

Odisha Judiciary - Mains 2014

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Jurisprudence And Constitution of India

- Q1. Examine the freedom of religion under the Indian Constitution. Can the state spend revenues to maintain a Hindu temple?**
- Q2. Define the term "State" with reference to Part - III (Fundamental Rights) of the Constitution.**
- Q3. What is meant by Parliamentary Privileges? How far is it available in India? Are Fundamental Rights subordinate to Parliamentary Privileges? Discuss with the help of decided cases.**
- Q4. "In the scheme of distribution of legislative powers, the Constitution of India has maintained predominance of Parliament and the judiciary has also generally supported this stand." Explain with the help of decided cases.**
- Q5. Discuss the main characteristics of the Constitution of India and point out how far is it federal in character.**
- Q6. "With the adoption of Parliamentary form of Government the Vesting Clause' in Article 53(1) remains to a great extent meaningless as the real executive power lies in the Ministry headed by the Prime Minister." Critically examine the above statement in the light of controversy pertaining to status and position of the President under Indian Constitution.**
- Q7. Critically examine the theory of "Volkgeist" propounded by Savigny.**
- Q8. Write an essay on the revival of natural law theory in the 20th Century with special reference to the view of Stammler.**
- Q9. Discuss the characteristic features of the sociological school of Jurisprudence.**
- Q10. "Possession is the Prima facie evidence of ownership." Discuss.**
- Q11. Discuss different theories of punishment. Which theory of punishment do you regard as the best theory and why? Give reasons for your answer.**
- Q12. "Rights and duties are coextensive." Discuss.**

Law of Contract

- Q1. (a) "The Indian Contract Act, 1872 contains certain provisions which impose contractual liability on a person under certain circumstances even if he never entered into contract." Discuss this statement with the help of statutory provisions and decided cases. (b) "Damages are compensatory not penal." Elucidate.**
- Q2. (a) Analyse the definition of consideration given in the Contract Act. Explain its main elements with the help of decided cases. (b) 'A' while still a minor by falsely representing himself to be the age of majority entered into an agreement to sell his house to 'B' and took from him a sum of Rs. 25 lakh as full and final consideration amount. However later 'A' refused to execute the sale deed of his house in favour of B on the plea of minority. Decide the case with the help of statutory provisions and decided cases.**

- Q3. (a) "The liability of surety presupposes the existence of a separate liability of the principal debtor. His liability is thus secondary or collateral which comes into existence only in default by the principal debtor." In the light of this statement, discuss the nature of surety's liability. (b) A surety gives the guarantee to the tune of Rs. 25,000 for an overdraft to be allowed by the bank to the principal debtor. The bank and principal debtor altered this amount of guarantee from Rs. 25,000 to Rs. 20,000 without consent of surety. Decide with the help of decided cases. 10
- Q4. "A vendor is bound not to disguise or artifice the goods to conceal the defects but under the doctrine of caveat emptor ordinarily he is not bound to disclose every defect of the goods." In the light of this statement explain the doctrine of caveat emptor and point out its exceptions.
- Q5. (a) Who is unpaid seller? What are the rights of unpaid seller against goods? (b) A person purchased a second hand car from a dealer by making payment. He used the car for a few months. Then police seized the car as stolen one. Can he recover full price from the seller? Decide.
- Q6. (a) When the property in the goods passes from the seller to buyer? Discuss the significance of passing of property. (b) A toy dealer displayed in his shop window some plastic toy catapults. A child of six was attracted and bought one. While he was using it, it broke off and injured his left eye, is the shopkeeper liable? Decide.
- Q7. (a) "Although sharing of profits is one of the essential elements of every partnership but every person who shares the profits need not always be a partner." Comment on the correctness of the statement and discuss the essentials of the partnership. (b) Define 'Partnership at Will'.
- Q8. (a) Is registration of a partnership firm compulsory under the Indian Partnership Act, 1932? State the effects of non-registration of a firm. (b) X, Y and Z are three partners in a firm. The firm is not registered. The firm files a suit against H for Rs. 1,000, for goods supplied to him. After filing the suit but before actual hearings in the suit, the firm is registered. Is the suit maintainable?
- Q9. (a) Generally a person who is not a partner in the firm cannot be made liable for the acts of the firm. Discuss the cases where liability of a non-partner can arise as a partner. (b) Discuss the circumstances under which a firm may be dissolved by the Court. Section - D
- Q10. (a) Discuss that 'a holder in due course' is a 'holder' but a 'holder' is not 'holder in due course'. (b) "Every cheque is a bill of exchange but every bill of exchange is not a cheque." Explain.
- Q11. (a) What is an endorsement? Explain and illustrate the different kinds of endorsements. (b) When a cheque is said to be dishonoured? Discuss the statutory provisions relating to dishonour of cheques.
- Q12. Define a Negotiable Instrument. Explain the main features of Negotiable Instruments. What are the main categories of Negotiable Instrument?

Law of Crime And Law of Torts

- Q1. Explain the maxim : actus non facit reum, nisi mens sit rea. Is mens rea a part of criminal law of India? Explain with the help of the cases. Is mens rea necessary in case of all crimes ?
- Q2. 'Nothing is an offence which is done in the exercise of right of private defence.' Elucidate and explain the object and purpose of the right of private defence. State the law with regard to the right of private defence of the body and property as contained under the penal code.
- Q3. Define 'hurt' and explain the differences between 'hurt' and 'grievous hurt'. State the ingredients of the two offences. State the circumstances when hurt and grievous hurt become aggravated. What is the justification for severe penalties in case of aggravated offences.

- Q4. What is 'robbery' ? When does the theft and extortion amount to robbery ? Explain, in brief, the distinction between theft and extortion, robbery and dacoity. Illustrate your answer with examples.
- Q5. What do you understand by the terms 'homicide' and 'culpable? When culpable homicide is not murder ? Distinguish among culpable homicide, murder and culpable homicide not amounting to murder. Refer leading cases.
- Q6. Distinguish between the following: (a) Wrongful Restraint and Wrongful Confinement (b) Riot and Affray (c) Criminal Misappropriation of Property and Breach of Trust (d) Wrongful Loss and Wrongful Gain
- Q7. Define 'Tort'. There is a law of tort, but not a law of torts' - Discuss. Distinguish between Tort and Crime.
- Q8. Explain the term 'Vicarious Liability'. What are the modes of Vicarious Liability ? Discuss the liability of Master to a servant for wrong done by another servant.
- Q9. Elucidate the term Volenti Non Fit Injuria' with the limitation of the scope of the doctrine. Distinguish between 'Act of God' and 'Inevitable Accident'.
- Q10. What is defamation ? Briefly discuss the different conditions which will be required to constitute an action for defamation with the help of the cases.
- Q11. Explain the term 'Nuisance' with suitable illustrations. Discuss the different kinds of 'Private Nuisance'. What are the liabilities of occupier for nuisance on premises?
- Q12. Write notes on the following: (a) Injuria Sine Damnum (b) Ryland v. Fletcher (c) Res Ipsa Loquitur (d) Remoteness of Damage

Personal Law

- Q1. Explain the salient features of the Mithakshara and Dayabhaga Schools and the difference between them.
- Q2. 'Hindu marriage is neither a Sacrament nor a Contract.' Elucidate and explain the salient features of divorce by mutual consent under the Hindu Marriage Act.
- Q3. The compact series of Heirs were superseded by a new set of order for intestate succession by the Hindu Succession Act, 1956. Examine the statement highlighting the changes brought about by the Hindu Succession Act 1956 and subsequent Amendment in 2005. Explain how these changes helped a Hindu Woman.
- Q4. What are the effects and results of valid adoption of a child before and after the commencement of the Hindu Adoption and Maintenance Act, 1956 ?
- Q5. 'Adoption is a Legal Fiction and Doctrine of Relation Back is a Religious Fiction.' Elucidate these statements.
- Q6. Discuss the effect of conversion on a Hindu Marriage and Guardianship.
- Q7. Examine the salient features of a Valid Marriage under Muslim Law.
- Q8. Discuss the various grounds and procedures provided for Divorce under Muslim Law.

- Q9. Examine the concept of Cruelty, Desertion and Polygamy as valid grounds for maintenance of Muslim Wife.**
- Q10. Examine the significance of 'Dower' under Muslim Personal Law.**
- Q11. Examine the powers of the Guardian over property of Minor under Muslim Law.**
- Q12. Write short notes on any two of the following: a. Mode of proof of Muslim, Marriage b. Doctrines of Awl (increase) and Rudd (return) c. Muslim Woman Protection of Rights on Divorce d. Vasiyat (Muslim Will)**

Law of Property

- Q1. (a) Define 'mortgage' and distinguish among 'simple', 'usufructuary', 'conditional' and 'English' mortgages. (b) Explain the maxim, "redeem up, foreclosure down". X borrows Rs. 5,000 from Y and executes a usufructuary mortgage for Rs. 3,000, the rents and profits to be taken in lieu of interest X covenants in the deed that the payment of balance of Rs. 2,000 with interest @ 2% per month would be compulsory at the time of redemption. Does this covenant amount to a clog on redemption?**
- Q2. (a) Discuss the doctrine of 'Part performance' and 'Equitable estoppel' and distinguish between them. (b) Discuss briefly the law relating to fraudulent transfers.**
- Q3. (a) Who is an Ostensible owner ? What is the effect of the Benami Transaction Act, 1988 on Section 41 of the TP Act, 1882. Refer to decided cases. (b) Distinguish between "condition precedent" and "condition subsequent". Discuss the validity of the following transfers: (i) A transfers field to B on the condition that he shall walk one hundred miles an hour. (ii) A transfers a field to his niece C on the condition that she will leave her husband.**
- Q4. (a) "Section 53-A of TP Act does not confer 'title'. It enables a person without title to defend his possession." Do you agree with the above statement? Give reasons for your answer with the help of decided cases. (b) Define contingent interest. Write down its nature and salient features. What is distinction between contingent interest and chance of heir apparent succeeding to an estate ?**
- Q5. (a) "Protection of life and property cannot be assured by a simple declaration of rights and duties. The enumeration of rights and duties must be supplemented by legal devices which help the individual to enforce his rights. Social redress must be provided to every person who is injured in the social process. Basically the mission of the Specific Relief Act is to assure that whenever there is a wrong, there must be a duty." (Ashok Kumar Srivastava v. National Insurance Co. Ltd. (1998) 4 SCC 361). Elucidate. Z bequeaths land to A, "not doubting that A will pay there out an annuity of Rs. 1,000 to B for his life". A accepts the bequest. Whether A is bound to pay the annuity to B? (b) "Specific relief to be granted only for enforcing individual civil rights and not for enforcing penal laws." Explain. A buys land from B, having noticed that C is in occupation of land. A omits to make an enquiry as to the nature of C's interest therein. Whether A is a trustee for C to the extent of that interest?**
- Q6. (a) Explain the cases in which specific performance of contracts connected with Trust enforceable. Two trustees A and B, empowered to sell trust property worth a lakh of rupees, contract it to C for Rs. 30,000. Whether specific performance of this contract is possible? (b) Explain, in brief, the contracts which cannot be specifically enforced by law. A and B contract to become partners in a certain business, the contract does not specify the duration of the partnership. Whether this contract can be specifically enforced?**

Q7. (a) Briefly discuss the provisions relating to rectification of instruments and rescission of contract in the light of the Sp. R. Act. 12 A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. Whether B is entitled to have the contract rescinded? (b) Explain the rule laid down in Section 28 of the Sp. Relief Act with the help of suitable case law.

Q8. (a) What are the declaratory decrees and how the Court can use this discretionary power? (b) Define injunction. In what cases the injunction is not issued and in which injunction can be refused?

Q9. (a) What is the meaning and nature of the law of limitation? Is law of limitation 'lex fen ? Distinguish between limitation and prescription. (b) How the period of limitation reckoned under the Limitation Act in the following cases? (i) A minor (ii) An insane person (iii) An idiot person

Q10. (a) In case of fraud or mistake, the limitation does not begin until the fraud or mistake has been discovered by the plaintiff or applicant. Discuss with the help of relevant provisions of Act and decided cases. (b) Explain and illustrate with the help of decided cases "when once time has begun to run, no subsequent disability or inability can stop it",

Q11. (a) Can a Court entertain an appeal or an application after the expiry of the period of limitation ? If so, under what circumstances and on what grounds ? Mention relevant provisions of the Act and decided cases. (b) "Computation of period of limitation excludes the time taken in legal proceedings." Explain with the help of legal provisions and illustrations. In a partition suit Court found the value of suit properties beyond its pecuniary jurisdiction and returned the plaint on 10-6-2013. On account of compromise with some claimant few properties were deleted and the value of the suit came within the jurisdiction of the Court. The plaintiff represented the plaint in the same Court on 12-06-2013. He claimed exclusion of time between the date of filing of suit 20-11-2011 and representation of the plaint under Section 14 of the Act, He urged that he must be deemed to have been prosecuting with due diligence another civil proceeding. Decide giving reasons.

Q12. (a) What is the effect of acknowledgement on limitation? (b) Whether the following illustrations are sufficient acknowledgement of liabilities: (i) "I am ashamed that the account has stood so long." (ii) "I admit the loan but I have since repaid the amount." (iii) "The promissory, note which I gave is unstamped. I will not pay it," (iv) "I wish to look your accounts; in my own account I do not see any amount due to you. Please, therefore, send the account." (v) "I cannot afford to pay my new debts much less the old debts I owe."

Procedural Laws

Q1. (a) A was tried for causing grievous hurt to B and was convicted. Later, B succumbed to his injuries. A is now tried for culpable homicide of B. Decide, giving reasons, whether he is guilty or not. (b) Discuss the justification of Plea Bargaining in criminal trials. (c) Distinguish cognizable offences from non-cognizable offences.

Q2. (a) What factors should be taken into consideration while considering a bail application in non-bailable offences? (b) The parents of A lodged a complaint with the school and also the local police wherein they alleged that their minor son was sodomized by B, the warden of the school hostel. B, apprehending arrest, moved an application for anticipatory bail under Section 438 Cr. P. C. Will he succeed? (c) An accused is arrested in a bailable offence and he is released on the bail. During trial, he absconds and non-bailable warrants are issued against him. Later, the police arrested him and produced him before the Court. In Court the defence counsel pleads for the release of his client on bail under Section 436(1), Cr. P. C. which provides that a person accused of a bailable offence shall be released on bail? Can the Court in such circumstances, refuse to release him on bail? Give reasons briefly.

Q3. (a) State the formalities to be observed in recording a "confession". (b) What is a Police Diary and what are its objects? Also state as to how the Police Diary can be used by an accused. (c) A is charged of double-murder and while in police custody A made a statement wherein he stated that "I accept that I had killed W, my 2nd wife, and D, my step daughter. Later, I buried their dead bodies in the courtyard of my house". 5 Discuss the relevance of such confession made by A while in police custody.

Q4. (a) Describe briefly the principal features of a fair trial. (b) Discuss the rights of the arrested person with the help of constitutional and other statutory provisions and their interpretation by the Supreme Court of India. (c) A took a bi-cycle on hire from B at Cuttack after entering into a written contract. Later, instead of returning it to B, he deposited it with C at Bhubaneswar as a security for an advance of Rs. 150. Has the Court at Cuttack jurisdiction to try him for the offence of criminal misappropriation and criminal breach of trust.

Q5. (a) State and elucidate the essential features of the rule of res-judicata. (b) A suit is filed by W against her husband under Section 9 of the Hindu Marriage Act claiming restitution of conjugal right. Her husband contested this suit and contended that their marriage stood dissolved by a decree of divorce. In support of this contention he filed in Court a certified copy of a "foreign judgement" which had dissolved their marriage. State the circumstances under which a "foreign judgement" would not operate as "res judicata". (c) A landlord filed a civil suit for possession against T, a trespasser, in the Court of the District Judge. Later he filed another suit against T in the same Court claiming mesne profits. In the 2nd suit T contends that the suit is not maintainable in the light of Section 12 read along with O.2, Rule 2, C. P. C.

Q6. (a) Discuss the rules and well established principles relating to transfer of a civil suit. (b) Discuss where the suit will lie in case of breach of a contract. (c) Discuss the rules relating to service of summons on a pardanashin lady.

Q7. (a) What do you understand by the term "mesne profits"? For what period of time the plaintiff can recover "mesne profits" from the defendant and what are the principles for calculation of "mesne profits"? (b) What is an ex-parte decree and how is it passed? (c) When does an auction sale in execution of a decree become absolute?

Q8. (a) Explain, with the help of illustrations, the principle of restitution. (b) Discuss the meaning, objects, nature and scope of inherent powers of the Court. (c) Elaborate the salient features of "Summary Trial" as contained in Order 37, C. P. C.

Q9. (a) With the help of illustrations, explain and distinguish between Primary and Secondary Evidences. (b) X wrote a letter to Y asking him to supply inflammable explosives for blowing up a Government hospital. Y took some time in sending it. In the meantime, X wrote another letter to Y seeking reasons about the delay. However, before the second letter could reach Y, X received the inflammable explosives sent by Y and X used the same in blowing up a hospital. In case of conspiracy, prosecution wants to produce both these letters. Discuss and decide whether they are admissible or not? (c) A and B are being prosecuted for murder of C by a pistol and in the Court the prosecution 'proves that A and B had plotted to kill C. In defence, A pleads that he is not guilty of murder of C as the fingerprints on the murder- weapon are only of B. Decide, giving reasons.

Q10. (a) Explain, with the help of illustrations, the doctrine of "estoppel". Differentiate "estoppel" with "promissory estoppel". (b) "There can be no estoppel against statute." Elucidate with the help of illustrations. (c) "A" filed a paternity suit against "P", a prominent politician. During trial "A" filed an application in the Court seeking directions for DNA test of "P" to prove that "P" is his biological father, Discuss the Indian law on this issue.

Q11. (a) Can a wife be compelled to give evidence against her husband in a civil case and also in a criminal case? (b) What are "professional communications"? Explain with the help of illustrations. What professional communications between a client and his legal adviser are protected from disclosure? (c) Who is an expert? What are the subjects on which an expert is competent to testify?

Q12. (a) What is a "fact"? How is it different from "fact in issue"? Explain with the help of at least two examples. (b) "There is no absolute Rule of Law or even a rule of Prudence that dying declaration unless corroborated by other independent evidence is not fit to be acted upon and made the basis of conviction." Discuss this statement with the support of case law. Explain, with the help of illustrations, any two rules, except the rule of dying declaration, relating to relevant facts. (c) Can the statement made by the one partner bind all partners in a dispute between partnership firm and third party? Explain, giving reasons, the relevant provisions of the Evidence Act.