

ALL INDIA BAR EXAMINATION, 2011

(Held on 24th July, 2011)

PART-I

SUBJECT: ALTERNATIVE DISPUTE RESOLUTION

1. **An Arbitral Tribunal should usually consist of:**

Options:

- (A) A Sole Arbitrator
- (B) Three Arbitrators
- (C) Any even number of arbitrators
- (D) Any odd number of arbitrators
- (E) Any odd number of arbitrators, though if the parties continue with an even number of arbitrators, the parties are deemed to have waived their right to challenge a common award by such an arbitral on the ground that there was an even number of arbitrators.

Ans. — (D)

Explanation:

An arbitral tribunal should usually consist of an odd number of arbitrators to avoid disagreements and impasses between arbitrators. The Arbitration and Conciliation Act, 1996 states that the number of arbitrators should not be even, and if the parties can't agree on the number, the tribunal will have a sole arbitrator.

2. **In an Arbitration Agreement, the Arbitrators:**

Options:

- (A) Have to be appointed by the court
- (B) Have to be appointed by the International Chamber of Commerce
- (C) Has to be the Chief Justice of the High Court that has jurisdiction
- (D) May be decided by the parties
- (E) Has to be from a panel approved by the Law Commission of India

Ans. — (D)

Explanation:

In an arbitration agreement, the arbitrators are neutral third parties who oversee the

arbitration process. There are several ways to select arbitrators, including:

- Single arbitrator: The parties may agree on a single arbitrator
- Three arbitrators: Each party may appoint one arbitrator, and the parties may agree on the third arbitrator
- List procedure: The parties exchange a list of candidates, and each party may strike some candidates and rank the rest

The number of arbitrators and the procedures for appointing them depend on the method agreed upon by the parties.

3. **An "Arbitration Agreement" is a condition precedent for a valid arbitration under the provisions of the Arbitration and Conciliation Act, 1996. With reference to a substantive agreement between the parties:**

Options:

- (A) The arbitration agreement has to be a separate agreement referencing the substantive agreement
- (B) The arbitration agreement can be a clause of the substantive agreement
- (C) The arbitration agreement has to be separately agreed upon by telex or e-mail or in writing under section 7 of the Arbitration and Conciliation Act, 1996
- (D) The arbitration agreement has to be a separate agreement registered with a High Court
- (E) The arbitration agreement has to be a separate agreement notarised by a notary.

Ans. — (B)

Explanation:

An arbitration agreement is a condition precedent for a valid arbitration under the Arbitration and Conciliation Act, 1996:

- **Definition:** An arbitration agreement is an agreement between parties to submit to arbitration all or some of their disputes.
- **Form:** An arbitration agreement can be in writing through signed documents, letters, telegrams, or other means of communication. It can also be a clause in a contract if the contract is in writing and the arbitration clause is referenced in a way that makes it part of the contract.
- **Separability:** An arbitration agreement is separate from the main contract, so the invalidity of the main contract doesn't necessarily mean the arbitration agreement is invalid.
- **Enforcement:** The agreement to refer disputes to arbitration must be enforceable in law.
- **Impartiality:** The tribunal must be impartial and fair to both parties.
- **Decision:** The tribunal must decide on a dispute that was already formulated when the reference was made.

4. Under the Arbitration and Conciliation Act, 1996 the rules of procedure for a domestic arbitration:

Options:

- (A) Can be chosen by the parties, subject to the requirements of section 18
- (B) Can only be set by the arbitral tribunal
- (C) Has to be prescribed by a court of competent jurisdiction
- (D) Has to be as per the procedure set forth by the New York Convention or the Geneva Convention
- (E) Has to be as per the procedure prescribed by the Law Commission

Ans. — (A)

Explanation:

Rules of procedure for domestic arbitration under the Arbitration and Conciliation Act, 1996:

- **Arbitral tribunal**

The arbitral tribunal is not bound by the Code of Civil Procedure or the Indian Evidence Act. The parties can agree on the procedure for the arbitral tribunal to follow, or the tribunal can decide on its own procedure. The tribunal

can also decide on the admissibility, relevance, and weight of evidence.

- **Arbitration agreement**

An arbitration agreement can be in a contract or as a separate agreement. It must be in writing and be a binding obligation to refer disputes to arbitration.

- **Settlement**

The arbitral tribunal can encourage settlement at any time during the proceedings. If the parties settle, the tribunal can terminate the proceedings and record the settlement as an award.

- **Time limits**

Section 29-A of the Act limits the time for passing an award to 12 months from the date of reference, and allows for a maximum of six months extension.

- 5. Civil Contractor A entered into an agreement with Architecture Firm B to design a building. Further, all matters in relation to the design of a mall in the same building were sub-contracted to another Architecture Firm C. The Contract had a clause titled "Arbitration", under which the Chief Architect of a third Architecture Firm D has the power to remove any difficulties, including with regard to modification of any plans for the mall's design. The parties sought to get an interim order under section 9 of the Arbitration and Conciliation Act, 1996. Will the parties succeed?**

Principle: Expert determination is a referral of a dispute to an independent third party, who uses her expertise to resolve a dispute. An arbitration agreement must contemplate the existence of a "formulated dispute" as against an intention to avoid further disputes.

Options:

- (A) This is not an arbitration clause, but an expert determination clause, and hence the provisions of the Arbitration and Conciliation Act, 1996 would not apply.
- (B) An interim order under section 9 would be possible depending upon the circumstances

- (C) An interim order will not be possible till the formulation of the decision by the Chief Architect of Architecture Firm D.
- (D) The clause is unenforceable since only an Arbitral tribunal can determine such a matter and the court will order the setting up of an arbitral tribunal first.
- (E) An interim order would be possible but only if consented to by both the parties.

Ans. — (A)

Explanation:

An expert determination clause is a part of a contract that allows the parties to a dispute to submit it to an expert for a binding decision. The expert's decision is final and binding unless the parties agree otherwise.

6. **A and B enter into a valid arbitration agreement in relation to a share purchase agreement. As per the agreement, any dispute in relation to the share purchase between A and B must be referred to a sole arbitrator. Thereafter, A and B have a dispute in relation to the share purchase. A and B refer the matter to a sole arbitrator. The sole arbitrator passes an award in favour of A. B is aggrieved by the award as he believes that the arbitrator misinterpreted a provision of the agreement relating to the "delivery of shares". B wants to appeal on this ground.**
- Principle:* There is no right to challenge an award, if the compositions of the arbitral tribunal or arbitration procedure is in accordance with the agreement of the parties, even though such composition or procedure is contrary to Part I of the Arbitration and Conciliation Act, 1996. It is not open to challenge the arbitral award on the ground that the arbitrator has drawn her own conclusion or has not appreciated the facts:

Options:

- (A) B can appeal the arbitral award before any court of competent jurisdiction
- (B) B can appeal the award before the relevant High Court

- (C) B can appeal the award before the Supreme Court
- (D) B can appeal the award before the Arbitration Appellate Tribunal
- (E) B cannot appeal the Award

Ans. — (E)

Explanation:

The most crucial basis for challenging an arbitration award generally depends upon whether or not the arbitration decision is binding or not. If arbitration is ineffective and non-binding, any party or parties are at liberty to appeal this award without requiring any reasonable ground to appeal. But if the Arbitration is binding, then the party or the parties need a concrete reason to challenge the award in court, just as in the case of jury award.

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7. **A and B enter into a shareholders agreement for the management of company X. They agreed that if the Company X is wound up, they would split the profits in a manner that is in accordance with the Companies Act, 1956. They agreed to subject themselves to arbitration in case of any dispute with regard to the winding up of the company X. What will be the result if such a dispute arises?**

Principle: The power to order winding up a company is conferred exclusively upon the company court by the Companies Act, 1956.

Options:

- (A) They can proceed only after confirmation from the company law board
- (B) This cannot be a subject matter of arbitration since an arbitrator has no jurisdiction to wind up a company
- (C) This can be settled by an arbitration panel.

- (D) This can be settled only by a sole arbitrator appointed by the Chief Justice of a High Court
- (E) The parties must enter into a mandatory mediation proceeding first.

Ans. — (C)

Explanation:

Arbitration panels can be used in a number of ways, including:

- Appointing nominees: When parties are unable to agree on a nominee, an arbitration panel can be used to appoint one.
- Appointing *ad hoc* committees: Arbitration panels can be used to appoint *ad hoc* committees.
- Resolving disputes: Arbitration panels can be used to resolve disputes without going to court.

SUBJECT: CIVIL PROCEDURE CODE, 1908 AND LIMITATION ACT, 1963

8. An ex-parte decree implies that:

Options:

- (A) The plaintiff was not present in court and hence the decree was passed based on the basis of the plaint and the defendant's (or his pleader's) arguments.
- (B) A decree passed against several parties under a common order
- (C) A decree passed without the presence of the defendant (or his pleader) in the court
- (D) A decree passed only against one defendant when there are several defendants in a case.
- (E) Dismissal of a suit on ground of being barred by limitation.

Ans. — (C)

Explanation:

An 'Ex parte decree' is a decree passed against a defendant *in absentia*. Despite service of summons, where on the date of hearing only the plaintiff does and a defendant does not appear, the court may hear the suit *ex parte* and pass a decree against the defendant.

9. The Limitation Act, 1963 prescribes limitation periods for various kinds of proceedings. For a proceeding which is not specifically provided for in the schedules:

Options:

- (A) The period of limitation is five years from the day on which the right to sue or apply accrues.
- (B) There is no limitation period
- (C) The period of limitation is ten years from the day on which the right to sue or apply accrues.

- (D) The period of limitation is three years from the day on which the right to sue or apply accrues.
- (E) The period of limitation is as it may be prescribed by a High Court

Ans. — (D)

Explanation:

Article 137 of the Limitation Act of 1963 in India states that applications for which no other limitation period is specified in the Division have a three-year limitation period. The limitation period begins when the right to apply arises.

10. A court may pass interim or interlocutory orders:

Options:

- (A) To let any of the parties withdraw from the suit or part of the claim.
- (B) To protect the rights of the parties till the final disposal of the suit.
- (C) To allow the parties to appeal in a higher court.
- (D) To allow the court to produce any witness to be examined to enable it to pronounce judgment.
- (E) To allow the filing of cross-objections in the suit.

Ans. — (B)

Explanation:

Interlocutory order only settles intervening matter relating to the cause. Such orders are made to secure some end and purpose necessary and essential to the progress of case and generally collateral to the issues to be settled by the court in the final judgment.

11. Filing a caveat before a court would mean that:

Options:

- (A) The Court cannot entertain a suit without notifying the defendant
- (B) The Court cannot take certain actions in a suit without notifying the party filing the caveat
- (C) The Court can take cognizance of a matter without notice
- (D) The Court must necessarily send the parties for mediation
- (E) The court cannot entertain the suit without the approval of the High Court.

Ans. — (B)

Explanation:

A caveat is a caution or warning giving notice to the Court not to issue any grant or take any step without notice being given to the party lodging the caveat. It is a precautionary measure taken against the grant of probate or letters of administration, as the case may be, by the person lodging the caveat.

12. Company A, registered in Mumbai, owns a property in Chennai. The company took a loan from a bank established in Kolkata mortgaging the Chennai property. The company defaulted in repaying the loan and the bank decided to foreclose the mortgage. Which of the following options is most correct.

Principle: According to section 16 of the CPC, 1908, subject to pecuniary jurisdiction, suits for foreclosure, sale, or redemption of immobile property must be filed in the court within the local limits of whose jurisdiction the property is located.

Options:

- (A) The courts in Chennai will have exclusive jurisdiction in the foreclosure suit
- (B) The court of Mumbai and Chennai will have jurisdiction
- (C) The court of Mumbai, Kolkata and Chennai will have jurisdiction
- (D) The courts of Mumbai and Kolkata will have jurisdiction

- (E) The court of Mumbai will have exclusive jurisdiction

Ans. — (A)

Explanation:

CPC Section 16. Suits to be instituted where subject-matter situate.

Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) for the determination of any other right to or interest in immovable property,
- (e) for compensation for wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate :

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant, may where the relief sought can be entirely obtained through his personal obedience be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

13. A and B, two Indians, have a dispute in relation to delivery of goods and payment of money in a trade from India to England. An English court decided on the matter in favour of A based on the principles of natural justice and applicable international commercial laws, including in respect of jurisdiction. B decided to institute a fresh suit in India. Which of the following is the most correct in such a situation:

Principle: A judgment delivered by a foreign court of competent jurisdiction can be enforced by an Indian Court and will operate as *res judicata* between the parties.

Options:

- (A) B can institute a fresh suit in India, provided the English court is a court of competent jurisdiction
- (B) B cannot institute a fresh suit in India, provided the English court is a court of competent jurisdiction.
- (C) B can institute a fresh suit only before a High Court that has jurisdiction.
- (D) B cannot institute a fresh suit without the consent of the English court.
- (E) B can only prefer an appeal before the Supreme Court of India.

Ans. — (B)

Explanation:

Code of Civil Procedure, 1908

13. When foreign judgment not conclusive.-

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

- (a) where it has not been pronounced by a Court of competent jurisdiction;
 - (b) where it has not been given on the merits of the case;
 - (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of {Subs. by Act 2 of 1951, s.3, for “the States”.} [India] in cases in which such law is applicable;
 - (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
 - (e) where it has been obtained by fraud;
- 14. A had filed a suit against B for trespass on A’s property. However, A fails to prove trespass. In appeal, A takes the leave of the court to produce an eyewitness, A’s guard who is willing to appear before the appellate court. A had tried to make the guard an eyewitness before the lower court as well. However, the guard**

had left the country at that time, and despite several summons being issued, had failed to appear before the lower court.

***Principle:* Under ordinary circumstances, evidence that has not been presented before a lower court cannot be presented in appeal. However, if the party seeking to produce additional evidence establishes that despite the exercise of due diligence, such evidence could not be produced by him at the time when the decree appealed against was passed, the Appellate Court may allow such evidence to be produced in the court.**

Options:

- (A) The court of appeal may not allow the guard to be produced as an eyewitness
- (B) The court of appeal may ask the lower court to re-appreciate the evidence and pass a fresh decree.
- (C) The Court of appeal may allow the guard to be produced as an eyewitness.
- (D) The court of appeal may allow the guard to be produced as an eyewitness, but the guard’s statement cannot be taken on record.
- (E) The court of appeal will allow the guard to be produced as an eyewitness only if the respondent consents to having the guard produced as an eyewitness.

Ans. — (C)

Explanation:

If the trial court didn’t admit relevant evidence: The appellate court can allow additional evidence if the trial court didn’t admit evidence that should have been admitted.

If the party didn’t know about the evidence: The appellate court can allow additional evidence if the party didn’t know about it or couldn’t produce it despite due diligence.

SUBJECT: CONSTITUTIONAL LAW

15. Which of the following is correct in relation to the formation of a new State from the territory of existing States?

Options:

- (A) Parliament has the authority to admit a new State into the territory of India under Article 3 of the constitution of India
- (B) Parliament may create a new State as a part of the Union of India under Article 3 of the Constitution, but only if the legislatures of the States pass a resolution with two-third majority to that effect.
- (C) The Legislatures of the States affected may create a new State as a part of the Union of India by passing a resolution with two-thirds majority to that effect.
- (D) Parliament may create a new State from the territory of existing States under Article 3 of the Constitution, on the recommendation of the President, and if the bill for this purpose has been referred to the legislatures of the States affected for their views, and the time period for receiving such views has expired.
- (E) Parliament may create a new State from the territory of existing States under Article 4 of the Constitution; in order to do this, it must amend the provisions of the First and Fourth Schedule of the Constitution accordingly, and need not pass any other resolution.

Ans. – (D)

Explanation:

Article 3 of the Indian Constitution gives Parliament the power to make laws about the formation of new States and the alteration of existing States. This includes:

- Formation of new States: Parliament can create new States by separating territory from another State, uniting two or more States, or uniting any territory to a part of another State.

- Alteration of existing States: Parliament can alter the area, boundaries, or name of any State.

16. Which provision of the Constitution gives the State authority to provide for reservation of appointments or posts in the services under the State in favour of any backward class of non-citizens which in the opinion of the State is not adequately represented in these services under the State?

Options:

- (A) Article 13 of the Constitution
- (B) Article 15(3) of the Constitution
- (C) Article 15(4) of the Constitution
- (D) Article 16(4) of the Constitution
- (E) None of the above

Ans. – (E)

Explanation:

Article 16 of Constitution of India

16. Equality of opportunity in matters of public employment

Article 16(4)

Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

17. Which of the following writs may the Supreme Court use to inquire into the legality of a claim that a person asserts to a public office, and to remove such a person from the public office if the claim is not well-founded?

Options:

- (A) Writ of Mandamus
- (B) Writ of Quo Warranto
- (C) Writ of Habeas Corpus
- (D) Writ of Certiorari
- (E) Writ of Prohibition

Ans. – (B)

Explanation:

A writ of quo warranto can be issued if:

- The person is wrongfully holding a public office
- The office was created by the Constitution or law
- The person is not qualified to hold the office under the Constitution or law
- The office is permanent in nature
- The duties of the office are public

18. Which of the following is most correct in respect of a Money Bill?

Options:

- (A) Money Bill may only be introduced in the House of the People; once it is passed by the House of the People, it is sent to the Council of States, which may send it back to the House of the People along with its recommendations and proposed amendments, if any. The House of the People, however, is not bound by such recommendations and proposed amendments.
- (B) A Money Bill may only be introduced in the Council of States; once it is passed by the Council of States, it is sent to the House of the People, which may send it back to the Council of States along with its recommendations and proposed amendments, if any. The Council of States, however, is not bound by such recommendations and proposed amendments.
- (C) A Money Bill may be introduced in either House of Parliament; once it is passed by the House in which it is introduced, it is sent to the other House, which may send it back to the House in which it was introduced along with its recommendations and proposed amendments, if any, and the House in which the Money Bill was introduced is not bound by such recommendations and proposed amendments.
- (D) A Money Bill may be introduced in either House of Parliament; once it is passed by the House in which it is introduced, it is sent to the other

House, which may send it back to the House in which it was introduced along with its recommendations and proposed amendments, if any, and the House in which the Money Bill was introduced is bound by such recommendations and proposed amendments.

- (E) A Money Bill may only be introduced by a member of the Council of Ministers in either House of Parliament, and need not be sent to the other House. Once the House in which it was introduced passes the Money Bill, it is sent directly to the President for the President's assent, upon receipt of which, it becomes law.

Ans. — (A)

Explanation:

Article 110 of the Indian Constitution manages the Indian cash bill. A couple of arrangements in a bill permit it to be delegated as a cash bill.

India's Money Bill Provisions

1. The imposition, abolition, remission, modification, or regulation of any tax.
2. Regulations govern the Union Government's borrowing of money.
3. The custody of the Consolidated Fund of India or the Contingency Fund of India and the payment. Into or withdraw from any such fund.
4. Appropriation of funds from the Indian Consolidated Fund.
5. Any expenditure charged to the Consolidated Fund of India, or any increase in the amount of any such expenditure, shall be declared.
6. The receipt of assets for the Consolidated Fund of India or the public record of India, the authority or circulation of such assets, or the review of the Union's or a State's records.
7. Article 110 of the Indian Constitution also specifies the conditions under which a bill cannot be considered a money bill. These are the provisions.

When a bill includes provisions, it is not a money bill

- Imposition of fines or other monetary penalties.
- The demand for or payment of fees for licenses or fees for services rendered.
- Imposition, repeal, remission, modification, or regulation of any tax by any local authority or body for local purposes

19. A five-judge Bench of the Supreme Court passes judgment in a matter. In a later case before a High Court, a party presents the Supreme Court judgment as a binding authority. The opposing party claims that the High Court is not bound by the Supreme Court's judgment because relevant provisions of law were not brought to the notice of the Supreme Court in that case. Which of the following is most correct in this case?

Principle: Article 141 of the Constitution provides that the law declared by the Supreme Court is binding on all courts within the territory of India.

Options:

- (A) Since the relevant provisions of law were not brought to the notice of the Supreme Court, the five-judge Bench's decision is not 'law' within the meaning of Article 141, and is not binding on the High Court.
- (B) The Supreme Court must expressly declare that its judgment is binding on all courts within the territory of India when passing judgment. In this case, the Supreme Court has not done so, and therefore, the decision of the five-judge Bench is not binding on the High Court.
- (C) The High Court cannot ignore the decision of the Supreme Court on the ground that relevant provisions of law were not brought to its notice. Under Article 141, it is bound by the decision of the Supreme Court.
- (D) Only those decisions that are passed by a larger Bench than the five-judge Bench would be binding on the High Court, since legitimate doubts have been raised about the propriety of the five-judge Bench's decision.

- (E) The decision of the five-judge Bench, since it is in conflict with other decisions, must first be decided upon by a larger Bench on the Supreme Court. Only after that would the decision be binding on all other courts under Article 141 of the Constitution.

Ans. — (C)

Explanation:

Article 141 of Constitution of India

141. Law declared by Supreme Court to be binding on all courts

The law declared by the Supreme Court shall be binding on all courts within the territory of India.

20. Company A made sales of bricks, which were supplied from outside a State, to several purchasers within the State. The State levies a tax on these sales. Can the State levy such a tax?

Principle: A State may not impose, or authorise the imposition of, a tax on the sale or purchase of goods if such sale or purchase takes place outside the State, or in the course of import of the goods into India, or the export of the goods outside India.

Options:

- (A) The State cannot levy such a tax, since the delivery of the bricks within the State was a result of a covenant or an incident of the contract of sale, that the bricks would be supplied in the State from a place outside the State. The sales were, therefore, inter-State sales, and the State cannot levy a sales tax on them.
- (B) The State cannot levy such a tax, since the delivery of the bricks within the State cannot be considered as a sale occurring within the State; in order that the State can levy such a tax, it is necessary to confirm that the bricks were not imported into India.
- (C) The State cannot levy such a tax, since there is no provision in the Constitution allowing a State to levy a tax on sales; this power is vested exclusively in the Union Government.

- (D) The State can levy such a tax, since the sale of the bricks had occurred within the territory of the State; the delivery of the bricks from outside the State would have non-impact on this matter.
- (E) The State can levy such a tax, since the purchasers were located within the territory of the State; the fact that the seller was outside the State, or that the bricks were being delivered from outside the State, would have no impact on the matter.

Ans. — (E)

Explanation:

- Article 286 of the Constitution of India prohibits State laws from imposing taxes on the sale or purchase of goods that take place outside the State, or during the import or export of goods.
- The article also states that Parliament can create principles for determining when a sale or purchase takes place in these ways.
- The article has been amended to include changes from GST, such as the State not being able to impose GST on inter-State supply of goods or services.

21. **A held an office under a State Government. A was not entitled to receive any salary or compensation under the terms of office, but was entitled to claim reimbursement of expenses incurred in the course of discharge of A's duties. The terms of office provided a limit on the expense that could be incurred, and that would be reimbursed. Later, A stands for election to the State Legislature, and is elected. A member of the opposing party challenges A's membership in the State Legislature on the ground that A holds an office of profit under the government. Which of the following is most accurate in this case?**

Principle: Article 102 of the Constitution provides that any person who holds an office of profit under the Government of India or the government of any State is disqualified from being chosen as, and for being, a member of either House of Parliament.

Options:

- (A) The Challenge will fail, since it should have been raised at the time of election, or when nomination papers were filed, rather than after the elections have been conducted, and A has already become a member of the House.
- (B) The Challenge will fail, since A is not entitled to any salary or compensation under the terms of office. As such, it cannot be said that A held an "office of profit" under the State Government.
- (C) The Challenge will succeed, since the challenge was to A's membership in the House, and can be raised even after the elections are over.
- (D) The challenge will succeed, since the amount of compensation or allowances paid to A under the terms of office are irrelevant; the reimbursement allowance itself is enough to constitute an "office of profit".
- (E) None of the above.

Ans. — (B)

Explanation:

Article 102 of Constitution of India

102. Disqualifications for membership

- (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament--
- (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
 - (b) if he is of unsound mind and stands so declared by a competent court;
 - (c) if he is an undischarged insolvent;
 - (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of

- allegiance or adherence to a foreign State;
- (e) if he is so disqualified by or under any law made by Parliament.

profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

- (2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

Explanation:

For the purposes of this clause a person shall not be deemed to hold an office of

SUBJECT - CONTRACT LAW INCLUDING SPECIFIC RELIEF, SPECIAL CONTRACTS AND NEGOTIABLE INSTRUMENTS

22. An agreement is not voidable if consent is caused by:

Options:

- (A) Mistake as to an Indian Law.
 (B) Misrepresentation.
 (C) Coercion.
 (D) Fraud.
 (E) Undue Influence.

Ans. — (A)

Explanation:

A voidable contract is a formal agreement between two parties that may be rendered unenforceable for any number of legal reasons, which may include: Failure by one or both parties to disclose a material fact, A mistake, misrepresentation, or fraud.

23. An agreement in restraint of trade not accompanied by a sale of goodwill, is:

Options:

- (A) Voidable at the option of either party.
 (B) A valid contract.
 (C) Voidable at the option of the promisor.
 (D) Voidable at the option of the promisee.
 (E) Expressly declared void.

Ans. — (E)

Explanation:

Section 27 Contract Act, 1872

Agreement in restraint of trade, void

Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

24. When one party rescinds a voidable contract, it must:

Options:

- (A) Perform all its promises contained in the rescinded contract.
 (B) Return any benefit received under the rescinded contract to the other party.
 (C) Give a reasonable opportunity to the other party to rectify its mistake.
 (D) Pay damages to the other party for rescinding the contract.
 (E) Indemnify the other party for any losses caused by the rescission.

Ans. — (B)

Explanation:

Section 64 Contract Act, 1872

Consequences of rescission of voidable contract

When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

25. Which of the following Statements is least accurate about partnership law in India?

Options:

- (A) The provisions of the Indian Contract Act, 1872 are generally still applicable to partnerships.
 (B) The mutual rights and duties of the partners of a firm may be determined by contract between the partners.
 (C) A firm is not a juristic person, or a person in law, but is merely an association of individuals.

- (D) Liabilities of the firm cannot be enforced against a partner of the firm personally.
- (E) A partner is an agent of the firm for the purposes of the business of the firm.

Ans. — (A)

Explanation:

- Partnership law

A partnership is created by an agreement between the partners, which can be written or oral, but must be legally enforceable. The agreement should specify the rights and obligations of each partner, including their capital contribution, profit sharing ratio, and the duration of the partnership.

- Contract law

A contract is a different legal arrangement than a partnership. A partnership creates a fiduciary relationship, which means that partners have a legal duty to act in the best interests of each other and the partnership.

26. A sends a letter to B offering to sell two hundred grams of gold at a certain price and requests B to convey his acceptance by post only. B writes a letter accepting A's offer and hands it over to his peon and asks him to mail it for him. The peon forgets to do so and posts the letter after two days. A day after the letter is posted, A calls B to ask him whether he has replied to his offer and B informs him that he has accepted the offer by post. A receives the letter a couple of days later but opens it only after a week. When as the acceptance of B completes against A?

Principle: Acceptance of an offer must be communicated to the other person in order for it to be valid. In case of communication by a non-instantaneous mode of communication, such as post or email, an acceptance is complete as against the offeror when the acceptor puts it in a mode of transmission outside the control of the acceptor.

Options:

- (A) The acceptance was complete as against A when he handed the letter over to his peon.

- (B) The acceptance was complete as against A only when the letter reached A.
- (C) The acceptance was complete as against A only when B informed A of his acceptance over the telephone.
- (D) The acceptance was complete against A only when A read the letter.
- (E) The acceptance was complete as against A when the letter was posted.

Ans. — (E)

Explanation:

To constitute a valid acceptance, the offeree shall communicate his acceptance to the offeror. Mere mental acceptance cannot be a valid acceptance. The communication can be expressed or implied. However, if the offer is such that the offeree has to act upon then by mere acting upon the offer, the offer is said to be accepted.

27. A gave some goods to B, and asked B to store them in a warehouse for a period of time and clean them regularly. A agrees to pay B a fee for the use of the warehouse and a fee for the cleaning, and B agrees not to retain the goods under any circumstances once the contract expires. Upon expiry of the contract, A demands that B hands over his goods. Can B retain A's goods until A pays him the agreed fees?

Principle: If the bailee, in accordance with the purpose of the bailment, renders any service involving the exercise of skill or labour in respect of the bailed goods, the bailee has, in the absence of a contract to the contrary, a right to retain the bailed goods until the bailee receives due remuneration for the services rendered in respect of the goods.

Options:

- (A) B can retain the goods till the agreed fees are paid as he has provided A with a service by storing and cleaning his goods.
- (B) B cannot retain the goods as mere storage and cleaning of A's goods does not involve any skill or labour.

- (C) B can retain the goods only if A refuses to pay both the agreed fees.
- (D) B cannot retain the goods as he expressly agrees not to do so in the contract even if he is not paid either of the fees.
- (E) B can retain the goods until he is paid for the cleaning of the goods as that involved labour but not after that even if he is not paid for the storage of the goods.

Ans. — (A)

Explanation:

A bailment is a legal arrangement where one person, the bailor, transfers possession of his property to another person, the bailee, for a specific purpose. The bailor retains ownership of the property, but the bailee is responsible for returning it or disposing of it as directed by the bailor.

28. On December 5, 2010, Company A enters into a contract with Company B to supply Company B with thousand shirts specially designed for sale on Republic Day. No time for delivery is mentioned in the contract and it is not stated whether time is the essence of the contract. Company A delivers the shirts after the Republic Day celebrations in 2011 are over. Has the contract been validly performed?

Principle: Time is presumed to be of the essence in the case of commercial contracts. Parties may indicate clearly whether or not time is of the essence

in a contract, and this intention would determine whether time is of the essence. If no time for performance is specified, a contract must be performed within a reasonable time.

Options:

- (A) The contract was validly performed as the contract did not expressly state a date for delivery.
- (B) The contract was not validly performed as time was clearly the essence of this commercial contract and it is reasonable to expect Company A to have delivered the shirts before Republic Day celebrations in 2011.
- (C) The contract was validly performed as it was not expressly stated that time was of the essence here.
- (D) The contract was not validly performed because Company A did not inform Company B that it would be delivering the shirts after Republic Day celebrations in 2011.
- (E) The contract was validly performed because this was not a commercial contract, and hence, time was not of the essence.

Ans. — (B)

Explanation:

Section 55 of the Indian Contract Act, 1872 provides that where time is of the essence of the contract, then a failure to comply with the stipulated timeline renders the contract voidable at the option of the promisee.

SUBJECT : THE INDIAN PENAL CODE

29. If a person is intoxicated against his will and commits a crime when he is incapable of knowing the nature of his actions, then he will be:

Options:

- (A) Punishable because being intoxicated is also an offence
- (B) Punishable, if the crime committed is an offence that does not require *mens rea*.
- (C) Punishable, if the crime committed is an offence punishable with imprisonment for seven years or more.

- (D) Punishable, if the crime involves physical injury to another person.
- (E) Not punishable under the Indian Penal Code, 1860.

Ans. — (D)

Explanation:

Section 86 IPC

This section states that if an act is only an offence when done with a specific intent or knowledge, then a person who commits the act while intoxicated is treated as if he had the same knowledge as if he were not intoxicated. This does not apply if the person

was intoxicated without his knowledge or against his will.

30. Section 53 of the Indian Penal Code, 1860 provides five forms of punishment, namely: (a) death; (b) imprisonment for life; (c) imprisonment, either rigorous or simple; (d) forfeiture of property; and (e) fine.

Imprisonment for life under section 53 means:

Options:

- (A) A special type of imprisonment that is neither rigorous nor simple.
- (B) Simple imprisonment for life.
- (C) Rigorous imprisonment for life.
- (D) Judicial custody for life.
- (E) Solitary confinement for life.

Ans. — (C)

Explanation:

Section 53 of the Indian Penal Code, 1860 (IPC) lists the types of punishments that can be given to people found guilty of crimes:

- Death
- Life imprisonment
- Rigorous imprisonment
- Simple imprisonment
- Forfeiture of property
- Fine

31. In which of the following cases does culpable homicide amount to murder?

Options:

- (A) If the person committing the act that caused death knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury.
- (B) If the act that caused death is done with the intention of causing death.
- (C) If the act that caused death is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused.
- (D) If the act that caused death is done with the intention of causing bodily

injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

(E) All of the above.

Ans. — (E)

Explanation:

Culpable homicide is considered murder under the Indian Penal Code (IPC) in certain circumstances, as outlined in Section 300:

- If the act was done with the intention of causing death
- If the act was done with the intention of causing bodily injury that the offender knew would likely cause death
- If the act was done with the intention of causing bodily injury that would normally cause death
- If the act was done with knowledge that it was dangerous and would likely cause death or serious injury, without excuse for taking the risk

32. Certain acts that lie within an Exception, such as that the defendant was of unsound mind when committing the act charged as an offence, are not treated as offences. Who has the onus of proving that an act lies within an Exception?

Options:

- (A) The prosecution must prove that the accused is of sound mind.
- (B) The defence must prove that the accused is of unsound mind.
- (C) The jury must prove that the accused is of unsound mind.
- (D) A special plea of insanity must be raised by a third party expert.
- (E) Only the judge may intervene and find the accused to be of unsound mind.

Ans. — (B)

Explanation:

According to the Indian Penal Code (IPC), Section 84, a person is not guilty of an offense if he is unable to understand the nature of his actions or that his actions are wrong or against the law due to unsoundness of mind.

33. A, a man, asked B, an adult woman, if he could have sexual intercourse with her. B refused. A brandishes a gun and threatens to kill her neighbours if she does not consent. B gives consent out of fear for the lives of her neighbours and they have sexual intercourse. A is charged with rape. In the court, the defence argues that at the time of the sexual intercourse, B had given her consent. Which of the following statements is the most accurate application of the principle below?

Principle: A man is said to commit 'rape' when he has sexual intercourse with a woman under circumstances such that the sexual intercourse is against her will, is without her consent, or is with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Options:

- (A) It is not rape because consent was obtained from B.
- (B) It is not rape because the consent was obtained by a threat to kill other people and not herself or her family.
- (C) It is not rape but an attempt to rape.
- (D) It is rape as the sexual intercourse was against her will and the consent was given by the threat of killing her neighbours.
- (E) It is rape but A will not be punished as B had given her consent.

Ans. — (D)

Explanation:

According to the Indian Penal Code (IPC), rape is defined as sexual intercourse with a woman against her will, without her consent, or under certain other circumstances:

- When consent is obtained through coercion, deception, or fraud
- When the woman is intoxicated, unsound of mind, or under the age of consent
- When the man knows he is not the woman's husband, but she believes he is someone else she is lawfully married to
- When the woman is unable to understand the nature and consequences of her consent due to intoxication or unsoundness of mind

34. A, a police officer, is directed by her superior to arrest B. A arrests B's younger sister, C, in the mistaken belief that she is actually B. Has A committed any offence?

Principle: A person who has done something that is an offence under the law due to a mistake of facts (and not due to a mistake of law), that led that person to believe in good faith that she was bound by law to do such an act is excused.

Options:

- (A) A has committed an offence, since a mistake as to the identity of a person is a mistake of law, and not a mistake of fact.
- (B) A has not committed an offence, since she was acting under the directions of a superior officer.
- (C) A has committed an offence as she has disobeyed her superior officer's order to arrest B when she arrested
- (D) A has not committed an offence, since she had made a mistake of fact in good faith, and not a mistake of law, in arresting C instead of B.
- (E) A has not committed an offence, since police officers have immunity any from prosecution in relation to act committed in the course of their duties.

Ans. — (D)

Explanation:

Section 76 of the Indian Penal Code (IPC) states that an act is not an offense if it is done by someone who is bound by law, or who in good faith believes they are bound by law, and is not mistaken about the law.

35. A asks B to forge a registered sale deed for him and B does so. A misrepresents the forged sale deed to be the genuine one and sell C's property to D. Which of the following statements is the most correct application of the principle below?

Principle: Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

Options:

- (A) A and B have both committed forgery and shall be punished in a like manner.
- (B) A has committed forgery and shall be punished for the same while B shall not be punished as he did not use the forged document for any fraudulent purpose.
- (C) B has committed forgery and shall be punished but A has not committed any offence.
- (D) B is guilty of forgery and A is guilty of using a forged document as genuine. A shall also be punished as

though he had forged the sale deed.

- (E) Neither A nor B has committed any offence as registered sale deeds are public documents and D ought to have checked carefully before buying the property.

Ans. — (A)

Explanation:

Section 468, IPC:- Forgery for purpose of cheating: Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

SUBJECT CRIMINAL PROCEDURE

36. **Taking cognizance of an offence under the Code of Criminal Procedure, 1973 means:**

Options:

- (A) Issue of warrants.
- (B) Taking judicial notice of an offence.
- (C) Declaring an event to be cognizable or non-cognizable offence.
- (D) Allowing a police officer to arrest without warrant in a non-cognizable offence.
- (E) Making an arrest without warrant.

Ans. — (B)

Explanation:

Cognizance literally means knowledge or notice, and taking cognizance of offence means taking notice, or, becoming aware of the alleged commission of an offence. Obviously, the judicial officer will have to take cognizance of the offence before he could proceed to conduct a trial.

37. **Which of the following courts may award a sentence of imprisonment for life?**

Options:

- (A) A Chief Judicial Magistrate.
- (B) A Court of Sessions.
- (C) A Chief Judicial Magistrate, subject to confirmation by the Court of Sessions.
- (D) A Court of a Magistrate of First Class.

- (E) A Court of a Metropolitan Magistrate.

Ans. — (B)

Explanation:

The Karnataka High Court has held that a Sessions Court can only award either life imprisonment or death sentence in a murder case, and has no power to inflict any punishment in between these two punishments.

38. **If an offence is classified as a non-bailable offence, it implies that:**

Options:

- (A) Bail may not be granted.
- (B) Bail may be granted only through exercise of judicial discretion.
- (C) Bail may be granted unless directed otherwise by the High Court of the concerned State.
- (D) Bail may be granted only if a personal bond is provided to the officer-in-charge.
- (E) Bail may be granted only if a personal bond is provided to a Magistrate and the person agrees to be under house arrest.

Ans. — (B)

Explanation:

In non-bailable offences, the accused is not entitled to bail as a matter of right. Police invariably does not take bail in such cases and only the Court grants bail. The list of bailable

and non-bailable offences is given in the First Schedule of the Cr. P.C.

39. The Code of Criminal Procedure, 1973, deals with procedural aspects of criminal law. An Exception in the Code of Criminal Procedure, 1973, where the proceedings are civil in nature, is a proceeding pertaining to:

Options:

- (A) Plea bargaining.
- (B) Compounding of offences.
- (C) Appointment of receivers.
- (D) Search and seizure.
- (E) Maintenance.

Ans. — (A)

Explanation:

Plea bargaining is a legal negotiation between the defense and prosecution where the defendant agrees to plead guilty to a lesser crime or some of the charges in exchange for a more lenient sentence or other concessions. It is a pre-trial or during-trial process that can help to reduce the number of criminal cases.

40. During a trial for murder, the prosecutor alleges that the murder weapon is hidden in the house of the accused but his wife is not allowing them into the house. What should the prosecution seek from the court to secure the murder weapon?

Principle: The Code of Criminal Procedure, 1973, empowers the Court and the investigating agencies to perform functions including to summon documents or things and to conduct searches for such documents or things.

Options:

- (A) An order for arrest of the wife.
- (B) An order for judicial custody of the wife.
- (C) An order for appointment of Judicial Committee.
- (D) A search warrant to inspect the accused's house for the murder weapon.
- (E) A summons to the wife to present the murder weapon in court.

Ans. — (D)

Explanation:

A summon is a legal document that requires a person to appear in court and respond to a complaint filed against them. A magistrate issues a summon to the accused under Section 204(1) (a) of the Code of Criminal Procedure (Cr. P.C.), 1973.

41. A has murdered her husband. She goes to the police station with the murder weapon and confesses before the police. In view of the principle below, what would be the most correct action for the police?

Principle: If any person wishes to give his statement or confession in the course of any investigation, such person may do so before a Metropolitan Magistrate or a Judicial Magistrate under section 164 of the Code of Criminal Procedure, 1973.

Options:

- (A) Record A's statement and make her sign it.
- (B) Record A's statement, and make her sign it in the presence of three independent witnesses.
- (C) Produce A before a Court of Sessions to record her confession.
- (D) Produce A before a Metropolitan Magistrate or a Judicial Magistrate to record her confession.
- (E) Produce A before the High Court to record her confession.

Ans. — (D)

Explanation:

Section 164, CrPC talks about the statements recorded by Magistrate: Sub-Section (1) authorizes the Magistrate to record the statement of a person or his confession, no matter whether he possesses jurisdiction in the case.

42. A, a witness to a murder, files a First Information Report ("F.I.R."), but A was Category A in a State of shock and could not record his statement completely. Which of the following statements is the most accurate application of the principle below?

Principle: An F.I.R. must be viewed in the context of the circumstances within which it was given to the police, and therefore, it may not have all details.

Options:

- (A) The F.I.R. is invalid as A is in a state of shock, and hence, of unsound mind.
- (B) The F.I.R. is invalid because it does not contain all the details of the murder.
- (C) The F.I.R. is not the sole basis of the trial. A can record his statement with missing details during the trial, but the prosecutor or the defence may cross-question him based on the F.I.R.

- (D) The F.I.R. must be withdrawn and a second F.I.R. should be prepared.
- (E) A second F.I.R. by another person must be filed before the trial can go ahead.

Ans. — (C)

Explanation:

The Code of Criminal Procedure contains no definition for the words "First Information Report." Instead, the phrase has not been used outside of section 207, which mandates that the accused gets a copy of the First Information Report that was submitted in accordance with section 154(1) of the Code from the magistrate. The FIR, which provides details on the cognizable crime, is the report that the police first kept on file on the commission of a case that is subject to legal action.

SUBJECT -DRAFTING, PLEADING AND CONVEYANCING

43. Which of the following statements is the most accurate description of the principle of *ejusdem generis*?

Options:

- (A) Where a complex sentence has more than one subject, and more than one object, the provision is to be read distributively by applying each object to its appropriate subject.
- (B) If a provision covers a number of matters but mentions only some of them, then these are taken to be excluded from the proposition.
- (C) A word or phrase is not to be construed as it stands alone but in the light of its surroundings.
- (D) Where a sentence in a statute contains several antecedents and several consequences, they are to be read distributively.
- (E) Where a list of two or more items belonging to the same genus is followed by general words, the general words are construed as confined to the same class.

Ans. — (E)

Explanation:

'*Ejusdem Generis*' is a Latin term and the meaning of it is "of the same kind and nature". According to the Black's Law Dictionary (8th edition, 2004.), "the principle of *Ejusdem*

Generis is where general words follow an enumeration of persons or things by particular and specific words.

44. Which provision of the Code of Civil Procedure, 1908, states that no pleading subsequent to the Written Statement of a defendant other than by way of defence to a set-off or counter-claim shall be presented except with the leave of the Court, and upon such terms as the Court thinks fit?

Options:

- (A) There is no such provision in the Code of Civil Procedure, 1908 for subsequent pleadings.
- (B) Order VIII, Rule 9 of the Code of Civil Procedure, 1908 provides for subsequent pleadings.
- (C) Order VII, Rule 1 of the Code of Civil Procedure, 1908, which lays down the particulars of a plaint, provides for filing of subsequent pleadings.
- (D) Subsequent pleadings can be filed by invoking the inherent powers of the Court and there is no provision in the Code of Civil Procedure, 1908 regarding subsequent pleadings.
- (E) Order II, Rule 2 of the Code of Civil Procedure, 1908 provides for subsequent pleadings.

Ans. — (B)

Explanation:

Under Order VIII Rule 9, the Court has power to call upon both parties to file written statements at any time and this power should be freely used for elucidating the pleas when necessary, especially in complicated cases.

45. Which of the following statements about a testatum of a deed is most accurate?

Options:

- (A) This can be described as some matter accepted or agreed upon as a return or equivalent for a promise made.
- (B) This is the clause in the deed containing the receipt of the consideration.
- (C) This is the witnessing part of a deed containing the intention of the parties.
- (D) This describes the property or the quantum of interest being conveyed.
- (E) This is in witness of the matters contained in the deed and is usually at the end of the deed.

Ans. — (C)

Explanation:

In a deed, the testatum is a witnessing clause that marks the beginning of the operative part of the document. It is usually placed after the recitals and before the operative part. The testatum clause often begins with the words "Now this Deed Witnesseth that..." or "Now this Deed Witnesseth as follows...".

46. In a Written Statement, which of the following forms of defence is a defendant not permitted to take?

Options:

- (A) A legal defence such as on the maintainability of the suit.
- (B) A special defence of confession and avoidance.
- (C) Traversal of the facts in the plaint specifically dealing with each allegation of fact.
- (D) Traversal of the facts in the plaint by giving vague, evasive, or routine denials.
- (E) Set-off or counter-claim.

Ans. — (D)

Explanation:

The written statement should specifically deny the allegations, which defendant thinks are false. Any allegation not specifically denied is deemed to be admitted. The written statement should also contain verification from the Defendant, stating that, the contents of written statement are true and correct.

47. B is a private limited company engaged in the manufacture and sale of shoes and is also one of your clients. A is, one of the legal managers of B. A approaches you and give you instructions to file a suit for recovery of money on behalf of B against one of its vendors. You know that another legal manager of B, named C, had been authorised in a prior case. Is it necessary that you confirm if A is also authorised to give instructions on behalf of B?

Principle: When you are taking instructions from a client, it is important to check whether the instructions have been given by the authorised or appropriate person.

Options:

- (A) No, it is not necessary to confirm if A is authorised since B is your client; it is only fair to assume that its legal manager would be authorised.
- (B) Yes, as a matter of rule, it is necessary that you confirm whether A is authorized to give instructions on behalf of B.
- (C) No, it is not necessary. Under law, all legal managers are authorised to represent a private limited company.
- (D) Since C had been authorised to give instructions on behalf of B, it is only fair to assume that A also will be authorised.
- (E) It does not matter who is authorised to give instructions. All that matters is who is authorised to represent the company in the suit.

Ans. — (C)

Explanation:

A manager or a managing director can represent a company for its day-to-day management which would also include approaching the court in a criminal matter.

48. Assume that the immigration laws of India state that "All these persons to whom this Act extends shall have the right of abode in India and shall be free to live in India and to come and go into and from India". What does 'come and go into and from India' signify?

Principle: The of principle *reddendo singula singulis* states that where a complex sentence has one subject, and more than one object, the provision is to be read distributively by applying each object to its appropriate subject.

Options:

- (A) It means that the person shall be free' to come into India but cannot go from India.
- (B) It means that the person shall be free to go into India and to roam within India.
- (C) It means that the person shall be free to come into India and to go from India.
- (D) It means that the person shall be free to go from India but then cannot come back to India.
- (E) It means that a person who resides in India cannot either come to India or go from India.

Ans. — (C)

Explanation:

Reddendo singula singulis is a Latin phrase that means "by assigning each one to each one" or "by giving each thing to each thing". It is a principle of legal instrument construction that helps to ensure that the intent of the document's creators is clear and followed.

49. Parties A and B enter into an Agreement for Sale of Immovable property. In the recitals portion of the agreement, it is mentioned that A, being the seller, agrees to pay all the relevant taxes to the authorities, including registration charges. However, the operative part to the said agreement contains a clause whereby B, being the purchaser, agrees to pay the registration charges. Who has

to pay the registration charges?

Principle: If the recitals are clear, and the operative part is ambiguous, the recitals govern the construction. If the recitals are ambiguous and the operative part is clear, the operative part must prevail. If both the recitals and operative part are clear, but they are inconsistent with each other, the operative part is to be preferred.

Options:

- (A) A has to pay the registration charges as the recitals clearly mention that the relevant taxes to the authorities shall include registration charges.
- (B) Regardless of what the agreement states, B has to pay the registration charges, and it is the norm that the purchaser shall pay these charges.
- (C) Regardless of what the agreement states, A has to pay the registration charges, as it is the norm that the seller pays the registration charges.
- (D) B has to pay the registration charges as the clause in the operative part of the agreement prevails over the recitals.
- (E) Neither A or B has to pay the registration charge as the conflicting clauses in the agreement cancel each other out.

Ans. — (D)

Explanation:

Recitals can be important for interpreting statutes and legal documents in a number of ways:

- Context: Recitals provide context and background information for a law or contract. They can also record the intentions of the parties involved.
- Interpretation: Recitals can be helpful in interpreting ambiguous provisions of a law or contract.
- Legislative intent: Recitals can help courts to understand the legislative intent behind a law.

SUBJECT -LAW OF EVIDENCE

50. Which of the following statements is most accurate about the law of evidence?

Options:

- (A) The law of evidence is not procedural law but a substantive law.
- (B) The law of evidence does not usually apply similarly across civil and criminal proceedings.
- (C) The law of evidence is not codified.
- (D) The normal rule in the law of evidence is that the burden of proving a fact lies on the party who alleges a fact.
- (E) Hearsay evidence is usually admitted.

Ans. — (D)

Explanation:

The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

51. Which of the following statements is the most accurate about a fact in issue?

Options:

- (A) It includes anything, capable of being perceived by the senses, and any mental condition of which any person is conscious.
- (B) It includes any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.
- (C) All relevant facts form part of the fact in issue.
- (D) A fact in issue must be the best evidence admitted before the court of law.
- (E) A fact in issue is a fact that both parties have agreed on.

Ans. — (B)

Explanation:

A fact in issue is a fact that must be determined in a dispute, and is the foundation of the case. It is also known as a "principal fact" or factum probandum.

Facts in issue are often the subject of disagreement between both parties. They include:

- Whether A caused B's death
- Whether A intended to cause B's death
- Whether A was unable to understand the nature of the act that caused B's death

52. Which of the following statements about primary and secondary evidence is least accurate?

Options:

- (A) The contents of documents can be proved either by primary or secondary evidence.
- (B) There are certain prescribed circumstances where secondary evidence can be used to prove a document.
- (C) Primary evidence affords the greatest certainty of facts in question.
- (D) Secondary evidence concerning a document may not be provided when the original is found to be inadmissible.
- (E) Section 63 provides an exhaustive definition of secondary evidence.

Ans. — (E)

Explanation:

Section 63 of the Indian Evidence Act, 1872 lists the types of documents that can be considered secondary evidence:

- Copies: Copies made from the original document by a mechanical process that ensures accuracy.
- Counterparts: Counterparts of the original document.
- Oral accounts: Oral accounts of the contents of a document.

Secondary evidence is only admissible when primary evidence is unavailable. The original document must be produced and proven if it is available.

53. Which of following statements is the most accurate regarding confessions and admissions?

Options: