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CS EXECUTIVE J'19 EXAM

**SUBJECT- JURISPRUDENCE, INTERPRETATION
AND GENERAL LAWS**

Test Code – CSE 2020

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ANSWER-1

ANSWER-A

- 1) **Right of Appeal is not a natural or inherent right attached to litigation.** Such a right is given by the statute or by rules under such statute (The Rangoon Case)
- 2) There are **four kinds of Appeal** provided under the CPC, 1908 –
 - i) Appeal from original decree (original appeal) – [Sec. 96 – 99]
 - ii) Second Appeal – [Sec. 100]
 - iii) Appeal from Orders – [Sec. 104]
 - iv) Appeal to Supreme Court [Sec. 109 -112]
- a) **Original appeal / first appeal (appeal from original decrees)**

Appeal against original decree is made in the court, **superior to the court passing the decree.** An appeal may lie against original ex-parte decree. When the decree has been passed with the consent of parties, no appeal lies. Similarly appeal cannot be made in any suit of small cause where the compensation amount or value of property does not exceed Rs.10,000/-.
- b) **Second appeal : Sec. 100**

As per sec.100 of CPC 1908, an appeal **lies to the high court against every decree passed by subordinate court** and the high court is satisfied that the case involves a substantial question of law.

Second appeal can also be made against ex-parte decree.
- 3) **Appeal to the Supreme Court** : under following cases, appeal can be made to the supreme court
 - Appeal shall be made to the supreme court against **any decree passed by high court while exercising original jurisdiction.**
 - Appeal shall be made to the supreme court against **any order / decision passed on appeal by high court while exercising appellate jurisdiction .**
 - When supreme court on **its own grants special leave** under Sec.112 of CPC to the affected party.
- 4) **Appealable orders** : appeal against orders Sec. (104)

(5 MARKS)

ANSWER-B

- ❖ Section 6,7,8 – legal disability under limitation act.
- **Sec. 6 deals with legal disability of one plaintiff.**
- **Sec. 7 deals with legal disability of more than one plaintiff.**
- **Sec. 8 deals with max limitation period after cessation of legal disability .** (2 MARKS)
- As per section 6 if person is legally disabled on date of default, in such case limitation period will not start from the date of default, it shall start from the date of cessation of legal disability

- Section 6 further states that if person is legally disabled with more than 1 legal disability, in such case limitation period will not start from the date of default, it shall start from the cessation of all the legal disability.
- As per section 7 if there is more than 1 plaintiff and all plaintiff represents each other in a suit and they are legally disabled, in such case limitation period will not start from the date of default, it shall start from the date of cessation of legal disability of any of the plaintiff.
- As per Section 8 **maximum limitation period available after expiry of legal disability is 3 years.**

(3*1 =3 MARKS)

ANSWER-2

ANSWER-A

Sec. 11 : Doctrine of Res-Judicata

- 1) Sec. 11 deals with the doctrine of Res-judicata i.e. **bar or restriction on repetition of cases of the same issue i.e. same cause of action.**
- 2) The **object of Sec.11 is** that there must be a **limit or end to litigation on the same issues.**
- 3) In simple words as per Sec.11, if any matter or case which is already decided by a Court of competent jurisdiction, in that case such matter between the same parties for the same cause of action shall not be considered as fresh suit by any other court at same level or level below.
- 4) Sec. 11 does not prohibits the parties to make an appeal apply for review or revision.
- 5) Sec.11 states that once a res (suit) is judicata (adjudicated) it shall not be adjudicated again
- 6) **The rule of res-subjudice is related to a matter which is pending, whereas res-judicata relates to a matter which is adjudicated i.e. decided**
- 7) Res-subjudice bars the **trial of a suit** in which the **cause of action is similar** to the previous pending suit whereas rule of res-judicata bars the trial of the suit, in which cause of action is already decided because of previous suit between the same parties.
- 8) Following are the essential conditions for Sec.11
 1. The cause of action in **both the suits should be same.**
 2. **Parties to the suit should be same.**
 3. The court which decided the earlier suit must be competent to decide the later suit

Note : a consent or compromise decree is not a decision by Court. It is an acceptance of something to which the parties had agreed. The court does not decide anything. The compromised decree has the seal of the court on the agreement of the parties therefore, principle of res-judicata is not applicable upon consent or compromised decree. But when the court on the basis of facts comes to a conclusion that the parties decided that, the consent decree should have the effect of final decree in such case, the principle of res-judicata may apply to it.

NOTE : The doctrine of res judicata prevails over the doctrine of lis pendens where there is a conflict between the two.

(6 MARKS)

ANSWER-B

❖ Privileged Communication

These are some facts of which evidence cannot be considered by court even though they are relevant to the case, such facts are called privileged communication.

i) Communication during marriage

- Communication between **husband and wife during marriage is privileged** and its disclosure cannot be enforced. This provision is based on the **principle of domestic peace and confidence between the spouse.**

ii) Communication under profession capacity

[professional communication]

- Communication between **legal advisor and a client** is protected from disclosure.
- A client cannot be compelled and legal advisor cannot be allowed with express consent of his client to disclose any communication held under professional capacity.

iii) Any evidence write affairs of state government

- Sec. 123 deals with those evidences derived from unpublished official record relating to affairs of state.

(4 MARKS)

ANSWER-3

ANSWER-A

❖ Section 18 – valid acknowledgement

- Sec. 18 of the Act deals with the **effect of acknowledgement of liabilities / debt in respect of property or right .**
 - Following requirements should be present for a valid acknowledgement as per Sec. 18
- i) There must be **written acknowledgement.**
 - ii) It must be **signed by debtor himself** (i.e. party against whom such property or right is claimed).
 - iii) It must be **made before the expiry of limitation period .**
 - iv) Such acknowledgement must be in **respect of any property or right.**
- If all the above requirements are fulfilled a fresh period of limitation shall be calculated from the time when such acknowledgement was signed.

(4*1 = 4 MARKS)

ANSWER-B

The Central Information Commission/State Information Commission **has a duty to receive complaints from any person –**

- (i) who has **not been able to submit an information** request because a PIO has not been appointed;
- (ii) who has been **refused information that was requested;**
- (iii) who has received **no response to his/her information** request within the specified time limits;
- (iv) who thinks the **fees charged are unreasonable;**

- (v) who thinks information given is **incomplete or false or misleading**; and
- (vi) any other matter relating to obtaining information under this law.

If the Commission feels satisfied, an enquiry may be initiated and while initiating an enquiry the Commission has same powers as vested in a Civil Court.

The Central Information Commission or the State Information Commission during the inquiry of any complaint under this Act may examine any record which is under the control of the public authority, and no such record may be withheld from it on any grounds. (Section 18)

(6*1 =6 MARKS)

ANSWER-4

ANSWER-A

Certain categories of information have been exempted from disclosure under the Act.

These are:

- (i) Where disclosure prejudicially affects the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (ii) Information which has been expressly forbidden by any court or tribunal or the disclosure of which may constitute contempt of court;
- (iii) Where disclosure would cause a breach of privilege of Parliament or the State Legislature;
- (iv) Information including commercial confidence, trade secrets or intellectual property, where disclosure would harm competitive position of a third party, or available to a person in his fiduciary relationship, unless larger public interest so warrants;
- (v) Information received in confidence from a foreign government;
- (vi) Information the disclosure of which endangers life or physical safety of any person or identifies confidential source of information or assistance;
- (vii) Information that would impede the process of investigation or apprehension or prosecution of offenders;
- (viii) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

Personal information which would cause invasion of the privacy unless larger public interest justifies it. (Section 8)

NOTE : The Public Information Officer has been empowered to reject a request for information where an infringement of a copyright is involved. (Section 9)

(5 MARKS)

ANSWER-B

❖ Legal Injury :

When there is violation of legal rights, it result into legal injury. Tort consist of some act or omission done by the defendant (Tort feasor) because of such act or omission plaintiff suffered harm or damages. Every person whose legal rights (such as rights of reputation, right to property, right of freedom, etc) are violated without any lawful justification or reason, in such case such person has a right to take action against the person who violated such rights.

❖ Legal Damages :

Every damage is not a legal damage, damage must be recognized in the eye of law to be considered as legal damage. In other words there should be legal injury or infringement of legal rights to be more precise following **2 maxims must be studied** :

1. Damnum Sine Injuria { Darnages without legal injury }

Damnum means damages, loss or harm in respect of money, comfort, health, etc. injuria means legal injury or infringement of legal rights. As per this maximum even though person has suffered damages yet no action can be taken because such damages are not legal damages therefore they are not actionable under tort.

2. Injuria Sine Damnum { Legal injury without damage }

It means **"legal injury without damages"**, when there is no damage resulting yet it is an injury or wrong i.e. when there is infringement of legal rights not resulting in harm but plaintiff can still file a suit under tort, similarly when there is violation of private right of an individual, there is injury and the plaintiff's action will succeed even if there is no damages. **Case study :- Ashby V/s. White**

❖ Legal Remedy

In case of Tort remedy is **un-liquidated i.e. it is not specified**, court may provide some other remedy such as injunction, damages (compensation) or specific restitution (specific order)

(5 MARKS)

ANSWER-5

ANSWER-A

Admission	Confession
<ul style="list-style-type: none">- There can be an admission either in a civil or criminal proceeding.- Admission need not be voluntary to be relevant- Admission can be oral or documentary- Admission is relevant even if it is made by an agent or even by a	<ul style="list-style-type: none">- There can be confession only in criminal proceeding- Confession to be relevant must be voluntary- Confession must be in oral form- Confession to be relevant must be

stranger
- Admission is "Genus"

made by accused himself
- Confession is "species"

(4 MARKS)

ANSWER-B

Strict / absolute liability

As per the general rule of **actus non facit reum nisi mensit rea i.e. the act itself creates no guilt in the absence of guilt mind.** It does not mean that for tort, the act must be done with a guilty intention. In case of tort the act must be done either with wrongful intention or negligence. However, the principle cases of Strict liability or absolute liability is an exception to the rule of mens rea.

- **As per strict liability rule the defendant is liable even though the harm to the Plf. occurred without intention or negligence on the defendant part.**
- In other words, the defendant is held liable without any fault
- These cases fall under following 3 categories
 - liability for inevitable accident
 - liability for inevitable mistake
 - vicarious liability for wrong committed by others
- The strict liability concept in relation to **Ryland V/s. Fletehes case**, court held that if the person brings anything or accumulates anything on his land which if escape may cause damages to other person, in that case it does such act on his own peril (risk), however, careful he was and whatever precautions he had taken to prevent such damages, he will be held responsible for such damages.
- Later in the case of Read v. Lyons, it has been explained that two conditions are necessary in order to apply the rule in Ryland v. Fletcher, these are:
 1. Escape from a place of which the defendant has occupation or over which he has a control to a place which is outside his occupation or control or something likely to do mischief if it escapes **and**
 2. there must be natural use of land.
- Following are certain exceptions to the rule of strict liability which have been introduced in course of time, some of being inherent in the judgment itself in Ryland v. Fletcher ;- (ALSO Refer pg 149 ICSI Module)
 - i. Consent of Plaintiff
 - ii. Act of 3rd party
 - iii. Act of God
 - iv. Escape due to Plf own fault
 - v. Act done by statutory authority in public interest
 - vi. Damages due to nature use of the land

(6 MARKS)