

Odisha Judiciary - Mains 2012

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Jurisprudence And Constitution of India

- Q1. Explain the importance of the historical school of law in the present day context.**
- Q2. Write notes on the following: (a) Two principles of Justice evolved by John Rawls (b) Comparison of 'Rule of Recognition' with 'Grundnorm'**
- Q3. Define Law. Distinguish between law and morals.**
- Q4. Discuss the importance of Precedent as a source of law. Mention some circumstances which increases the authority of a precedent**
- Q5. Rights and Duties are Jural Correlatives. Discuss. Mention some of the characteristics of a legal right.**
- Q6. Define the term 'person' and distinguish between 'natural' and 'legal' persons. Mention two circumstances in which beasts may be thought to persons legal rights.**
- Q7. 'All laws in force in the territory of India immediately before the commencement of the constitution, in so far as they are inconsistent with the provisions of this part, shall to the extent of such inconsistency be void.' Attempt an exhaustive analysis of the above constitutional provision.**
- Q8. The Right to Education has been conferred the status of a fundamental right. Discuss the constitutional significance of the amendment incorporating right to education as a fundamental right.**
- Q9. Article 39A of the Constitution of India provides for Equal Justice and Free Legal Aid. Attempt an analysis of the aforesaid provision and its impact on the working of the Constitution.**
- Q10. The President of India can seek advisory opinion of the Supreme Court as certain matters. Examine the above in the context of Article 143 (1) and (2) of the Constitution.**
- Q11. Attempt an exhaustive analysis of the law of detection in India as provided for under the Tenth Schedule.**
- Q12. Discuss the extent and scope of protection provided to Civil Servants under the Constitution of India.**

Law of Contract

- Q1. (a) "The test of contractual intention is objective, not subjective. What matters is not what the parties had in mind, but what a reasonable person would think, in the circumstances, their intention to be"? Analyse this statement with the help of the judicial decisions in view of the common intention of the parties to enter into legal obligation. (b) Analyse the concept of mistake of fact as provided under the Indian Contract Act, 1872.**

Q2. (a) "Section 73 of the Indian Contract Act is declaratory of the common law principle as to damages." Critically analyse the above statement with judicial decisions. (b) 'A', a singer enters into a contract with 'B', the manager of a theater party to sing at his theater two nights in every week during the next two months in a consideration of Rs. 100 for each night's performance. On the sixth night, 'A' will fully remains absent With the assent of *B\ TV sings in the seventh night. State the effect of refusal of party to perform promise wholly and determine the rights and liabilities of the parties.

Q3. (a) "The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract." Explain this with the provisions of law and judicial decisions. (b) The Board of Directors of a company appoints Mr. 'X' as managing director for managing the affairs of the company with expressly limiting his powers to order goods only up to Rs. 5,000 and beyond that amount with the prior sanction of the Board. But Mr. X orders goods worth of Rs. 10,000 to Mr. T the third party. Analyse the authority of Mr. 'X' and determine the liability of the company before the third party in the context of agent's authority.

Q4. (a) Define 'sale' with its essentials. Distinguish between 'Contract of Sale' and 'Hire- purchase'. (b) 'A' sold a car by auction to X, the highest bidder. X' offered to pay for the car by a cheque and he was allowed to do so when he signed the document stating that the property in the car would not pass to the buyer 'X' until the amount of the cheque had been credited to As account. The cheque Was subsequently dishonoured, but In the mean time, 'X' sold the car to T and 'Y* sold It to *Z\ Then 'A' sued T to recover back the car and his contention was that T could not get a good title to the car because 'X' had not become the owner of the car as the cheque given by him had been dishonoured and no transferee from him could get a good title. Can 'A' recover the car from 'Z' ? Decide by giving justifications.

Q5. Discuss the rules regarding delivery of goods. Explain the duties and liabilities of the seller when he delivers the goods to the carriers or wharfinger.

Q6. (a) Explain the maxim nemo dat quod non habet with exceptions to the rule. (b) "The implied conditions and warranties provided in the Act are binding in every contract of sale unless they are inconsistent with any express conditions and warranties agreed to by the parties." Explain.

Q7. "The scope of the implied authority of a partner has been limited through statutory restrictions." Explain this. Can restrictions of implied authority be imposed through an agreement between parties?

Q8. (a) 'The rights of the parties to make any contract to regulate their mutual rights and duties is subject to the provisions of the Partnership Act.' Explain. (b) 'D' who is not actually a partner in the firm consisting of 'A, 'B','C' represents to 'X' that he is also a partner in that firm. On the faith of that representation, X gives credit to the firm. Can 'X' make *D' liable under the doctrine of holding out ? Decide with suitable case laws.

Q9. (a) Explain the position of minor admitted to the benefits of Partnership. What would happen to the firm if a minor is made full-fledge partner in the partnership firm at the time of its creation. (b) 'A', 'B','C' entered into partnership and contributed a capital of Rs. 20,000 and Rs. 5,000 respectively, but they share the profits and losses equally. On dissolution, if the assets realize Rs. 17,000 only, there is deficiency of capital to the extent of Rs. 18,000. Determine the mode of settlement of accounts.

SECTION - D

Q10. (a) Explain the conditions necessary to be a holder in due course. What is the difference between holder in due course and holder for collections? (b) State the legal validity of 'electronic cheque' and 'truncated cheque'.

Q11. (a) Explain the circumstances in which the maker, acceptor or indorser are discharged from liability. (b) 'X' has his account with Y bank. One day in the morning the balance in X's account was Rs. 1,000. About 1 PM of the same day, Rs. 500 was paid into his account; a little later at 3 PM a cheque drawn by X' for Rs. 1,200 was presented. Rs. 500 have not yet been credited to the account of X', the payment was refused. Discuss with case law, whether the refusal is justified.

Q12. (a) "Presumption as provided under the Negotiable Instrument Act operate in favour of or against parties to the negotiable instrument or their privies." Explain this with the special rules of evidence. (b) A bill of exchange was drawn by 'A' in California where the rate of interest is 25%, and accepted by 'B' payable in Washington where the rate of interest is 6%. The bill is indorsed in India, and is dishonoured. An action on the bill is brought against 'B' in India. Discuss the liability of 'A' if he is charged as drawer.

Law of Crime And Law of Torts

Q1. Discuss the scope of "joint liability" for a Criminal Act based on the existence of common intention.

Q2. What are the different punishments enumerated under the Indian Penal Code to which offenders are liable ?

Q3. Referring to Indian Penal Code discuss the views of the Supreme Court on the offence of attempt to commit suicide.

Q4. Critically examine the concept of insanity and intoxication as defences available under the Indian Penal Code.

Q5. "Vicarious liability is unknown to Criminal Law". Critically evaluate the statement in the light of the provisions of the Indian Penal Code recognising such liability.

Q6. Distinguish between the following : a. Abetment and Criminal Conspiracy b. Sec. 34 and Sec. 149 of IPC c. Rape and Adultery d. Kidnapping and Abduction e. Motive and Intention

Q7. "A tort is a civil injury, but all civil injuries are not torts." Discuss the statement referring to essential ingredients of tort.

Q8. Discuss, in detail, different legal remedies provided in the law of tort.

Q9. What do you mean by absolute liability in tort? Explain the concept of absolute liability with the help of decided cases.

Q10. The law of negligence concerns itself with carelessness only when there is a legal duty to take care. Discuss.

Q11. Explain the concept of the tort of defamation. Discuss the defences available against it.

Q12. Write notes on the following: a. Donoghue Vrs Stevens b. Wagon Mound Case c. Bhopal Gas Leak Disaster Case d. Ubi jus ibi remedium e. Damnum sine injuria

Personal Law

Q1. Explain two prominent schools of Hindu Law. What are the differences between two? Are there any sub-schools of one of above schools? State their differences also.

Q2. Discuss various conditions of a Valid Marriage as provided under Hindu Marriage Act, 1955. Violation of which condition makes the marriage void and voidable. Explain.

- Q3. State the legal effects of a Valid Adoption. What do you mean by the theory of Relation Back? How the Supreme Court revived this theory after the commencement of Hindu Adoption and Maintenance Act, 1956? Explain with citing of the cases decided by the 'Supreme Court1.
- Q4. Explain the rules of succession of Self Acquired Property left by a Hindu Male dying Intestate as provided in Hindu Succession Act, 1956.
- Q5. Explain the Term 'Coparcenary'. What are the main elements of a Hindu Coparcenary ? State the rules of succession of a coparcenary property after Hindu Succession Act, 1956. What changes have been brought by the Hindu Succession Amendment Act, 2005, in this regard?
- Q6. Write short notes on the following : a. Maintenance Pendente Lite and Permanent Alimony b. Natural Guardians of a minor child, and their powers
- Q7. Discuss various sources of Mohammedan Law.
- Q8. Explain various conditions of a Valid Muslim Marriage. In which circumstances a Marriage becomes Batil (Void) and Fasid (Irregular). State the consequences of such Marriage.
- Q9. Discuss various forms of Talaq as recognized in Muslim Personal Law.
- Q10. The right of 'Pre-emption' under Muslim Law is a very weak right." Explain the statement stating The Law of Pre-emption as prevailed in Muslim Law.
- Q11. Explain the concept of 'Dower' and its various classes as recognized in Muslim Law.
- Q12. Explain the following : a. Doctrine of 'Aul' and 'Rud' b. Rule of Acknowledgement and Legitimacy of a child

Law of Property

- Q1. (a) Ashish, a Hindu, who was separated from his father, sells to Santosh three fields A, B and C representing that he is authorised to transfer the same. Field - C does not belong to Ashish,, as it was retained by his father at the time of partition, but after his father's death Ashish being the heir obtained Field- C. Santosh did not rescind the contract of sale and asked Ashish to deliver field-C to him. Whether Santosh will succeed ? Decide. (b) Write short notes on the following: (i) Doctrine of marshalling (ii) Once a mortgage, always a mortgage (iii) Forfeiture of lease
- Q2. (a) Ashok has the properties - Property 'A' and Property - 'B'. He sells property - 'B' to Bikash and puts a condition that Bikash should not construct on property - B more than one storey so that Ashok's property - A which he retains should have good light and free air. Is such a condition valid ? Give reasons in support of your answer. (b) Explain the following: (i) Doctrine of lis pendens' (ii) Doctrine of 'part-performance'
- Q3. (a) Discuss the rights of an ostensible owner to transfer property under Transfer of Property Act. (b) Discuss briefly the law relating to subrogation provided in the Transfer of Property Act, 1882.
- Q4. (a) Bhavani effects an insurance policy on his own life with the Life Insurance Corporation of India (LIC) and deposits it with a bank for securing payment of an existing debt. Bhavani dies and Bank claims the amount from LIC contrary to the claims of Bhavani's heirs. Decide whether the claim of the bank is maintainable. (b) Akhil makes a gift of some immovable property of Sunita. But before the registration of gift document Akhil dies. Can the document be presented for registration after his death? If yes, what will be the effect of registration? (c) "An absolute restraint on disposition is a clog on ownership." Explain this fully with reference to provisions of the Transfer of Property Act.

- Q5. (a) Dr. Sunil agrees to perform a certain operation and takes an advance of Rs. 50,000 from the patient. Later on, Dr. Sunil refuses to operate. Decide, giving reasons, whether a patient can get a decree of performance from the court against Dr. Sunil. (b) Write a critical comment on provisions relating to Preventive Relief.
- Q6. (a) Adarsh without Brajesh's authority contract to sell to Sanjay an estate which Adarsh knows belong to Brajesh. Can Adarsh enforce specific performance of this contract if Brajesh is willing to confirm at. (b) What are the prerequisites for ordering for a specific performance?
- Q7. (a) Explain the salient features of the Specific Relief Act, 1963. (b) State when the court will order "Rectification of Instrument".
- Q8. (a) Sujata, a singer agreed to sing at Anapurna's theatre from September to December, 2009 and not to sing anywhere else during that period. Afterwards, she entered into a contract to sing at Lakshmi's theatre during the said period and refused to sing at Anapurna's theatre during that period. Anapurna filed an injunction application to appropriate court. What relief Anapurna is entitled to get, and for which part court may refuse to grant injunction? Decide giving reasons. (b) Explain: (i) Declaratory Decree (ii) Specific Performance
- Q9. (a) Explain that the Limitation Act is statute of repose, peace and justice, yet it is at times arbitrary and inequitable. (b) Discuss the effect of acknowledgement on the period of limitation.
- Q10. (a) Aswini has taken Rs. 5,000 as a loan from Bhushan and has promised to return the loan amount within one year. Aswini failed to return the loan amount within the stipulated period, but he has written a letter to Bhushan that he would pay the amount within a month. Whether the period of limitation will start after expiry of one year or from the date when Bhushan received the letter? Give reasons. (b) What do you mean by 'Sufficient cause' as explained in the Limitation Act? What are the condition precedent for its application?
- Q11. (a) Explain the general principles of Limitation under the Limitation Act. (b) Explain the effect legal disability on the operation of the period of limitation with relevant illustration.
- Q12. (a) Examine the grounds on which the courts have the power to extend the period of limitation. (b) "Every suit instituted, appeal preferred or application made after the period prescribed therefore be the 1st schedule shall be dismissed". Discuss.

Procedural Laws

- Q1. (a) Draw distinction between Executive and Judicial Magistrate. What are the powers of an Executive Magistrate and a Police Officer in dispersing an Unlawful Assembly? (b) Define Arrest When a Police Officer can arrest a person and what precautions he must follow while taking a person into Police Custody. Explain with the help of decided cases from the Supreme Court of India. 15
- Q2. (a) Enumerate the ways of process to compel a person to appear in Court? How long does a Warrant of Arrest remain in force? (b) Define Suspension, Remission and Commutation. What are the powers given to the Government to suspend, remit and commute sentences?
- Q3. (a) What are the necessary contents of a Judgement? Can a Criminal Court alter or revise its own judgement after it is signed and delivered? (b) Briefly explain, when a Criminal Court can order to pay compensation to the Injured or Aggrieved Person?

Q4. Explain with reasons and relevant Provisions of Law: (a) A 9 year old son was living with his father who is a habitual offender On the petition of the Child's Mother, can the Magistrate issue a search warrant against the Father considering such custody as wrongful confinement and an offence? (b) On 12th May, 2009, 'B' informs the Police that 'A' is planning to murder him on 18th May, 2009 at New Hotel, Buxi Bazar, Cuttack. On 18th May, 2009 Police arrested 'A' from the said Hotel. Is the Preventive arrest of the police is legal? (c) A Magistrate orders 'Z' to pay maintenance of Rs. 500 per mensem to his unemployed and disabled Father under Section 125 of Cr. P. C 1973. Can 'Z' prefer an Appeal or Revision against such order? If so, in which Court? (d) On 23rd April, 2009, a Police Sub-Inspector while on Night Patrol duty arrested 'M' for selling illicit liquor, 'N' for prostitution and 'Q' for extortion. Can 'M', 'N' and 'Q' be tried jointly? (e) Do you think a Magistrate can tender a pardon to an accomplice under Section 306 of Cr. P. C.1973?

Q5. (a) Explain briefly the Rules; relating to Appearance of Parties and Consequence of Non-Appearance under Order IX., Code of Civil Procedure, 1908. (b) When the court may allow and refuse the Amendment of Pleadings?

Q6. (a) Emumerate the Supreme Court's guide line for the grant of Temporary Injunction. (b) Draw distinction between Second Appeal and Revision. Can the High Court suo moto exercise the Revisional Jurisdiction?

Q7. Explain with relevant provisions of law: (a) Whether 'Equitable Execution' is mandatory or discretionary? (b) As American Court passed an order for payment of Matrimonial Maintenance against an Indian Husband currently residing in India. Can this order be executed by an Indian Civil Court? (c) Can a Civil Court through Review of Judgement alter it's own Judgement? (d) X wants to sue 'Y' an I. A. S. officer. Do you think 'X' is bound to give notice under Section 80 of CPC to 'Y'? (e) Do you think parties to the Civil Suit are entitled to get a copy of the Judgment free of cost?

Q8. Explain with relevant provisions of law: (a) Do you think every Civil Court has inherent power to decide the question of its own jurisdiction? (b) 'X' files a suit against 'Z' for declaration that he is entitled to certain landed property as the legal heir of 'M'. The suit is dismissed. Can 'X' claim the same property on the ground of adverse possession in a subsequent suit? (c) Do you think all Civil Courts can suo motu transfer suit, appeal and other proceedings to another Court? (d) 'W' and 'B' co-plaintiffs obtain a decree for Rs. 1600 against 'C' and 'C' obtains a decree for Rs. 1000 against 'B'. Can 'C' treat his decree as a cross decree? (e) Can a substantive suit be filed to set aside a decree passed by a Court on an objection as to the place of suing?

Q9. (a) Can a Court of Sessions convict an accused solely on the basis of Circumstantial Evidence? Discuss briefly the Rules of Circumstantial evidence as enumerated by the Supreme Court of India. (b) It is trite to say that every confession must necessarily be an admission, but, every admission does not necessarily amount to a confession. Explain the evidentiary value of 'Retracted Confession'.

Q10. (a) Define 'Secondary Evidence'. Explain the kinds of Secondary Evidence. Do you think that secondary evidence is not admissible until the non-production of primary evidence is satisfactorily proved? Discuss with case laws. (b) Explain the evidentiary value of 'Polygraph Examination' and 'Narco-Analysis Techniques' with the help of relevant provisions of law and decided cases.

Q11. (a) Draw distinction between 'Burden of Proof' and 'Onus of Proof'. Enumerate the Rules of Burden of Proof. (b) What questions cannot be asked to an accused or Witness during Cross Examination?

Q12. Estimate the evidentiary value of the following: (a) Testimony of an accomplice (b) Relevancy of facts forming part of same transaction (c) Professional Communication (d) Oral Evidence (e) Medical Evidence