. Incapacity: If one of the parties to the arbitration agreement was under some legal incapacity or the arbitration agreement itself is not valid under the law to which the parties have subjected it or, failing any indication thereon, under Indian law.

2. Invalid arbitration agreement: If the arbitration agreement is not valid under the law or is incapable of being performed.

3. Lack of proper notice: If a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable to present its case as a result.

4. Composition of the arbitral tribunal: If the arbitral tribunal was not constituted in accordance with the agreed-upon procedure or, failing such agreement, was not constituted in accordance with the provisions of the Act.

5. Exceeded scope of authority: If the arbitral tribunal has exceeded its scope of authority in deciding matters beyond the scope of the arbitration agreement.

6. Contrary to public policy: If the award is in conflict with the public policy of India. This ground is narrowly interpreted by the courts and is invoked in exceptional circumstances.

It is important to note that setting aside an arbitral award is subject to a time limitation. An application to set aside an award must be made within three months from the date of receipt

of the award or from the date on which a request to correct or interpret the award was disposed of by the tribunal, whichever is later.

(b) Write notes on:

(i) Arbitration agreement

An arbitration agreement is a contract entered into by the parties involved in a dispute, in which they agree to resolve their disputes through arbitration rather than going to court. It is a fundamental document that establishes the basis for arbitration proceedings. Here are some key points about arbitration agreements:

Separate agreement: The arbitration agreement is an independent and separable contract from the main contract. It means that even if the main contract is found to be invalid, the arbitration agreement may still be enforceable.

Formal requirements: An arbitration agreement must be in writing. It can be in the form of a standalone agreement or as a clause within a broader contract. The agreement can be in the form of an exchange of letters, emails, or any other means of communication that provide a record of the agreement.

Autonomy of parties: The parties have the freedom to determine the procedures and rules that will govern the arbitration process. They can choose a specific arbitral institution, determine the number of arbitrators, and set out the governing law for the arbitration.

(ii) Foreign Award

A foreign award refers to an arbitral award that is rendered in a country other than the country where its enforcement is sought. It involves the recognition and enforcement of awards that are issued in international arbitrations.

Foreign awards are subject to a separate legal framework for recognition and enforcement. The New York Convention, to which a significant number of countries are parties, provides a mechanism for the recognition and enforcement of foreign awards.

The process of recognizing and enforcing a foreign award involves applying to the courts of the country where enforcement is sought. The courts will examine whether the award meets the requirements of the applicable law and whether any grounds for refusal of enforcement exist.

The New York Convention provides limited grounds for refusing the recognition and enforcement of foreign awards. These grounds include matters such as incapacity of the parties, invalid arbitration agreement, lack of proper notice, and contravention of public policy.

8. (a) What are the rules regarding removal of Arbitrator? Can an appointed arbitrator be removed by the parties or court?

Under the Indian Arbitration and Conciliation Act, 1996, the removal of an arbitrator can occur in certain circumstances. The rules regarding the removal of an arbitrator are outlined in Section 14 of the Act.

1. Grounds for removal: An arbitrator can be removed only if circumstances exist that give rise to justifiable doubts about their impartiality or independence, or if they fail to meet the qualifications agreed upon by the parties.

2. Agreement between parties: The Act allows the parties to agree on a procedure for challenging the arbitrator's appointment or removal. Such an agreement may provide specific grounds and procedures for removal.

3. Court's power of removal: If the parties have not agreed on a procedure for removal, a party can approach the court to seek the removal of an arbitrator. However, the Act does not grant an automatic right to the parties to remove an arbitrator without valid reasons.

4. Court's decision on removal: When a party requests the court to remove an arbitrator, the court has the power to decide on the removal after giving an opportunity to the arbitrator to present their case. The court will consider the circumstances and determine whether justifiable doubts exist regarding the arbitrator's impartiality or independence.

5. Replacement of the arbitrator: If an arbitrator is removed, whether by the parties or the court, a substitute arbitrator may be appointed according to the procedure agreed upon by the parties. If there is no agreed procedure, the court can appoint a substitute arbitrator.

It's important to note that the specific provisions of the Act and the procedures may be subject to interpretation and may vary in different cases. It is advisable to consult legal professionals or refer to the latest version of the Indian Arbitration and Conciliation Act for specific and up-to-date information.

(b) Distinguish between the following:

(i) Arbitration and Judicial Adjudication

Arbitration is a method of dispute resolution where the parties involved agree to submit their dispute to an impartial third party, known as an arbitrator or an arbitration panel. The arbitrator or panel is chosen by the parties and has the authority to render a decision, known as an arbitral award, which is legally binding on the parties. Arbitration can be either voluntary or mandatory, depending on the agreement between the parties. It is a private and confidential process, and the decision reached by the arbitrator is usually final and binding, with limited grounds for appeal. Arbitration is often used as an alternative to litigation because it offers a more flexible and expedited process for resolving disputes.

Judicial adjudication, on the other hand, refers to the resolution of disputes through the court system, where a judge or a panel of judges presides over the case. In judicial adjudication, the parties present their arguments and evidence before the court, and the judge makes a decision based on the applicable laws and legal principles. The judge's decision, known as a judgment, is legally binding and enforceable. Judicial adjudication is a formal and public process, conducted in accordance with established legal procedures. The parties may have the right to appeal the judge's decision to a higher court, depending on the jurisdiction and applicable laws.

(ii) Conciliation and Negotiation

Conciliation is a process in which an impartial third party, known as a conciliator, assists the parties in reaching a mutually acceptable resolution to their dispute. The conciliator facilitates communication between the parties, helps them identify their interests and concerns, and encourages them to explore possible solutions. The conciliator may offer suggestions or propose compromise options but does not have the authority to impose a decision on the parties. The objective of conciliation is to promote understanding and cooperation between the parties and to help them find a resolution that meets their interests.

Negotiation, on the other hand, is a process in which the parties involved directly communicate and discuss the issues in order to reach an agreement. It is a voluntary and informal method of dispute resolution where the parties can freely express their positions, interests, and preferences. Negotiation can be conducted between individuals, organizations, or even nations. The outcome of negotiation depends on the ability of the parties to reach a mutually acceptable agreement. It does not involve the intervention of a third party, although the parties may choose to involve advisers or mediators to assist them in the negotiation process.

GROUP- D

9. (a) What is Charge? Can a Court alter a Charge? If so, how and when?

A charge refers to the specific accusation or allegation made against an individual in a criminal case. It outlines the offence or offences that the accused person is being charged with, along with the relevant legal provisions that pertain to those offences.

Court has the authority to alter a charge under certain circumstances. The power to alter a charge is derived from Section 216 of the Code of Criminal Procedure, 1973, which empowers the court to make alterations to charges at any stage of the proceedings before the pronouncement of judgment. However, there are certain limitations and conditions that need to be satisfied for such alterations to take place.

The court may alter a charge if it finds that the facts and evidence presented during the trial support a different offence from the one originally charged.

The court can exercise its discretion to alter a charge after considering the objections and submissions of the prosecution and the defense.

The court must ensure that the accused is provided with a reasonable opportunity to defend against the altered charge. This includes allowing the accused to present evidence and cross-examine witnesses relevant to the altered charge. If necessary, the court may also adjourn the proceedings to provide adequate time for the defense to prepare its case in light of the altered charge.

It is essential that any alteration to a charge is made before the pronouncement of judgment. Once the judgment is delivered, the court loses its power to alter the charge. Therefore, any necessary alterations should be made promptly to ensure that justice is served and the accused is provided with a fair trial.

9(b) Distinguish between the following:

(i) Cognizable and Non-Cognizable Offence

Cognizable Offence: A cognizable offense is one for which a police officer has the authority to make an arrest without a warrant and initiate an investigation based on a complaint or on his own knowledge. These offenses are generally more serious in nature and carry higher penalties. Examples of cognizable offenses include murder, rape, kidnapping, and robbery. The Code of Criminal Procedure (CrPC) provides a list of cognizable offenses.

Non-Cognizable Offence: In contrast, a non-cognizable offense is one for which a police officer cannot make an arrest without a warrant and cannot initiate an investigation without a court order or a complaint by the aggrieved party. These offenses are typically less serious and carry relatively lower penalties. Examples of non-cognizable offenses include defamation, public nuisance, and simple assault.

The distinction between cognizable and non-cognizable offenses is important because it determines the powers and procedures available to the police in dealing with the offense. Cognizable offenses allow the police to take immediate action, such as making an arrest, whereas non-cognizable offenses require them to seek judicial intervention before initiating an investigation or making an arrest.

(ii) Conviction and Acquittal

Conviction: Conviction refers to the legal finding of guilt against a person who has been accused of committing a crime. It occurs when a court, after a trial or upon the accused's plea of guilty, is satisfied beyond a reasonable doubt that the accused is guilty of the offense charged. A conviction can lead to various consequences, including imprisonment, fines, probation, or other legal penalties, depending on the nature and severity of the offense.

Acquittal: Acquittal, on the other hand, means the legal finding of innocence or the lack of guilt of the accused. It occurs when the court, after considering the evidence and arguments presented during the trial, is not convinced beyond a reasonable doubt of the accused's guilt. An acquittal results in the accused being discharged from the charges and protects their presumption of innocence. It also prevents any further legal consequences associated with the offense.

10. (a) Discuss the procedure for disposal of the cases adopted by the Small Cause Courts under the Provincial Small Cause Courts Act, 1887.

Under sections 17 to 23 of the Provincial Small Cause Courts Act, 1887, the following procedures are adopted for the disposal of cases in Small Cause Courts:

1. Application of the Code of Civil Procedure: The procedure followed in a Small Cause Court is generally governed by the provisions of the Code of Civil Procedure, 1908, unless otherwise specified in the Act. This means that the general procedures prescribed in the Code will apply to suits cognizable by the Small Cause Court and any proceedings arising from those suits.

2. Filing and admission of plaints: The plaintiff initiates the case by filing a plaint, which outlines the facts and nature of the dispute. In the absence of the Judge and an Additional Judge, the Registrar may admit or reject a plaint. The Judge may also return or reject a plaint that has been admitted by the Registrar or admit a plaint that has been returned or rejected by the Registrar.

3. Trial of suits by Registrar: Suits cognizable by the Registrar under specific sections of the Act are tried by the Registrar. The decrees passed in such suits are executed by the Registrar in the same manner as if the Judge had tried the suits and executed the decrees.

4. Passing of decrees by Registrar on admission: If, before the scheduled date of the hearing, the defendant or their authorized agent appears before the Registrar and admits the plaintiff's claim, the Registrar may pass a decree in favor of the plaintiff. This decree has the same effect as a decree passed by the Judge. The Judge may grant an application for a review of judgment and re-hear the suit on the same conditions as if the decree had been passed by the Judge.

5. Execution of decrees by Registrar: In the absence of the Judge and an Additional Judge, the Registrar may make orders regarding the execution of decrees and orders made by the Small Cause Court. The Judge or the Additional Judge has the authority to reverse or modify the Registrar's order upon their own motion or on the application of a party within fifteen days from the date of the Registrar's order.

6. Adjournment of cases by chief ministerial officer: When the Judge is absent and an Additional Judge has not been appointed or is also absent, the Registrar or other chief ministerial officer of the Court may adjourn the hearing of any suit or proceeding and fix a date for the further hearing.

7. Return of plaints in suits involving questions of title: If the right of a plaintiff and the relief claimed by them depend on the proof or disproof of a title to immovable property or another title that the Small Cause Court cannot determine, the Court may return the plaint for presentation to a Court that has jurisdiction to decide the title. The Court shall comply with the provisions of the Code of Civil Procedure regarding the return of plaints and make appropriate orders regarding costs.

10(b) Whether the Small Cause Courts Act competent to hear following cases:

(i) A suit for relief of divorce

(ii) A suit for dissolution of partnership

In India, Small Cause Courts were established under the Provincial Small Cause Courts Act, 1887. As per the Act, Small Cause Courts can adjudicate upon civil matters which are of lesser value, not exceeding a specific amount as set out in the respective state legislation. Their jurisdiction is restricted by Section 15 of the Act.

(i) A Suit for Relief of Divorce

The Small Cause Courts Act does not have the jurisdiction to hear a suit for relief of divorce. The jurisdiction for hearing divorce matters primarily lies with the Family Courts, as laid down in the

Family Courts Act, 1984 (Section 7). If there's no Family Court, such cases fall within the jurisdiction of the District Court.

Case law supporting this includes Anita Suresh Palshetkar v Suresh Palshetkar (AIR 1996 Bom 284), where the Bombay High Court affirmed that divorce cases lie outside the purview of the Small Cause Court's jurisdiction.

(ii) A Suit for Dissolution of Partnership

Under the Provincial Small Cause Courts Act, 1887, a suit for dissolution of partnership also falls outside the jurisdiction of the Small Cause Court. As per the Second Schedule of the Act, suits for dissolution of a firm and accounts of dissolved firms are excluded from the jurisdiction of Small Cause Courts (Entry 37).

In accordance with the Indian Partnership Act, 1932 (Section 44), the jurisdiction for hearing cases related to dissolution of partnership primarily lies with the High Court and District Court. The Supreme Court in Dulichand Laxminarayan v Commissioner of Income-tax, Nagpur (AIR 1956 SC 354) clarified that disputes concerning dissolution of a partnership firm should be adjudicated by regular civil courts.