December 2012 GCL Solved Paper

1. (a) Freedom of trade and profession is provided under Article 19 (1) (g) of the Constitution of India. This gives the citizens the right to pursue any trade, profession, business or occupation in any place within India. This right is, however, not absolute. It can be restricted by the State in the following cases –

- When the State feels it is essential to do so in the public interest.
- When it is felt that there should be some basic qualifications for any occupation or profession, it can provide so.
- When the State feels that it needs to establish control in some area of trade, occupation or business, so that it can be better tended.

These restrictions shall be considered valid when the conditions of the trade or business restricted at that time justify them, for example, for keeping the price of essential services down. Hence, the State can take over these rights to any extent – from being one of the participants in that trade to being the only one, provided it is justified in doing so.

On behalf of the State it was argued that Article 19(6) of the Constitution indicated, as in its amended state, that the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business or industry or service, whether to the exclusion, complete or partial, of the citizens or otherwise, was a permissible restriction on an individual's right of trading. [Sagir Ahmad And Ors. vs The Govt. Of The State Of Uttar ... on 17 November, 1953]

1.(b) The Parliament can extend the legislative powers given to it by the Constitution to formulate laws under special situations to include certain subjects of the State List. Some of the conditions under which the Parliament may extend its powers include the situations explained below-

In the National Interest (Under Article 249)

Proclamation of Emergency (Article 250) in any state by the President.

If two states agree that the Parliament can legally make laws with respect to the two states, then the Parliament can make laws relating to any state or states (Under Article 252)

For the implementation of treaties in the international interest of the country (Under Article 253).

Failure of Constitutional Machinery in a State as a result of the inefficiency of a State Legislature, as declared by a proclamation issued by the President (Under Article 356 (1) (b))

Normally both the Union Government and the State Governments operate within the limitations of the powers given to them by the Constitution. They enjoy equal powers to make laws relating to the Concurrent list items, which are of general importance such as succession, transfer of property, preventive detention, education, etc. If there arises a conflict between a law passed by the Union and that passed by one or more State Legislatures, precedence would be given to the law made by the Union Parliament. However, problem arises when either the Union or a State illegally encroaches upon the powers of the other legislature, or they may arise because the two laws do not coordinate. Only where the legislation is on a matter in the Concurrent List, it becomes important to apply the test of repugnancy and judge which act will apply. Normally the Union law is given precedence, unless the State has reserved a law for the approval of the President, in which case it will supersede the law made by the Union. However, the Union can at all times cause an alteration or amendment in the law.

1.(c) The preamble of an Act is the introduction or the key to the Act. Although not a part of the Act itself, and so does not perform any legal function, it is a valuable key for understanding the Act and resolving the ambiguities in drafting. The preamble provides the introduction to the Act and indicates its coverage. Both these views are taken together in comprehending the importance of preambles in interpretation of statutes. If

the statute is clear in itself, the preamble is not resorted to for gaining comprehension; if it is ambiguous or unclear, then the preamble can be used to give a direction to the interpretation. It thus prescribes an outline to the Act itself, letting the person reading it know what all it includes within its bounds. The preamble specifies the intention behind the making of the act, i.e. what is the mischief that the makers of the act sought to correct. It can be one of the key starting points when we begin to understand a statute. The next in line is the judgment of the Supreme Court (Girdhari Lal & Sons v. Balbir Nath Mathur) wherein, on the subject of interpretation of Statutes, the Supreme Court had laid down the law as hereunder:

Parliamentary intention may be gathered from several sources. First, of course, it must be gathered from the statute itself, next from the preamble to the statute, next from the Statement of Objects and Reasons, thereafter from parliamentary debates, reports of committees and commissions which preceded the legislation and finally from all legitimate and admissible sources from where there may be light. Regard must be had to legislative history too.

Also, **Novartis Ag Represented By It'S ... vs Union Of India (Uoi) Through The ... on 6 August, 2007.**

Hamdard Dawakhana (Wakf) Lal ... vs Union Of India And Others on 18 December, 1959.

Ans 2.(i) The external aids of interpretation are generally used when the statute is vague or indistinct in meaning. Here, the inner means of interpretation would not serve the purpose and some external means, like the circumstances that prevailed at the time of making of the statute, committee reports, if any, links with other acts, dictionaries or even case histories from other countries, would have to be utilized. If there were other acts leading upto the current one, they could be looked into as well on the assumption that they would shed some light over the current statute.

These external aids, however, have to be used with due care and only in situations where the internal ones prove insufficient in giving an

understanding of the statute or its part. This is because firstly, they are extraneous to the statute in question, and however close to the subject matter, they might not give an accurate picture. For example, if an act is made in year 1889 regarding a particular thing, and another is made in year 2008, the earlier act would not give a true picture if used as an aid for interpretation of the new act. This is because the conditions and situations of both acts were different; they were made against different social, political and economic backdrops. This does not mean that it cannot at all be use for shedding light on the subsequent act; it simply means that it should be used in moderation and with care, and the context and underlying situations too should be kept in mind, while doing so. Only then would the interpretation be a fair one.

Legislative or parliamentary history – This would help in giving a general direction to the interpretation. The parliamentary history helps in understanding the trend of the legislative thought of the country thus providing a background for the statute under study. This helps in providing an overview or a general context to the statute. **Parliamentary material**

(a) Debates

Courts often take recourse to parliamentary material like debates in Constituent Assembly, speeches of the movers of the Bill, Reports of Committees or Commission, Statement of Objects and Reasons of the Bill, etc.

Fagu Shaw etc. v The State of West Bengal "*We may therefore legitimately refer to the Constituent Assembly debates for the purpose of ascertaining what was the object which the Constitution makers had in view and what was the purpose which they intended to achieve when they enacted the law in its present form.*"

(b) Statement of Objects and Reasons

So far as Statement of Objects and Reasons, accompanying a legislative bill is concerned, it is permissible to refer to it for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute and the evil which the statute sought to remedy. But, it cannot

be used to ascertain the true meaning and effect of the substantive provision of the statute. (Devadoss (dead) by L. Rs, v. Veera MakaliAmman Koil Athalur[16].

(c) Reports of Parliamentary Committees and Commissions
Reports of Commissions including Law Commission or Committees including Parliamentary Committees preceding the introduction of a Bill can also be referred to in the Court as evidence of historical facts or of surrounding circumstances or of mischief or evil intended to be remedied. [Mithilesh Kumari v Prem Behari Khare.
Rosy and another v State of Kerala and others]

ii) Section 19 in The Specific Relief Act, 1963

As per this section, specific performance of a contract may be enforced against-
(a) either party thereto;
(b) any other person claiming under him by or through a title arising after the contract was entered into, except a bona fide transferee for value
(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been dislodged by the defendant;
(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the resultant, amalgamated company which arises out of the amalgamation;
(e) when the promoters of a company have entered into a pre-incorporation contract for the purpose of the company and such contract has been accepted by the company has and communicated such acceptance to the other party to the contract.

[Dalmia Jain And Company Ltd. vs Kalyanpur Lime Works Ltd. And Anr. on 10 December, 1962.]

Ans 2.(iii) Additional award is the award that is given by the arbitral tribunal at the instance of either party. It allows for claims that were originally included in the arbitral proceedings but omitted from the award. The request for such an additional claim can be submitted within thirty days of the

original award being received. The tribunal will intimate its decision within a period of sixty days, which period can be extended upon need.

This is under Section 33, which is for Correction and interpretation of award and additional award. This Section says that -

Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties, a party, with notice to the other party, may request the arbitral tribunal to correct any computational, clerical or typographical errors or any other errors of a similar nature.

If so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

Within thirty days of receiving the award, either party can request the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.The arbitral tribunal shall make the additional arbitral award within sixty days from the receipt of such request.

Ans 2.(iv) According to Section 10 of the Transfer of Property Act, 1882 the right of absolute alienation of property is not to be allowed to the transferor.

Absolute restraint is not allowed as it limits the transferee from freely transferring the property as he thinks fit. The term might also apply to restrictions placed on the enjoyment of acquired property. For example, a condition that the transferee cannot further sell the land except when the price is above a fixed sum comes under this term.

However there are certain exceptions to Section 10.

1. A condition that the lessee cannot further sublet the property is valid.

2. In the case of a woman to whom the Hindu, Buddhist or Muslim personal law does not apply shall not have power to transfer the property as long as her marriage subsists.

Ans 2.(v) Sections 12 to 19 and Section 24, which are contained in Part III of the Limitation Act, 1963, titled "Computation of Period of Limitation", provide the details for this. They are as under –

Section 12 – It says that the time required for filing a suit, appeal or application, either against a decree or order or otherwise, is exclusive of the day from which the limitation period is calculated. Moreover, the time needed for obtaining a copy of the order being appealed against is also to be excluded.

The following are to be excluded while calculating this period –

- In calculating the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

- In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment was pronounced and the time required for obtaining a copy of the decree, sentence or order appealed from shall be excluded.

- Where a decree or order is appealed from for sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment on which the decree or order is based or from which it is sourced, shall be excluded.

- In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

However, in computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the

decree or order before an application for a copy thereof is made shall not be excluded.

Ans. 3. (i) The Writ of Prohibition is issued primarily to prevent an inferior court or tribunal from exceeding its jurisdiction. It is issued by a superior court to inferior courts from usurping a jurisdiction which is not legally vested in it, or in other words to compel inferior courts to keep within the limits of their jurisdiction. Thus the writ is issued in both cases where there is excess of jurisdiction and where there is absence of jurisdiction (S. Govind Menon vs. union of India, AIR 1967 SC 1274 The writ can be issued only when the proceedings are pending in a court. It can be issued only against a judicial or legislative functionary, not administrative.

On the other hand, the writ of Mandamus, meaning "we command", is a constitutional remedy provided by the Constitution of India, against holders of public offices or against those performing public duties, to order them to perform their duties. It can be issued to both individuals and organizations, and ensures judicial backing to the person who needs to get a public duty done. It ensures that a person who has the right to get some public duty performed in his favour can get a writ passed to get the work done. The high courts and the Supreme Court have the powers to issue this writ. This writ remedy cannot be used in case the act required to be done is discretionary, and the authority responsible for it has the right to decide whether or not to do it.

When there is the option of another action through the normal route, then this writ is usually not used, hence it is termed as an extra ordinary constitutional remedy. Generally it covers acts of the lower courts, public officers and government corporations. Moreover, it can be used even before a case is decided.

Ans. 3. (ii) The basic differences are as follow -

- Performance/ non-performance – Injunctions are an order by the court not to do a specific act, i.e. an order for non-performance,

whereas an order for specific performance is issued to make someone do the very thing mentioned in the order.

- Types of cases – Injunctions are normally for torts and other civil wrongs; specific performance is generally used in case of contracts.
- Necessity of contract – In case of injunctions, there is no need for prior contracts, as they are issued mainly for acts done without the other party agreeing to or even knowing about them. Specific performance, on the other hand, requires a contract to be entered into first, the breach of which gives right to the need for specific performance as a remedy. [The only exception here is an agreement of forbearance; in this case, injunctions might be issued.]

Ans. 3. (iii) Section 2 (1)(a) of the Arbitration and Conciliation Act, 1996, defines "Arbitration means any arbitration whether or not administered by permanent arbitral institution."

ARBITRATION can be defined as a method by which parties to a dispute get the dispute settled through the intervention of a third independent person. Parties can also settle their disputes through a permanent arbitral Institutions like, Indian Council of Arbitration, Chamber of Commerce, etc. Arbitration, a form of alternative dispute resolution (ADR), is a legal technique for the resolution of disputes outside the courts, thus saving time and money. In this, the parties to a dispute refer it to one or more persons (the "arbitrators" or "arbitral tribunal"), by whose decision (known as the "arbitral award") they agree to be bound.

Halsbury defines Arbitration as follows:—

"Arbitration is the reference of dispute between not less than two parties, for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction."

Conciliation

It is an informal process in which both the disputing parties appoint a neutral conciliator or a third person to bring them to an agreement and to help end the dispute. This is done by sorting out any misinterpretations between the

parties and removing the technical difficulties and working out possible solutions. It is an alternative dispute resolution (ADR) process whereby the parties to a dispute using the help of a conciliator, resolve the issues bothering them. The conciliator meets with the parties separately in an attempt to resolve their differences. They help by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated, mutually acceptable settlement.

Conciliation differs from arbitration in that the conciliation process, in and of itself, has no legal standing, and the conciliator usually has no authority to seek evidence or call witnesses, usually writes no decision, and makes no award.

The main differences between the two are as follows –

- Legal standing – Arbitration has a legal standing; conciliation does not have a legal standing.

- Authority to seek evidence or examine witnesses – An arbitrator has the right to seek evidence or call witnesses; a conciliator does not have these rights.

- Writing of decisions- An arbitrator can write decisions, a conciliator just aids the two parties in reaching to an agreement.

- Making of awards – An arbitrator can pass an arbitral award; a conciliator can pass no awards; just help in a conciliation agreement.

Ans. 3. (iv) What Is Slander?

Slander verbally harming the reputation or activities of another individual or entity, using information that is known to be false or misleading. This might involve not only the use of specific words to damage a reputation, but also actions such as hand gestures or facial expressions in order to reinforce the misinformation that is being distributed. Any defamation that is expressed in an ephemeral or transitory mode is usually considered slander. For example, a disgruntled shareholder might say bad things about the company, like it is

going bankrupt. If it is said in a form that cannot be retained for future references, it is slander.

What Is Libel?

Like slander, libel also refers to statements or opinions that damage another person's reputation. The difference is that libel takes the form of fixed, relatively permanent or printed material rather than verbal assaults. For example, the employee in the above mentioned illustration may choose to leave the company and write an article about the company operations, against the directors etc. The article may be supported by photographs that were taken and then used out of context or to reinforce the purported validity of the lies. This type of activity would likely constitute libel.

Ans. 3. (v) The differences between mortgages and charges are as under –

- Interest/Security – A mortgage involves transfer of an interest in property, whereas a charge is created as a security for a debt.
- Creation – Mortgages are created voluntarily when the parties so decide, but a charge can be created voluntarily or it can be a mandatory requirement under a law for the time being in force.
- Mode of creation – Mortgages need to be in writing to take effect; charges can also be oral; if they are oral they can be reduced to writing.
- Registration – Mortgages need compulsory registration to be effective, for that they need to be attested by at least two witnesses. Charges need not be registered, unless a company creates them.
- Foreclosure – There is a possibility of foreclosure in certain types of mortgages, not all, but charges are without this benefit. The only recourse a charge-holder will have in case of non-payment is to get the property sold.
- Personal liability – In a mortgage, the element of personal liability will be generally present, but it will depend also on the category of mortgage chosen. In a charge, it I always absent.

Ans. 4. (i) An 'instrument' under Section 2(14) of the Indian Stamp Act, 1899 implies and includes any document that create, diminishes or alters any right, interest or liability in property. For example, a lease deed is an

instrument. A valid instrument needs to be signed in order to be complete and functional. Moreover, it need not be a separate deed; it can even be in the form of an entry in a register, or of a letter or communication evidencing receipt of an amount. Under the Indian Stamp Act, 1899, an instrument is chargeable to duty.

Moreover, any instrument has to be seen in entirety, in its spirit rather than its form, in order to judge the incidence and quantum of stamp duty. One cannot determine duty incidence simply by looking at the form and ignoring the substance that might be camouflaged to reduce or counter the incidence of duty.

Andhra High Court -Bahadurrinisa Begum vs Vasudev Naick And Ors. on 16 December, 1965

Ans. 4. (ii)It is true that the majority of problems in information technology relate to the machine, the medium and the message.

The machine – This includes the instruments used in IT; if these are not foolproof, the machine and consequently the data or information contained therein might be endangered. Additional safety measures like password locking, data encryption should be used.

The message – There are copyright and hacking issues. Moreover, different countries address these issues differently, so there is no standardization and hence, very less chance of any dispute being properly addressed.

The medium - Unless the information is encrypted, or saved in a format that cannot be tampered with, the information may be endangered.

All these problems are compounded by the information available on the internet, which can be freely copied and creates copyright issues and other problems.

Ans. 4. (iii)As per Rule 9 of the Code of Civil Procedure (Amendment) Act, 2002 –

(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of Rule 21 shall not apply.

(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, ‘ - the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

10. Mode of service.- Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the court.

11. Service on several defendants.- Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

12. Service to be on defendant in person when practicable, or on his agent.- Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on Such agent shall be sufficient.

13. Service on agent by whom defendant carries on business.- (1) In a Suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

14. Service on agent in charge in suits for immovable property.- Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

15. Where service may be on an adult member of defendant's family.- Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation: A Servant is not a member of his family within the meaning of this rule.

16. Person served to sign acknowledgement.- Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgement of service endorsed on the original summons.

17. Procedure when defendant refuses to accept service, or cannot be found.- Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and 'whose presence the

copy was affixed.

Ans. 4. (v) The Principle of estoppel says that a person may not approbate and reprobate at the same time, and that if he has said or claimed something at one time, he may not claim the opposite anytime hence.

It is a rule of law which says that when person A, by act or words, gives person B reason to believe a certain set of facts upon which person B relies or takes some action, person A cannot later, to his (or her) benefit, deny those facts or say that his (or her) earlier act was improper or that it is a nullity.

An example of this principle is the 'Doctrine of feeding the grant by estoppel', which covers the case of a person who leads another to believe that he is the owner of any property and transfers it to him for value. Later on, he is stopped from denying his ownership of the property and rejecting the transfer if he acquires the rights to that property subsequent to that transfer. The pre-requisites are –

- The transferor should have led the transferee to believe that he is, in fact, the owner of that property.
- The rights shod have devolved on the transferor subsequently.
- The transfer was in good faith and for value.
- The transferee had no notice of the transferor's real position at the time of transfer.

Ans. 4. (v) Section 190 of the Code of Criminal Procedure, 1973 covers taking of cognizance of offences by magistrates. It can be done when he receives an intimation of the fact in any of the following ways –

- Upon complaint of the offence
- When a police officer reports the happening of such an offence
- When he come to know of such an offence being committed
- When information regarding such an offence is received from someone other than the police

The magistrate takes cognizance only when the required procedure is followed. In case the case is initiated other than by the magistrate acting *suo motu*, the accused can apply for an inquiry to be held.

Section 191. Transfer on application of the accused.

When a Magistrate takes cognizance of an offence under clause (c) of sub-section (I) of section 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking cognizance, the case shall ba transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf.

Section 192. Making over of cases to Magistrates.

Any Chief Judicial Magistrate (CJM) may, after taking cognizance, hand over the case for inquiry or trial to and competent Magistrate subordinate to him. Likewise, any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial.

Ans. 5. (a)(i) 395 articles and 12 schedules

Ans. 5. (a)(ii) intergrity

Ans. 5. (a)(iii) immovable

Ans. 5. (a)(iv) perpetuity

Ans. 5. (a)(v)Magistrate

Ans. 5. (a)(vi) proclaimed offender

Ans. 5. (a)(vii)Rs.25000/-

Ans. 5. (b)(i)(c) Contract for rent laws

Ans. 5. (b)(ii)(b) Bill of exchange

Ans. 5. (b)(iii)(d) The appointment of adjudicating officer.

Ans. 5. (b)(iv)(b) Prime Minister of India

Ans. 5. (b)(v)(b) District Court

Ans. 5. (b)(vi)(c) 90 days

Ans. 5. (b)(vii)(b) 30 days

Ans. 5. (b)(viii)(d) Section 93.

Ans 6. (i) True. This is as per Section 24 of the Indian Stamp Act, 1899, which provides that in case of property subject to mortgage or any other encumbrances, the assessee is to treat as part of consideration any unpaid amount due on the mortgage and is to pay stamp duty on the total amount.

Ans 6. (ii) True. As per Order 5 of The Civil Procedure Code, 1908, summons need to be signed by the judge from whose court it is issued, and sealed with the seal of the Court in order to be valid.

Ans 6. (iii)True. Section 260 Clause 2 of the Code lists certain offences which may be summarily tried by any Chief Judicial Magistrate, any Metropolitan Magistrate or any Judicial Magistrate First Class. The offences that may be tried summarily under this Section are:offences not punishable with death, life imprisonment, or imprisonment for a term exceeding two years.

Ans 6. (iv)True. As per Section28 of the Right to Information Act, 2005 - In normal course, information to an applicant shall be supplied within 30 days from the receipt of application by the public authority. If information sought concerns the life or liberty of a person, it shall be supplied within 48 hours by the PIO.

Ans 6. (v)False. The Conciliator under the provisions of the Arbitration and Conciliation Act, 1996 shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

Ans 6. (vi) Under Section 2 (1) (b) of the Information Technology Act, 2000, “addressee” means a person who is intended by the originator to receive the

electronic record but does not include any intermediary.

Ans 6. (vii)False. A document executed by several persons at different times may be presented for registration and re-registration within four months from the date of each execution.(Section 24, Indian Registration Act, 1908).

Ans 6. (viii) True. As per Section 31 of the Indian Stamp Act, 1899, the Collector is to determine the stamp duty payable upon the instrument, but he cannot impound the instrument or impose any penalty.

Ans. 7.(a) Under the Transfer of Property Act, 1882, in order to be valid, a notice has to be valid, has to be a proper notice. There are two things to be kept in mind, so that it can be termed as a proper notice

- It has to clearly specify the intention to terminate tenancy.
- The date of termination of tenancy should be mentioned in it.

Moreover, depending on whether it is a monthly or yearly lease, the notice period should be fifteen days and six months respectively.

In this case, the lease is granted by Amrit to Sukant for four years, w.e.f. 1st June, 2001. This lease ends on 1st June, 2005. Since the tenant has continued residing in the property after this period, we can safely assume that the lease after 1st June, 2005 continues as a monthly lease, for which a fifteen day notice suffices.

Hence,

(i) The notice is a valid notice.
(ii) The tenancy is a monthly tenancy.

Ans. 7 (b) This case pertains to the Law of Torts, i.e. the law pertaining to vicarious liability. Under these rules, the principal is liable for the wrongs of his agents, based on the maxim – Qui facit per alium facit per se (He who acts through an agent acts himself, i.e. even if someone is acting through an

agent, and the agent is acting as per the principal's directions, it can be assumed that the principal is acting himself.).

In this case, however, the agent acted without the knowledge of the principal and defrauded the lady client, inducing her to sign the documents transferring her property to him. Even though the principal had no knowledge of the agent's acts, he is 'vicariously' liable, since the agent acted in the course of employment.

A leading case that supports this decision is the case of *Lloyd vs. Grace, Smith & Co. (UKHL)* and *Sitaram Motilal Kalal vs Santanuprasad Jaishankar Bhatt (1966).*

Ans. 7 (c) According to the Right to Information Act, 2005, no lower court is allowed to hear petition regarding suits or applications against any orders made under this Act (Section 23).

Under this Act, the Public Information Officer (PIO) has to provide the information within thirty days (Forty eight hours if the matter pertains to the life or liberty of another). If he takes no action, it is presumed to be deemed refusal (Section 7).

Bimal would be recommended not to file any suit in the civil court for not providing the required information to him. He may, however, approach the next higher authority in the public authority or organization within thirty days of deemed refusal or from expiry of the time required for making the decision or giving the information (Section 19). He may also approach the State Information Commission, which may decide to impose penalty on the PIO (Section 20).

Ans. 8 (a) This is the offence of 'hacking' as per Section 66 under the Information Technology Act, 2000. This Section provides that if any person deliberately or knowingly causes destruction or deletion in information stored in a computer resource, or causes its value or importance to be reduced, or otherwise harms it, he is committing the offence of hacking. The

punishment for which he might be liable will be imprisonment upto three years or fine extending upto two lakh rupees or with both.

Ans. 8 (b) Sections 28 and 29 of The Registration Act, 1908 cover the provisions for the place of registration of documents related to land and other property.
According to Section 17 of the Act, documents relating to creation, diminution or alteration of rights related to immovable property, if not registered, will not have the same effect as it would have had if it had been registered.
Section 28 provides that all documents mentioned in Section 17 as compulsorily registrable would be registered in the office of the sub-registrar in whose jurisdiction or sub-district the property or a part of it is located. Any other document would be registered in the office of the Sub-Registrar within whose jurisdiction the document was executed, or where the persons who are executing the document want it to be registered.

Hence, in this case, the sale deed of the property shall be registered at Noida where the property is situated. Registration done elsewhere would be void. [Harendra Lal Roy Chowdhuri vs Srimati Hari Dasi Debi on 25 March, 1914].

Ans. 8 (c) In this case, the plaintiff can file an application for a stay on the subsequent suit. 'Stay of suit' implies the action taken under Section 10 of the Code of Civil Procedure, 1908. It is the Doctrine of *res sub-judice*. The doctrine of *res sub-judice* refers to a matter pending before a judge, or court, or not yet decided. It is a matter under judicial consideration, meaning that a decision regarding the case it pertains to has not been reached yet. The doctrine or rule implies that if a matter is awaiting judicial proceedings and a decision may not be heard in any other court until it has been decided upon in the first court the matter was filed in. This doctrine helps in avoiding duplicity of cases, and prevents opposing judgements being reached in same matters (Section 10 of the Code of Civil Procedure, 1908). When such a case arises, generally a stay operates on the second or following suit.