CLAT PG 2024 Question Paper

Total Paragraphs – 20
Total Questions – 120
Questions Per Paragraph – 6

Total Marks – 120 Marks for
Correct Answer – 1
Marks for Incorrect Answer - -0.25

Total Time: 2 Hours

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An unpleasant tussle ensured between the TATA Sons and Cyrus Pallonji Mistry ("CPM") in October 2016, when Mistry, who was the sixth chairman of Tata Sons, was ousted from the position of Executive Chairman of Tata Sons Limited. CPM took over as the chairman in 2012 after Ratan Tata announced his retirement. Tata Group patriarch Ratan Tata had personally asked Cyrus Mistry to resign as chairman of Tata Sons as the board had lost faith in him, but his refusal led to the removal via majority vote. Cyrus Investments Private limited and Sterling Investment Corporation Private Limited belonged to the Shapoorji Palloni Group in which CPM held a controlling interest (about 2% of the issued share capital of Tata Sons). Seven out of the nine directors of Tata Sons voted for CPM's replacement after Farida Khambata abstained and Mistry was declared ineligible to vote as he was an interested director. Mistry challenged his removal, accusing the board of mismanagement and of oppressing minority shareholders. however, the National Company Law Tribunal (NCLT) rejected his petition. After this Mistry challenged his removal in National Company Law Appellate Tribunal (NCLAT). In 2018, NCLAT order restored Mistry as the group's executive chairman. Tata Sons challenged that NCLAT order in Supreme Court. CPM also challenged the order for few more relief. Supreme Court stayed NCLAT's order reinstating Cyrus Mistry as the executive chairman of Tata Sons and restoring his directorships in the holding company as well as three group companies, with a preliminary observation that the first impression of the order was "not good" and that the tribunal 'could' not have given consequential relief that had not been sought in the first place. Ultimately, the Supreme Court decided the case in favour of Tata Sons. One of the issues decided by Supreme Court was that "whether the case was fit to be qualified as a situation of 'Oppression and Mismanagement' under Section 241 of the Companies Act, 2013?". On this issue, the Supreme Court observed that "unless the removal of a person as a chairman of a company is oppressive or mismanaged or done in a prejudicial manner damaging the interests of the company, its members or the public at large, the NCLT cannot interfere with the removal of a person as a Chairman of a Company in a petition under Section 241 of the Companies Act, 2013." This case highlighted the point that "an executive chairman does not have sovereign authority over the company. In corporate democracy, decision making always remains with the Board as long as they enjoy the pleasure of the shareholders. Likewise, an executive chairman will continue as long as he/she enjoys the pleasure of the Board. An assumption by the executive chairman that he/she would have a free hand in running the affairs of the company is incongruous to corporate governance and corporate democracy. The Tribunal held that the concept of 'free hand rule' is antithesis to collective responsibility and collective decision making". [Based on Tata Consultancy Services Ltd. v. Cyrus Investment Pvt. Ltd., 2021 SCC 122].

1. The parties in this case approached the Supreme Court of India under which of the following provision:

    - (A) Appeal under section 423 of the Companies Act, 2013.
    - (B) A Class Action Suit under Section 245 of the Companies Act, 2013.
    - (C) Special Leave Petition (SLP) under Article 136 of the Constitution of India. (Correct Answer)
    - (D) Appeal under section 421 of the Companies Act, 2013.

Correct Answer: (C) Special Leave Petition (SLP) under Article 136 of the Constitution of India.

- Explanation for (A): This option is incorrect because section 423 pertains to appeals against the order of a Tribunal to the Appellate Tribunal, not to the Supreme Court.
- Explanation for (B): This option is incorrect because a Class Action Suit under Section 245 allows for collective legal action by members or depositors against the company, not an appeal to the Supreme Court.
- Explanation for (C): This is correct as SLP under Article 136 is the Supreme Court's discretionary power to hear appeals against any court or tribunal's decision in India.
- Explanation for (D): This option is incorrect because section 421 deals with appeals to the National Company Law Appellate Tribunal from orders of the Tribunal, not appeals to the Supreme Court.

2. Rule of 'supremacy of majority' in governing the affairs of a company has been settled in a very old leading case of Foss v. Harbottle (1843) 2 Hare 461. In India, which case diluted the majority rule and held that interest of the company was above the interest of its shareholders either majority or minority?
   - (A) Rajahmundry Electric Supply Corporation Ltd. v. A. Nageshwara Rao.
   - (B) Bagree Cereals v. Hanuman Prasad Bagri.
   - (C) Shanti Prasad Jain v. Kalinga Tubes Ltd.
   - (D) Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. (Correct Answer)

Correct Answer: (D) Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.

- Explanation for (A): This case is not related to the dilution of the majority rule in corporate governance.
- Explanation for (B): This case did not address the supremacy of majority versus the company's interest principle.
- Explanation for (C): While important, this case did not serve as a landmark judgment for the interests of the company over the majority's interests.
- Explanation for (D): This is correct because it emphasized that the company's interests prevail over the majority's interests, establishing a precedent for protecting minority shareholders and the company itself.

3. While recommending "Separation of the Roles of Non-executive Chairperson and Managing Director/ CEO", the Kotak Mahindra Committee quoted the following text: "given the importance and the particular nature of the chairmen's role, it should in principle be separate from that of the chief executive. If the two roles are combined in one person, it

represents a considerable concentration of power". This quote refers to which of the following Committee Report?

- (A) Cohen Committee Report.
- (B) Cadbury Committee Report. (Correct Answer)
- (C) Hampel Committee Report.
- (D) Narayana Murthy Committee Report. Correct Answer: (B) Cadbury Committee Report
- Explanation for (A): The Cohen Committee did not specifically focus on the separation of the chairperson and CEO roles.
- Explanation for (B): Correct because the Cadbury Committee Report is known for its recommendations on corporate governance, including the separation of the roles of the chairperson and CEO/MD.
- Explanation for (C): While important, the Hampel Committee did not originate the quoted principle.
- Explanation for (D): The Narayana Murthy Committee focused on various aspects of corporate governance in India but the specific quote is directly from the Cadbury Committee.

4. Which of the following statement is true regarding share qualification requirement under section 244 for applying for relief from oppression/ mismanagement under section 241 of the Companies Act, 2013 (in the case of a company having a share capital)?

- (A) Members not less than 100 members of the company or 10% of the total number of its members, whichever is less or any member or members holding not less than 10% of the issued share capital of the company. (Correct Answer)
- (B) Members not less than 100 members of the company and 10% of the total number of its members or members holding not less than 10% of the issued share capital of the company.
- (C) Not less than 20% of the total number of its members.
- (D) Members not less than 50 members of the company and 5% of the total number of its members or members holding not less than 5% of the issued share capital of the company.

Correct Answer: (A) Members not less than 100 members of the company or 10% of the total number of its members, whichever is less or any member or members holding not less than 10% of the issued share capital of the company.

- Explanation for (A): This is the accurate requirement under section 244 for members to apply for relief under section 241, providing two pathways based on the number of members or the percentage of issued share capital they hold.

- Explanation for (B): This option incorrectly combines criteria in a way that is not supported by the actual legislative text.
- Explanation for (C): This option inaccurately represents the thresholds established by the Companies Act, 2013.
- Explanation for (D): This option also misstates the criteria, creating a threshold that does not align with the legal requirements.

5. Statement I - Power to grant relief from oppression/mismanagement which were vested by section 402 of the 1956 Act in High Court have now been transferred to the National Company Law Tribunal by section 242 of the 2013 Act.

Statement II - Section 242 does not empower National Company Law Appellate Tribunal to grant relief by way of prevention of apprehended mismanagement of the company due to material change which has taken place in its management or control.

- (A) Statement I is untrue.
- (B) Statement II is untrue.
- (C) Both Statements I and II are untrue.
- (D) Both Statements I and II are true. (Correct Answer)

Correct Answer: (D) Both Statements I and II are true.

- Explanation for Statement I: True, as the Companies Act of 2013 shifted the jurisdiction for these matters from the High Courts to the NCLT, reflecting a significant change in handling cases of oppression and mismanagement.
- Explanation for Statement II: Also true, as Section 242 focuses on addressing actual instances of oppression or mismanagement rather than preemptive action based on potential future mismanagement.

Alastair Hudson in his book 'Securities Law' First Edition (Sweet & Maxwell), 2008 at page 342, refers to 'Restricted Offers' and noticed that there is no contravention of Section 85 of FSMA 2000, if: "(b) the offer is made to or directed at fewer than 100 persons, other than qualified investors, per EEA State". The purpose underlying that exemption, the author says, is mainly the fact that the offer is not being made to an appreciable section of "the public" such that the policy of the prospectus rules generally is not affected. Further, the author says that "Self-evidently, while an offer to 99 ordinary members of the public would be within the literal terms of the exemption, it would not be the sort of activity anticipated by the legislation. Moreover, if a marketing campaign were arranged such that ordinary members of the people were approached in groups of 99 people at a time in an effort to avoid the prospectus rules, then that would not appear to be within the spirit of the regulations and might be held to contravene the core principle that a regulated person must act with integrity." 5 * PG I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue

beyond forty-nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. Facts clearly reveal that Saharas have issued securities to the public more than the threshold limit statutorily fixed under the first proviso to Section 67(3) and hence violated the listing provisions which may attract civil and criminal liabilities. Principles of listing, which I may later on discuss, is intended to assist public companies in identifying their obligations and responsibilities, which are continuing in nature, transparent in content and call for high degree of integrity. Obligations are imposed on the issuer on an ongoing basis. Public companies who are legally obliged to list their securities are deemed to accept the continuing obligations, by virtue of their application, prospectus and the subsequent maintenance of listing on a recognized stock exchange. Disclosure is the rule, there is no exception. Misleading public is a serious crime, which may attract civil and criminal liability. Listing of securities depends not upon one's volition, but on statutory mandate. [Extract from Sahara India Real Estate Corporation Limited v. Securities and Exchange Board of India (SEBI), Para 89-91, Civil Appeal No. 9833/2011 (SC)]

6. Which among the following is not considered as a 'prospectus' under the Companies Act, 2013?

    - (A) Shelf prospectus
    - (B) Red herring prospectus
    - (C) Private placement offer letter
    - (D) Advertisement inviting offers from the public Correct Answer: (C) Private placement offer letter Explanation:
    - (A) Shelf Prospectus: Recognized under the Companies Act, 2013, as a prospectus that allows a company to issue securities without the need for a separate prospectus for each offering within a certain period.
    - (B) Red Herring Prospectus: A preliminary registration document filed with regulators before a public offering, detailing the company's operations and financials except for the final price and share size. It's considered a type of prospectus.
    - (C) Private Placement Offer Letter: Not considered a prospectus under the Companies Act, 2013, because it's a document used for private placements, targeting a select group of investors, and not the general public.
    - (D) Advertisement Inviting Offers from the Public: This can be seen as an attempt to attract public attention towards a public offering, aligning with the purpose of a prospectus to inform and attract investors from the general public.

7. In Sahara India Real Estate Corporation Limited v. SEBI, Sahara issued which of the following instruments to raise money?

    - (A) Shares

- (B) Convertible preference shares
- (C) Optionally fully convertible debentures
- (D) Currency derivatives

Correct Answer: (C) Optionally fully convertible debentures

Explanation:

- (A) Shares: Common stock representing ownership in a company; not the instrument used by Sahara in the cited case.
- (B) Convertible Preference Shares: Preference shares that can be converted into a fixed number of common shares, usually after a predetermined date; also not the instrument used by Sahara.
- (C) Optionally Fully Convertible Debentures (OFCDs): The instrument issued by Sahara, providing investors with the option to convert debentures into shares after a specific period.
- (D) Currency Derivatives: Financial contracts to buy or sell currencies at a future date; not related to the Sahara case.

8. In Sahara India Real Estate Corporation Limited v. SEBI, the company issued securities in violation of rules relating to:
   - (A) Public issue under the Companies Act.
   - (B) SEBI Disclosure Investor Protection Guidelines, 2000 read with Issue of Capital and Disclosure Guidelines, 2009.
   - (C) Both the above
   - (D) None of the above Correct Answer: (C) Both the above Explanation:
   - (A) Public issue under the Companies Act: Sahara violated this by not following the proper public issue procedures.
   - (B) SEBI Disclosure Investor Protection Guidelines, 2000 read with Issue of Capital and Disclosure Guidelines, 2009: Sahara's actions also violated SEBI guidelines designed to protect investors by ensuring transparency and disclosure.
   - (C) Both the above: The correct answer, as Sahara's issuance of OFCDs contravened both sets of regulations.
   - (D) None of the above: Incorrect, as Sahara clearly violated regulations from both the Companies Act and SEBI guidelines.
9. The Supreme Court of India in the Sahara case held:
   - (A) SEBI, being a statutory regulator, does not have the power to investigate and adjudicate.

- (B) As per Companies Act and SEBI Act, 1992, SEBI has jurisdiction over both listed companies and companies which intend to get listed.
- (C) SEBI has no jurisdiction over public issuances of hybrid securities.
- (D) Powers of SEBI supersede that of Ministry of Corporate Affairs.

Correct Answer: (B) As per Companies Act and SEBI Act, 1992, SEBI has jurisdiction over both listed companies and companies which intend to get listed.

Explanation:

- (A) SEBI, being a statutory regulator, does not have the power to investigate and adjudicate: Incorrect, as SEBI does have these powers.
- (B) As per Companies Act and SEBI Act, 1992, SEBI has jurisdiction over both listed companies and companies which intend to get listed: Correct, affirming SEBI's broad regulatory authority.
- (C) SEBI has no jurisdiction over public issuances of hybrid securities: Incorrect, as SEBI's jurisdiction covers all securities, including hybrids, especially in cases affecting the public interest.
- (D) Powers of SEBI supersede that of Ministry of Corporate Affairs: Incorrect, as both bodies have distinct roles and responsibilities, with SEBI focusing on the securities and capital markets.

10. Which of the following is mandatory in case of private placements by private companies?

- (A) Mandatory grading by a credit rating agency
- (B) Use of public media to advertise the issue
- (C) Post-issue listing of securities
- (D) Return of allotment to be filed with Registrar of Companies (RoC) Correct Answer:

  (D) Return of allotment to be filed with Registrar of Companies (RoC) Explanation:

- (A) Mandatory grading by a credit rating agency: Not mandatory for private placements, which are not public offerings.
- (B) Use of public media to advertise the issue: Not allowed for private placements, which are meant for a select group of investors.
- (C) Post-issue listing of securities: Not a requirement for private placements, as these securities are not necessarily made public.
- (D) Return of allotment to be filed with Registrar of Companies (RoC): Mandatory, as it ensures transparency and regulatory compliance by documenting the allotment of securities to selected investors.

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past, it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry as observed by this Court in Suresh Koshy George v. University of Kerala [Civil Appeal No. 990/68, decided on 15-07- 1968], the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. [Extract from the judgment of the Supreme Court in A.K. Kraipak v. Union of India, (1969) 2 SCC 262, decided on April 29, 1969, hereafter 'A.K. Kraipak'].

11. The decision in A.K. Kraipak is considered a landmark authority for which of the following propositions?

    - (A) There is no application of the principles of natural justice to purely administrative functions.
    - (B) The principles of natural justice are in an ever-evolving state of flux.
    - (C) The principles of natural justice do not differentiate between administrative and quasi-judicial functions.
    - (D) There is no application of the principles of natural justice to quasi-judicial functions.

Correct Answer: (C) The principles of natural justice do not differentiate between administrative and quasi-judicial functions.

Explanation:

- (A) Incorrect because the A.K. Kraipak decision specifically challenges this notion by extending the application of natural justice principles beyond purely judicial or quasijudicial contexts into administrative functions.
- (B) While the principles of natural justice are indeed evolving, this choice does not directly address the key proposition established by the A.K. Kraipak decision regarding the non-differentiation between administrative and quasi-judicial functions.

(C) Correct as it directly reflects the essence of the A.K. Kraipak ruling, emphasizing that the principles of natural justice apply to both administrative and quasi-judicial functions, thereby challenging the traditional limitation of these principles.

- (D) Incorrect because the A.K. Kraipak decision does not suggest that principles of natural justice have no application to quasi-judicial functions; rather, it affirms their application across different types of functions.

12. The Court states in A.K. Kraipak that, 'If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries.' Which of the following approaches to interpretation of statutes does the Court appear to adopt:

    - (A) Literal Interpretation
    - (B) Constructive Interpretation
    - (C) Strict Interpretation
    - (D) All of the above.

Correct Answer: (B) Constructive Interpretation Explanation:

- (A) Literal Interpretation focuses strictly on the literal and plain meaning of the words used in the statute, which does not align with the court's rationale for extending natural justice principles.
- (B) Correct because Constructive Interpretation involves interpreting legal texts to fulfill the broader purpose and intentions behind them, which aligns with the court's approach in seeking to prevent miscarriages of justice by applying principles of natural justice to administrative enquiries.
- (C) Strict Interpretation involves a narrow reading of legal texts, which does not reflect the court's broader purposive approach in this case.
- (D) Incorrect as the court's approach in this context specifically aligns with constructive interpretation, rather than strictly adhering to the literal or strict interpretation.

13. The Court states in A.K. Kraipak, that '… in the course of years many more subsidiary rules came to be added to the rules of natural justice.' Which of the following is a later entrant to the principles of natural justice?

    - (A) No one shall be a Judge in their own cause.
    - (B) Duty to hear.
    - (C) Duty to give reasons.
    - (D) None of the above.

Correct Answer: (C) Duty to give reasons.

Explanation:

- (A) Incorrect because the principle that no one shall be a judge in his own cause is one of the original and fundamental rules of natural justice.
- (B) Incorrect as the duty to hear (audi alteram partem) is also one of the foundational principles of natural justice.
- (C) Correct because the duty to give reasons has emerged as a later development in the principles of natural justice, reflecting the evolution of these principles to enhance transparency and accountability in decision-making.
- (D) Incorrect since the duty to give reasons is indeed a later entrant and represents a significant addition to the principles of natural justice.

14. The Supreme Court has recognised in several decisions that in cases requiring urgent administrative action or in exigencies, it may not always be possible to give full effect to the principles of natural justice without rendering the administrative action redundant in the circumstances. Which of the following is true for the requirements of natural justice in such cases?

- (A) The administrator may choose to not follow principles of natural justice in case of emergency scenarios, where time does not permit such compliance, without recording their reasons in writing.
- (B) The administrator may choose to not follow principles of natural justice in case of emergency scenarios, where time does not permit such compliance, but must record their reasons in writing.
- (C) The administrator may provide for a post-decisional remedial hearing wherever pre-decisional hearing is not possible.
- (D) None of the above.

Correct Answer: (C) The administrator may provide for a post-decisional remedial hearing wherever pre-decisional hearing is not possible.

Explanation:

- (A) Incorrect because even in emergency scenarios, the principles of natural justice cannot be entirely disregarded without some form of accountability or remediation.
- (B) While recording reasons in writing is important, this option does not fully address the possibility of remedial measures like a post-decisional hearing.
- (C) Correct as it acknowledges the flexibility within the principles of natural justice to adapt to urgent situations by allowing for a post-decisional hearing when immediate compliance with procedural norms is impracticable.
- (D) Incorrect because the option provided in (C) does represent a recognized approach to maintaining the requirements of natural justice in exigent circumstances.

15. In testing whether the rule against bias has been violated, courts often invoke, which of the following standards:

    (A) Likelihood of bias as perceived by a fair-minded and informed observer.

- (B) Likelihood of bias as perceived by a fair-minded and uninformed observer.
- (C) Likelihood of bias as perceived by a third person.
- (D) Likelihood of bias as perceived by persons involved in similar trade.

Correct Answer: (A) Likelihood of bias as perceived by a fair-minded and informed observer.

Explanation:

- (A) Correct because this standard is used to determine whether there is a reasonable perception of bias in a decision-making process, ensuring that justice is not only done but seen to be done from the perspective of an objective observer who is informed about the circumstances.
- (B) Incorrect as the standard requires the observer to be informed rather than uninformed to make a reasoned judgment about the presence of bias.
- (C) Incorrect because the standard specifically involves the perspective of a fairminded and informed observer, not just any third person.
- (D) Incorrect as the focus is on the perception of bias by an objective observer, not necessarily someone involved in a similar trade or profession.

The doctrine of promissory estoppel is by now well recognized and well defined by a catena of decisions of this Court. Where the Government makes a promise knowing or intending that it would be acted on by the promise and, in fact, the promise, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promise notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 229 of the Constitution. The rule of promissory estoppel being an equitable doctrine has to be moulded to suit the particular situation. It is not a hard-andfast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. This doctrine is a principle evolved by equity, to avoid injustice and though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. For application of the doctrine of promissory estoppel the promise must establish that he suffered in detriment or altered his position by reliance on the promise. Normally, the doctrine of promissory estoppel is being applied against the Government and defence based on executive necessity would not be accepted by the court. However, if it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the court would not raise an equity in favour of the promise and enforce the promise against the Government. Where public interest warrants, the principles of promissory estoppel cannot be invoked. The Government can change the policy in public interest. However, it is well settled that taking cue

from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law. There is no promissory estoppel against the settled proposition of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the Government or public authority cannot be compelled to make a provision which is contrary to law. [Extract from the judgment of the Supreme Court in Shree Sidhbali Steels Limited v. State of Uttar Pradesh, (2011) 3 SCC 193, decided on January 20, 2011, hereafter 'Shree Sidhbali Steels'].

16. The decision in Shree Sidhbali Steels carves out the 'public interest' exception in cases of promissory estoppel against Government. To which kind of cases have courts routinely applied this exception in favour of Governments?

    - (A) Fiscal matters
    - (B) Service matters
    - (C) Labour matters
    - (D) All of the above.

Correct Answer: (D) All of the above.

Explanation:

- (A) Fiscal Matters: Courts have applied the public interest exception in fiscal matters, recognizing the government's need to adjust its economic policies to serve the greater public interest.
- (B) Service Matters: Similarly, in service matters, the courts have allowed the government to alter its stance if adherence to a promise would contravene the public interest.
- (C) Labour Matters: In labour matters, the public interest exception has been invoked to allow the government flexibility in policy-making and administrative actions affecting labour laws.
- (D) All of the Above: Correct, as the public interest exception has been applied across various kinds of cases, including fiscal, service, and labour matters, allowing governments to modify or retract promises when it serves the public interest.

17. Which of the following is a landmark decision governing the law on promissory estoppel against Governments?

    - (A) Sarat Chander Dey v. Gopal Chander Laha, (1892) 19 IA 203
    - (B) Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409
    - (C) Carlill v. Carbolic Smoke Ball Company, [1892] EWCA Civ 1
    - (D) Tej Bhan Madan v. II Additional District Judge and Others, (1988) 3 SCC 137

Correct Answer: (B) Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409

Explanation:

- (A) Sarat Chander Dey v. Gopal Chander Laha is an important case in Indian legal history but not specifically influential in the development of promissory estoppel against governments.

  (B) Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. is a landmark decision that significantly contributed to the jurisprudence of promissory estoppel in India, especially regarding its application against governmental actions.

- (C) Carlill v. Carbolic Smoke Ball Company is a foundational case in the law of contract, particularly in the context of unilateral contracts, but not directly related to promissory estoppel against governments.

- (D) Tej Bhan Madan v. II Additional District Judge and Others, while important, is not as central to the development of promissory estoppel against governments as Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.

18. Which of the following statements reflect the correct position of law for promissory estoppel against Governments?

    - (A) Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, provided that there is consideration for the promise and the promise is recorded in the form of a formal contract as required by Article 299 of the Constitution.

    - (B) Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution.

    - (C) Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, provided that there is consideration for the promise, but notwithstanding that the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution.

    - (D) Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise, but provided that the promise is recorded in the form of a formal contract as required by Article 299 of the Constitution.

Correct Answer: (B) Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution.

Explanation:

- (A) Incorrect because the doctrine of promissory estoppel applies even in the absence of consideration or a formal contract, as explicitly stated in the passage.

- (B) Correct as it accurately reflects the doctrine of promissory estoppel's application against governments, emphasizing that it does not require consideration or a formal contract for the promise to be enforceable against the government. This principle allows for the enforcement of promises based on the equity and fairness to prevent injustice, aligning with the equitable roots of promissory estoppel.

(C) Incorrect because the requirement for consideration is not a prerequisite for the application of promissory estoppel against the government, which is a departure from traditional contract principles.

- (D) Incorrect as it mistakenly suggests that a formal contract is required under Article 299 of the Constitution for promissory estoppel to apply, which contradicts the essence of promissory estoppel that it does not necessitate formalities or consideration.

19. Which of the following statements is accurate in light of the passage?

- (A) The doctrine of promissory estoppel stands diluted where the Government claims that it is in the public interest to go back on its promise or actions.
- (B) The doctrine of promissory estoppel overrides any purported claims of public interest by the Government.
- (C) Permitting a public interest exception is against the interests of justice, equity, and good conscience as it is a self-serving claim for the Government.
- (D) Both (B) and (C).
- Correct Answer: (A) The doctrine of promissory estoppel stands diluted where the Government claims that it is in the public interest to go back on its promise or actions.
- Explanation:
- (A) Correct because the passage clearly states that the government can argue against the enforcement of a promise if it can demonstrate that adhering to it would be inequitable due to subsequent events or if it is contrary to public interest. This introduces a nuanced flexibility into the doctrine, allowing for the consideration of changing circumstances and the overarching public interest.
- (B) Incorrect as the passage and established legal principles confirm that claims of public interest can, in fact, override the application of promissory estoppel in certain cases, particularly where adhering to a promise would contravene the broader public good.
- (C) Incorrect because the legal framework acknowledges the legitimacy and necessity of considering the public interest, even in the context of promissory estoppel. The courts recognize that rigidly holding the government to promises could sometimes work against the public welfare.
- (D) Incorrect as both (B) and (C) misrepresent the legal position regarding the interplay between promissory estoppel and public interest considerations.

20. Which of the following statements does not reflect the correct position of law?

- (A) Promissory estoppel cannot be invoked so as to defeat the law.
- (B) Even if the representation is made by the Government itself, but it goes against the law, estoppel can be invoked to defeat the law.

(C) If all conditions of promissory estoppel are met, a challenge can still be made to the vires of the law.

- (D) None of the above.
- Correct Answer: (B) Even if the representation is made by the Government itself, but it goes against the law, estoppel can be invoked to defeat the law.
- Explanation:
- (A) Correct in stating that promissory estoppel cannot be used to compel illegal actions or to enforce promises that would violate the law.
- (B) Incorrect because it misstates the legal principle that promissory estoppel cannot be used to enforce a promise that is contrary to law. The doctrine cannot compel the government or any party to act against statutory provisions or legal principles.
- (C) This statement is somewhat misleading in its phrasing. While promissory estoppel can be applied to ensure fairness and prevent injustice, it cannot challenge the vires (legality) of the law itself; instead, it operates within the bounds of existing legal frameworks.
- (D) Incorrect as option (B) does not accurately reflect the legal position regarding promissory estoppel and its limitations, particularly in the context of legality and the enforcement of promises that go against the law.

In its second preliminary objection, Myanmar submits that The Gambia's Application is inadmissible because The Gambia lacks standing to bring this case before the Court. In particular, Myanmar considers that only "injured States", which Myanmar defines as States "adversely affected by an internationally wrongful act", have standing to present a claim before the Court. In Myanmar's view, The Gambia is not an "injured State" (a term that Myanmar appears to use interchangeably with the term "specially affected State") and has failed to demonstrate an individual legal interest. Therefore, according to Myanmar, The Gambia lacks standing under Article IX of the Genocide Convention. Myanmar draws a distinction between the right to invoke State responsibility under general international law and standing before the Court. It argues that, even if it were established that a "non-injured" Contracting Party to the Genocide Convention has the right to invoke another State's responsibility for violations of the Convention, this would not necessarily entail the right to bring a case before the Court. To this end, Myanmar contends that there exists a difference between the common interest in the accomplishment of the purposes of the Genocide Convention and a State's individual legal interest that may be enforce through the institution of proceedings before the Court. In Myanmar's view, only States "specially affected" by an internationally wrongful act have standing to bring a claim before the Court. Myanmar further submits that The Gambia's claims are inadmissible in so far as they are not brought before the Court in accordance with the rule concerning the nationality of claims which, according to Myanmar, is reflected in Article 44 (a) of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts. Myanmar asserts that the rule concerning the nationality of claims applies to the invocation of responsibility by both "injured" and "non injured" States

and irrespective of whether the obligation breached is an erga omnes partes or erga omnes obligation. Consequently, in Myanmar's view, The Gambia lacks standing to invoke Myanmar's responsibility. Myanmar maintains that, even if Contracting Parties that are not "specially affected" by an alleged violation of the Convention are assumed to have standing to submit a dispute to the Court under Article IX, this standing is subsidiary to and dependent upon the standing of States that are "specially affected". Myanmar argues that Bangladesh would be "the most natural State" to institute proceedings in the present case, because it borders Myanmar and has received a significant number of the alleged victims of genocide. In Myanmar's view, the reservation by Bangladesh to Article IX of the Genocide Convention not only precludes Bangladesh from bringing a case against Myanmar, but it also bars any "non-injured" State, such as The Gambia, from doing so. Myanmar further argues that "non-injured" States may not override the right of a State "specially affected" by the alleged breach to decide how to vindicate its rights in a way that would best serve its own interests. [Excerpted passage represents the claims of Myanmar in The Gambia v. Myanmar, judgment on preliminary objections, July 22, 2022]

21. Hypothetically, if The Gambian state was to exercise criminal jurisdiction over the persons responsible for Crimes of Genocide, then such jurisdiction would be called as: Correct Answer: (B) Universal jurisdiction

- (A) Extra-territorial jurisdiction typically refers to a state's ability to apply its laws to conduct outside its borders due to some connection, such as the nationality of the perpetrator or victim. While it involves actions outside a state's territory, it requires a specific link to the state.
- (B) Universal jurisdiction allows a state to claim criminal jurisdiction over an accused person regardless of where the crime was committed, and regardless of any link to the state exercising such jurisdiction. This is applicable to crimes considered so serious that they affect the international community as a whole, such as genocide.
- (C) Contentious jurisdiction refers to a court's power to hear and decide cases where there is a dispute, often used in the context of international courts and not directly applicable to the exercise of criminal jurisdiction by a state over specific crimes.
- (D) A state cannot exercise jurisdiction over such crimes without having any connection with them is incorrect because universal jurisdiction specifically allows states to prosecute certain crimes even without a direct connection to them due to their severity and international relevance.

22. Erga omnes partes means:

Correct Answer: (D) Both (A) and (B).

- (A) Obligations that are so integral to the subject and purpose of the treaty that no reservations or derogations are permissible describes obligations that are considered fundamental but does not fully capture the meaning of "erga omnes partes."

- (B) Obligations arising out of customary principles of international law that states have not objected to also contributes to the understanding of "erga omnes partes," which refers to obligations owed towards all states parties of a particular treaty.
- (C) Obligations essentially arising after gaining membership of the United Nations is not directly related to the concept of "erga omnes partes."

  (D) Both (A) and (B) is correct because "erga omnes partes" obligations are those owed to all states within the framework of a particular treaty, and can include both integral treaty obligations and those arising from customary international law that are so fundamental that all states parties are considered to have an interest in their protection.

23. Article 44 (a) of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts states that 'the responsibility of a State may not be invoked if: (a) the claim is not brought in accordance with any applicable rule relating to the nationality of claims.' Can Gambia invoke the principles of state responsibility against Myanmar for Crimes of Genocide?

Correct Answer: (C) Yes, the Article has no relevance as the Genocide Convention expects the accomplishment of its high purposes.

- (A) No, as The Gambia cannot fulfill the conditions stipulated in Article 44 (a) is incorrect because the principle of the nationality of claims primarily applies to diplomatic protection cases and is not relevant for cases under the Genocide Convention, which allows any state party to call out breaches due to the convention's universal and erga omnes nature.
- (B) Yes, as the nationals of The Gambia have also faced persecution from Myanmar is incorrect because The Gambia's standing in the case against Myanmar is not based on direct injury to its nationals but on the universal nature of the obligations under the Genocide Convention.
- (C) Yes, the Article has no relevance as the Genocide Convention expects the accomplishment of its high purposes is correct because the Genocide Convention establishes obligations erga omnes partes, allowing any state party to hold another accountable for breaches, irrespective of direct injury or the nationality of claims.
- (D) No, Bangladesh is an appropriate state to bring claims and hold Myanmar internationally responsible is incorrect because while Bangladesh may have a more direct interest, the Genocide Convention does not limit standing to directly affected states only.

24. Myanmar claims that the reservation by Bangladesh to Article IX of the Genocide Convention not only precludes Bangladesh from bringing a case against Myanmar, but it also bars any "non-injured" State, such as The Gambia, from doing so. Is this claim maintainable?

Correct Answer: (B) No, it does not affect the locus standi of The Gambia as being party to the Convention, it has its own right.

- (A) Yes, because Bangladesh is the injured state and its reservation imposes a restriction on dispute itself precluding any state from raising it is incorrect because a reservation by one state does not affect the rights of other states parties to the convention to bring a case.
- (B) No, it does not affect the locus standi of The Gambia as being party to the Convention, it has its own right is correct because each state party to the Genocide Convention has the right to bring a case for violations of the convention, independent of any reservations made by other states.
- (C) No, Gambia can only file the dispute before ICJ after Bangladesh consents to the same is incorrect as the ability of The Gambia to bring a case does not depend on the consent of Bangladesh or any other state.
- (D) Option (A) subject to (C) is incorrect because it relies on the erroneous premise that Bangladesh's consent or reservation affects The Gambia's standing.

25. Myanmar has made a reservation to Article VIII of the Genocide Convention to restrict the competent organs of the UN to take actions under the Charter of the UN as they consider appropriate for the prevention and suppression of acts of genocide. Myanmar claims that since ICJ is the principal organ of the UN, there is a limitation on Article IX. The claim is:

Correct Answer: (B) Not maintainable, as Article VIII concerns the discretionary function which is different from the judicial function of the ICJ.

- (A) Maintainable, as the reservation explicitly prohibits the intervention of UN organs is incorrect because Myanmar's reservation to Article VIII does not directly limit the jurisdiction of the ICJ under Article IX.
- (B) Not maintainable, as Article VIII concerns the discretionary function which is different from the judicial function of the ICJ is correct because Article VIII pertains to prevention and suppression measures, which is a different context from the judicial functions exercised by the ICJ under Article IX.
- (C) Maintainable, as the two provisions of the treaty i.e., Article VIII and IX are to be interpreted harmoniously is incorrect because the reservation to one does not necessarily impact the operation of the other, especially when they serve different purposes within the Convention.
- (D) Not maintainable, as ICJ as a successor of PCIJ is regulated by the Statute of ICJ and not the UN Charter is partly correct in highlighting the distinct legal basis for the ICJ's functions but does not directly address the issue of the reservation's impact on Article IX's applicability.

The consensual structure of the international legal order, with its strong emphasis on the sovereign equality of states, has always been somewhat precarious. In different waves over the centuries, it has been attacked for its incongruence with the realities of inequality in international politics, for its tension with ideals of democracy and human rights, and for standing in the way of more effective problem-solving in the international community. While surprisingly resilient in the face of such challenges, the consensual structure has seen renewed

attacks in recent years. In the 1990s, those attacks were mainly “moral” in character. They were related to the liberal turn in international law, and some of them, under the banner of human rights, aimed at weakening principles of nonintervention and immunity. Others, starting from the idea of an emerging “international community,” questioned the prevailing contractual models of international law and emphasised the rise of norms and processes reflecting community values rather than individual state interests. Since the beginning of the new millennium, the * fafafafafafafafafa afafafafafafafafafa fafafafaf * 12 PG focus has shifted, and attacks are more often framed in terms of effectiveness or global public goods.

Classical international law is regarded as increasingly incapable of providing much-needed solutions for the challenges of a globalized world; as countries become ever more interdependent and vulnerable to global challenges, an order that safeguards states' freedoms at the cost of common policies is often seen as anachronistic. According to this view, what is needed-and what we are likely to see-is a turn to nonconsensual lawmaking mechanisms, especially through powerful international institutions with majoritarian voting rules. [The extract is part of the article "The Decay of Consent: International Law in an Age of Global Public Goods" by Krisch N, in the American Journal of International Law].

Question 26

Which of the following statements is *not* true with respect to the principle of 'nonintervention' enshrined in Article 2(7) of the UN Charter?

(A) The United Nations should not intervene in matters which are essentially within the domestic jurisdiction of any state.

(B) The United Nations shall not require the Members to submit such matters which are essentially within the domestic jurisdiction to settlement under the present Charter.

(C) The principle of non-intervention shall not prejudice the application of enforcement measures under Chapter-VII of the UN Charter.

(D) As per the wordings of Article 2(7) of the UN Charter, the obligation with respect to 'non-intervention' under this provision applies to both the United Nations and its members.

Correct Answer: D

Explanation of Each Option:

- (A) True. Article 2(7) explicitly states that the UN shall not intervene in matters within the domestic jurisdiction of any state, reinforcing the sovereignty of states.
- (B) True. This reflects the principle that states have the sovereignty to decide on their internal matters without being compelled to submit these issues to international mechanisms under the Charter.
- (C) True. The principle of non-intervention does not affect the UN's ability to take enforcement actions under Chapter VII, which deals with threats to peace, breaches of the peace, and acts of aggression.
- (D) Not true. The principle specifically restricts the United Nations from intervening in domestic matters, not explicitly mentioning its members. The obligation primarily binds the UN as an organization, although it indirectly influences member states' actions within the UN framework.

Question 27

Which of the following statements is *not* true with respect to the Security Council?

(A) Each member of the Security Council shall have one vote.

(B) Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.

(C) Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members, including the concurring votes of the permanent members.

(D) Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members, including the concurring votes of the permanent members, provided that, in decisions under Chapter VI and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

Correct Answer: C

Explanation of Each Option:

- (A) True. According to the UN Charter, every member of the Security Council has one vote.
- (B) True. This is the correct procedure for procedural matters, requiring a simple majority.
- (C) Not true. Procedural matters do not require the concurring votes of the permanent members, only an affirmative vote of nine members is needed.
- (D) True. For substantive matters, an affirmative vote of nine members including the concurring votes of all permanent members is needed, with the exception for parties to a dispute under specific circumstances.

Question 28

Which of the following is *not* true with respect to jus cogens?

(A) It is a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted.

(B) It can be modified only by a subsequent norm of general international law having the same character.

(C) A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law (Jus Cogens).

(D) States are bound by Peremptory norms of general international law (Jus Cogens) only when they have given express consent to it in writing.

Correct Answer: D

Explanation of Each Option:

- (A) True. Jus cogens norms are peremptory norms recognized as fundamental to the international community, allowing no derogation.
- (B) True. Only a norm of equivalent authority (another jus cogens norm) can modify an existing jus cogens norm.

(C) True. This principle invalidates treaties that conflict with jus cogens norms at the time of their conclusion.

(D) Not true. Jus cogens norms bind all states, irrespective of individual consent, due to their peremptory nature.

Question 29

Article 25 of the UN Charter states, 'The Members of the United Nations agree to accept and carry out the decisions of the _____ in accordance with the present Charter.' Which of the following organ(s) of the United Nations is/are being referred to in Article 25:

(A) Security Council

(B) International Court of Justice

(C) Security Council and General Assembly

(D) Security Council and International Court of Justice

Correct Answer: A

Explanation of Each Option:

- (A) True. Article 25 specifically refers to the Security Council, whose decisions members agree to accept and carry out.
- (B) Not true. The ICJ provides advisory opinions and judgments on cases brought before it; its decisions are not binding in the same way as those of the Security Council.
- (C) Not true. While the General Assembly plays a significant role in the UN system, Article 25 specifically refers to the Security Council.
- (D) Not true. Article 25 only refers to the Security Council, not the ICJ.

Question 30

Which of the following statements is *not* true with respect to 'customary international law'?

(A) In the Asylum case 1950, ICJ declared that a customary rule must be 'in accordance with a constant and uniform usage practiced by the States in question'.

(B) In the North Sea Continental Shelf cases, 1969, ICJ remarked that state practice had to be 'both extensive and virtually uniform in the sense of the provision invoked'.

(C) In the Nicaragua v. United States case, 1986, ICJ said that it was not necessary that the practice in question had to be 'in absolutely rigorous conformity' with the purported customary rule.

(D) In the Right of Passage over Indian Territory case, 1960, ICJ denied the existence of local custom between the two states.

Correct Answer: D

Explanation of Each Option:

- (A) True. This statement accurately reflects the criteria for establishing a customary international law rule.

(B) True. This emphasizes the need for widespread and consistent practice among states.

(C) True. This acknowledges some flexibility in the application of customary international law.

- (D) Not true. The ICJ recognized the existence of a local custom in the Right of Passage case, contrary to the statement provided.

In the realm of jurisprudence, the interplay between morality and legality is a complex and often contentious issue. While laws are designed to regulate human behavior and maintain social order, they may not always align with personal or societal moral values. This leads to a fundamental question: Should laws be based on moral principles, and if so, to what extent? One school of thought, known as legal moralism, asserts that the law should enforce moral values and prohibit actions that are considered immoral by society. Proponents argue that certain actions, such as murder or theft, are inherently wrong and that the law should reflect and enforce these moral judgments. However, legal moralism is not without its critics. They argue that enforcing moral values through the law can be overly intrusive, infringing on individual autonomy and diversity of thought. They contend that the law's primary role is to protect individual rights and maintain social order, not to impose moral values. On the other hand, the principle of legal neutrality posits that the law should remain neutral on matters of morality. This perspective asserts that the law's primary function is to protect individual rights and maintain order, and it should not be concerned with enforcing particular moral values. Legal neutrality allows for a more pluralistic and diverse society where individuals are free to live in accordance with their own moral values, as long as they do not infringe on the rights of others. Nevertheless, this perspective raises challenging questions. If the law remains morally neutral, it may tolerate actions that many find morally repugnant, such as hate speech or discrimination. This leads to a moral dilemma—whether it is morally justifiable for the law to allow such actions in the name of freedom and neutrality. These philosophical debates highlight the complexity of balancing morality and legality within a legal system. They challenge us to consider the appropriate role of the law in shaping and reflecting societal values.

Question 31: Which perspective argues that the law should enforce moral values and prohibit actions considered immoral by society?

- (A) Legal neutrality
- (B) Legal positivism
- (C) Legal moralism
- (D) Legal realism

Correct Answer: (C) Legal moralism Explanation:

(A) Legal neutrality argues for the law to remain neutral on matters of morality, not to enforce moral values.

(B) Legal positivism focuses on the belief that law is what is written and codified, rather than on enforcing moral values.

(C) Legal moralism asserts that the law should enforce society's moral values and prohibit actions that are considered immoral, making it the correct answer.

- (D) Legal realism emphasizes that law is based on the actions of judicial officials and their interpretations, rather than on enforcing moral standards.

Question 32: What is one criticism of legal moralism?

- (A) It infringes on individual autonomy and diversity of thought.
- (B) It promotes individual and social order.
- (C) It allows for a more pluralistic society.
- (D) It maintains legal neutrality.

Correct Answer: (A) It infringes on individual autonomy and diversity of thought.

Explanation:

- (A) Critics argue that legal moralism can be overly intrusive and infringe on individual autonomy and diversity of thought, making this the correct answer.
- (B) Promoting individual and social order is generally seen as a positive aspect, not a criticism.
- (C) Legal moralism is criticized for potentially stifling a pluralistic society by enforcing a uniform set of moral values.
- (D) Legal moralism is the opposite of maintaining legal neutrality; it involves making laws based on moral judgments.

Question 33: According to legal moralism, what is the law’s primary role?

- (A) To protect individual rights and maintain social order.
- (B) To impose moral values.
- (C) To maintain legal neutrality.
- (D) To enforce specific cultural practices.

Correct Answer: (B) To impose moral values.

Explanation:

- (A) While protecting individual rights and maintaining social order are functions of the law, legal moralism specifically emphasizes imposing moral values as the law's primary role.

(B) Legal moralism believes the law should reflect and enforce societal moral judgments, making this the correct answer.

(C) Legal neutrality, not legal moralism, advocates for the law to remain neutral on morality.

(D) While imposing moral values may intersect with cultural practices, legal moralism's primary focus is on morality itself.

Question 34: What is the central tenet of legal neutrality?

- (A) The law should remain morally neutral.
- (B) The law should enforce moral values.
- (C) The law should prioritize individual rights over morality.
- (D) The law should regulate all aspects of individual behavior.

Correct Answer: (A) The law should remain morally neutral.

Explanation:

- (A) Legal neutrality posits that the law should not concern itself with enforcing specific moral values, making this the correct answer.
- (B) Enforcing moral values is the tenet of legal moralism, not legal neutrality.
- (C) While prioritizing individual rights is important, the core idea of legal neutrality is about the law's moral stance, not just prioritizing rights over morality.
- (D) Regulating all aspects of individual behavior contradicts the idea of neutrality, which suggests restraint in enforcing moral judgments through law.

Question 35: What moral dilemma is raised by the principle of legal neutrality?

- (A) Whether the law should impose moral values on individuals.
- (B) Whether the law should prioritize individual rights over morality.
- (C) Whether it is morally justifiable to tolerate certain morally repugnant actions in the name of freedom and neutrality.
- (D) Whether the law should suppress individual autonomy.

Correct Answer: (C) Whether it is morally justifiable to tolerate certain morally repugnant actions in the name of freedom and neutrality.

Explanation:

- (A) This is not a dilemma raised by legal neutrality, but rather a question opposed to its principle.

- (B) Prioritizing individual rights over morality is more of a strategy than a dilemma raised by legal neutrality.

  (C) The core dilemma of legal neutrality is whether tolerating morally repugnant actions is justifiable in the interest of freedom and neutrality, making this the correct answer.

(D) Legal neutrality aims to protect individual autonomy, not suppress it, so this is not a dilemma it raises.

Within the intricate tapestry of legal philosophy, the concept of legal positivism stands as a highly debated and intricate doctrine. Legal positivism posits that the validity and authority of law are determined solely by the source from which it originates. In other words, if a rule is created by a recognized authority, it is considered legally valid, regardless of its moral or ethical implications. Legal positivism places significant emphasis on the distinction between law as it is and law as it ought to be, focusing on the former. One of the most renowned proponents of legal positivism, H.L.A. Hart, argued that a legal system is composed of primary and secondary rules. Primary rules are those that govern human behavior, such as criminal laws or contractual obligations. Secondary rules, on the other hand, are rules that dictate how primary rules should be created, changed, or terminated. These secondary rules include the rule of recognition, the rule of change, and the rule of adjudication. The rule of recognition, according to Hart, is the fundamental rule that identifies the authoritative source of law within a legal system. It is what legal officials use to determine, which rules are legally valid. This rule acts as a kind of social norm among legal professionals, signaling that certain rules have legal status. For example, in a democracy, the rule of recognition may point to the Constitution as the highest source of legal authority. Critics of legal positivism argue that this philosophy risks legitimizing immoral or unjust laws if they are enacted through the proper procedures. They assert that the law should be grounded in moral or ethical principles, and its validity should be assessed based on its conformity to these principles. Natural law theory, in contrast to legal positivism, argues that law should be guided by moral or ethical principles. According to natural law theory, there is a higher, moral law that transcends manmade laws. This moral law, proponents argue, should be the basis for evaluating the validity of legal norms. The debate between legal positivism and natural law theory raises profound questions about the nature and purpose of law. Does the source of law, as posited by legal positivism, determine its validity, or should law be grounded in moral or ethical principles, as argued by natural law theorists? These questions challenge the very foundation of legal philosophy and the role of law in society.

36. What is the primary focus of legal positivism in determining the validity of law? (A) Moral and ethical considerations. (B) The source from which the law originates. (C) The conformity of the law to social norms. (D) The principles of natural law.

Correct Answer: B) The source from which the law originates.

Explanation:

- (A) is incorrect because legal positivism explicitly separates law's validity from moral or ethical considerations, focusing instead on the legal system's procedures and origins.
- (B) is correct as legal positivism holds that the authority and validity of law are determined by its source, such as the entity or process through which it is created, not by its moral or ethical content.
- (C) is incorrect because, while social norms might influence the recognition and enforcement of laws, legal positivism does not consider the conformity of the law to social norms as the basis for its validity.

(D) is incorrect because legal positivism does not rely on natural law or moral principles to establish legal validity; instead, it focuses on the formal sources and structures within a legal system.

37. What is the role of the rule of recognition in legal positivism? (A) It governs human behavior. (B) It dictates how laws should be created. (C) It identifies the authoritative source of law within a legal system. (D) It evaluates the morality of laws.

Correct Answer: C) It identifies the authoritative source of law within a legal system.

Explanation:

- (A) is incorrect because the rule of recognition does not directly govern human behavior; this is the role of primary rules.
- (B) is incorrect because, although the rule of recognition may indirectly influence how laws are created by identifying valid sources, its primary function is not dictating the processes of law creation.
- (C) is correct as the rule of recognition serves as the fundamental rule within a legal system that identifies which sources of law are authoritative, enabling legal officials to determine what counts as valid law.
- (D) is incorrect because the rule of recognition does not concern itself with the morality or immorality of laws; its function is to establish legal validity based on the source, not ethical evaluation.

38. What is a criticism of legal positivism? (A) It risks legitimizing immoral or unjust laws if they are enacted through proper procedures. (B) It is too focused on moral and ethical principles. (C) It rejects the idea of man-made laws. (D) It emphasizes natural law theory.

Correct Answer: A) It risks legitimizing immoral or unjust laws if they are enacted through proper procedures.

Explanation:

- (A) is correct because a common criticism of legal positivism is that by focusing solely on the source of law for determining its validity, it could potentially legitimize laws that are immoral or unjust, as long as they are created through recognized legal procedures.
- (B) is incorrect because legal positivism specifically avoids integrating moral and ethical principles into the assessment of legal validity, contrary to the implication of this option.
- (C) is incorrect because legal positivism does not reject man-made laws; in fact, it is centered on the idea that law's authority comes from human institutions.

  (D) is incorrect because legal positivism is distinct from natural law theory, which it is often contrasted against due to its lack of emphasis on moral principles in determining legal validity.

39. In natural law theory, what is considered to transcend man-made laws? (A) The rule of recognition (B) Moral or ethical principles (C) The rule of adjudication (D) Secondary rules

Correct Answer: B) Moral or ethical principles Explanation:

- (A) is incorrect because the rule of recognition is a concept from legal positivism, not natural law theory, and is about identifying the sources of law within a legal system.
- (B) is correct as natural law theory posits that there are universal moral or ethical principles that exist independently of and transcend man-made laws. These principles should guide the creation, interpretation, and application of laws.
- (C) and (D) are incorrect because both the rule of adjudication and secondary rules are concepts within legal positivism related to how laws are interpreted and the structure of legal systems, not concepts that deal with transcending moral or ethical principles in natural law theory.

40. What fundamental question does the debate between legal positivism and natural law theory raise? (A) Whether the law is entirely based on moral principles. (B) How to determine the source of law. (C) Whether the validity of law is determined by its source or by moral and ethical principles. (D) How to change primary rules within a legal system.

Correct Answer: C) Whether the validity of law is determined by its source or by moral and ethical principles.

Explanation:

- (A) is incorrect because the debate is not about whether law is entirely based on moral principles but about what should determine the validity of law—its source or moral principles.
- (B) is incorrect because, while determining the source of law is a concern, the fundamental debate is about what basis (source or morality) gives law its validity.
- (C) is correct as the core of the debate between legal positivism and natural law theory centers on what grounds legal validity: the procedural or formal source of law, as argued by legal positivists, or the adherence to universal moral or ethical principles, as argued by natural law theorists.
- (D) is incorrect because the question of how to change primary rules is a technical aspect of legal systems rather than the fundamental philosophical question raised by the debate between these two theories.

The concept of per se disqualification is unknown to the Constitution. Any decision as to the disqualification proceedings under the Tenth Schedule must be taken after following the due process of law and the principles of natural justice. A member incurs disqualification only after adjudication by the Speaker. The procedure for the adjudication of disqualification petitions is prescribed under the Maharashtra Legislative Assembly (Disqualification on

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Ground of Defection) Rules 1986. The MLAs facing disqualification retain the right to participate in the proceedings of the House and vote on resolutions. Article 189(2) of the Constitution provides that any proceedings of the House are not invalid even if it is subsequently discovered that persons who were not entitled to participate or vote or otherwise take part in the proceedings, did so. In Pratap Gouda Patil v. State of Karnataka and Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi, this Court observed that members should not be stopped from taking part in the proceedings of the House merely because disqualification proceedings were pending against them. Prior to the deletion of Paragraph 3 of the Tenth Schedule, the Speaker's enquiry as to the existence of a split within a political party was limited to a prima facie determination for deciding the disqualification proceedings. As a result of the deletion of Paragraph 3, the authority of the Speaker to form even a prima facie opinion regarding a split within a political party has been removed. Upon the deletion of Paragraph 3, the only defence for disqualification proceedings under the Tenth Schedule are that of a merge under Paragraph 4. The Election Commission of India is the sole authority empowered to decide disputes between rival factions of a political party according to the provisions of the Symbols Order. [Extracted from Subhash Desai v. Principal Secretary, Governor of Maharashtra (2023)].

41. Which of the following judgments that ruled, which a Speaker stands disabled to act under the Tenth Schedule to curb defection if a notice of intention to move a resolution for their removal is issued, was referred to a seven-judge bench by the five-judge bench in Subhash Desai v. Principal Secretary, Governor of Maharashtra?

    - (A) Nabam Rebia & Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly
    - (B) Raja Ram Pal v. Hon'ble Speaker, Lok Sabha
    - (C) Keisham Meghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly
    - (D) Shrimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly

Correct Answer: A) Nabam Rebia & Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly Explanation:

- (A) This case directly addresses the issue of a Speaker's powers under the Tenth Schedule being curtailed if there is a notice for their removal. The judgment clarified that the procedural requirements for a Speaker's removal impact their ability to act on disqualification issues, making it a critical reference in the context of discussing the limits of the Speaker's authority under the Tenth Schedule.
- (B) This case does not specifically deal with the issue of a Speaker's disqualification powers being disabled due to a notice of removal, hence it is not the correct answer.

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- (C) Similarly, this case focuses on the interpretation of the Tenth Schedule but does not specifically address the situation where a Speaker is disabled from acting due to a notice of removal.

  (D) This case involves issues of defection and the Speaker's powers, but it does not specifically address the scenario of a Speaker's powers being curtailed due to a notice of intention to move a resolution for their removal.

42. Srinivasan, J. in Mayawati v. Markandeya Chand held that ‘Political Party’ cannot be read as ‘Legislature Party’. Which among the following was not a reason provided by the Hon’ble Judge?

- (A) The phrase ‘Political Party’ in Paragraph 2(1)(b) of the tenth schedule cannot be interpreted to mean ‘Legislative Party’ while the same phrase in Paragraph 2(1)(a) of the Tenth Schedule retains its original meaning.
- (B) Such an interpretation would render explanation (a) to Paragraph 2(1) of the Tenth Schedule otiose because a legislature party cannot set up a person as a candidate for election;
- (C) Disqualification from membership of the assembly is a serious consequence. Such a consequence can only ensue from voting contrary to the direction of the political party.
- (D) In Kuldip Nayar v. Union of India, it was held that to balance the competing considerations of the anti-defection law and intra-party dissent, a direction to vote (or abstain from voting) can only be given if the vote would alter the status of the government formed or if it is on a policy on which the political party that set up the candidate went to polls on. Only the political party and not the legislature party can issue directions concerning issues of this nature.

Correct Answer: D) In Kuldip Nayar v. Union of India, it was held that to balance the competing considerations of the anti-defection law and intra-party dissent, a direction to vote (or abstain from voting) can only be given if the vote would alter the status of the government formed or if it is on a policy on which the political party that set up the candidate went to polls on. Only the political party and not the legislature party can issue directions concerning issues of this nature.

Explanation:

- (A), (B), and (C) are reasons that support the distinction between a "Political Party" and a "Legislature Party" as provided by Justice Srinivasan, emphasizing the importance of adhering to the directives of the political party to prevent disqualification under the Tenth Schedule.
- (D) While this option discusses considerations relevant to the anti-defection law and intra-party dissent, it does not specifically relate to the reasons provided by Justice Srinivasan in the context of distinguishing between a political party and a legislature

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party. The reference to Kuldip Nayar v. Union of India is more about the broader implications of voting directions and government stability rather than directly addressing the interpretation of "Political Party" vs. "Legislature Party."

43. Which of the following was not challenged by the petitioners in the case of Subhash Desai v. Principal Secretary, Governor of Maharashtra?

- (A) Disqualification of thirty-four MLAs
- (B) Swearing in Mr. Ekanth Shinde as the Chief Minister
- (C) Election of the Speaker by the House, which included the thirty-four MLAs who are facing disqualification notices
- (D) Legality of the trust vote dated July 4, 2022

Correct Answer: B) Swearing in Mr. Ekanth Shinde as the Chief Minister Explanation:

- (A), (C), and (D) are specific actions or events that were directly related to the proceedings and outcomes of the case, and hence could have been subjects of challenge by the petitioners in relation to the disqualification proceedings and the conduct of the legislative assembly's business.
- (B) The swearing-in of Mr. Ekanth Shinde as the Chief Minister is a procedural outcome following the political dynamics and legislative assembly decisions. This option is not directly related to the legal challenges concerning disqualification, the election of the speaker, or the legality of the trust vote, making it the correct answer as the aspect not challenged.

44. A violation of the anti-defection law will not result in a member of the House being:

- (A) Disqualified from the House
- (B) Disqualified from holding any election campaign for the duration of the period commencing from the date of their disqualification till the date on which the term of their office as a member of the House would expire or till the date on which they contest election to a House and are declared elected, whichever is later.
- (C) Disqualified from holding any remunerative political post for the duration of the period commencing from the date of their disqualification till the date on which the term of their office as a member of the House would expire or till the date on which they contest election to a House and are declared elected, whichever is earlier.
- (D) Disqualified from being appointed as a Minister for the duration of the period commencing from the date of their disqualification till the date on which the term of their office as a member of the House would expire or till the date on which they contest election to a House and are declared elected, whichever is earlier.

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Correct Answer: B) Disqualified from holding any election campaign for the duration of the period commencing from the date of their disqualification till the date on which the term of their office as a member of the House would expire or till the date on which they contest election to a House and are declared elected, whichever is later.

Explanation:

- (A), (C), and (D) are direct consequences of a violation of the anti-defection law under the Tenth Schedule, which includes disqualification from the House and restrictions on holding certain positions or offices.

  (B) This option is incorrect because the anti-defection law does not specifically address or impose restrictions on conducting election campaigns by disqualified members. The primary consequence of disqualification under the anti-defection law is the loss of the legislative seat and, in some contexts, restrictions on holding governmental or remunerative political positions, but it does not extend to the specifics of election campaigning activities.

45. The Tenth Schedule specifies five defense that a member may take recourse to shield themselves from the consequences of the anti-defection law. Which among the following is not a defense?

- (A) In cases where the original political party of a member is found to have merged with another political party under Paragraph 4(1)(a), members of the original political party are protected from being disqualified if they have not accepted such merger and have opted to function as a separate group.
- (B) Members who have been elected to the office of the Speaker or the Deputy Speaker (or the Chairman or the Deputy Chairman as the case may be) in Parliament or in the Legislative Assemblies of States are exempted from disqualification under the Tenth Schedule if they voluntarily give up the membership of their political party by reason of their election to such office and do not re-join the political party or become a member of another political party so long as they continue to hold such office. Further, they are not disqualified if they re-join the political party which they gave up membership of, after ceasing to hold office.
- (C) Disqualification on ground of defection not to apply in case of split. Where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction, which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such legislature party.
- (D) A member is protected from being disqualified if the political party to which they belong has condoned their actions in voting or abstaining from voting contrary to the directions issued by such political party, within fifteen days from such voting or abstention.

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Correct Answer: C) Disqualification on ground of defection not to apply in case of split. Where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction, which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such legislature party.

Explanation:

- (A), (B), and (D) accurately describe defenses available under the Tenth Schedule against disqualification for defection, including provisions for party mergers, roles of office bearers like Speaker or Deputy Speaker, and condonation by the party.
- (C) This option describes a defense that was part of the original provisions of the Tenth Schedule but was later removed. The defense related to splits within parties (requiring a minimum one-third members for legitimacy) is no longer a valid defense against disqualification due to amendments to the anti-defection law, making it the correct answer as it is not a current defense against disqualification.

The principles of democracy and federalism are essential features of our Constitution and form a part of the basic structure. Federalism in a multi-cultural, multi-religious, multi-ethnic and multi-linguistic country like India ensures the representation of diverse interests. It is a means to reconcile the desire of commonality along with the desire for autonomy and accommodate diverse needs in a pluralistic society. Recognizing regional aspirations strengthens the unity of the country and embodies the spirit of democracy. Thus, in any federal Constitution, at a minimum, there is a dual polity, that is, two sets of government operate: one at the level of the national government and the second at the level of the regional federal units. These dual sets of government, elected by "We the People" in two separate electoral processes, is a dual manifestation of the public will. The priorities of these two sets of governments, which manifest in a federal system are not just bound to be different, but are intended to be different. While NCTD is not a full-fledged state, its Legislative Assembly is constitutionally entrusted with the power to legislate upon the subjects in the State List and Concurrent List. It is not a State under the First Schedule to the Constitution, yet it is conferred with power to legislate upon subjects in Lists II and III to give effect to the aspirations of the people of NCTD. It has a democratically elected government which is accountable to the people of NCTD. Under the constitutional scheme envisaged in Article 239AA (3), NCTD was given legislative power which though limited, in many aspects is similar to States. In that sense, with addition of Article 239AA, the Constitution created a federal model with the Union of India at the centre, and the NCTD at the regional level. This is the asymmetric federal model adopted for NCTD. While NCTD remains a Union Territory, the unique constitutional status conferred upon it makes it a federal entity for the purpose of understanding the relationship between the Union and NCTD. In the spirit of cooperative federalism, the Union of India must exercise its powers within the boundaries created by the Constitution. NCTD, having a sui generis federal model, must be allowed to function in the domain charted for it by the Constitution. The Union and NCTD share a unique federal relationship. It does not mean that NCTD is subsumed in the unit of the

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Union merely because it is not a “State”. [Extracted from Government of NCT of Delhi v. Union of India, 2023 SCC Online SC 606 (hereafter GNCTD Case)]

46. In the GNCTD’s case, which of the following powers were held to be within the control of the Government of the National Capital Territory of Delhi?

- (A) Law and Order
- (B) Land
- (C) Police
- (D) Services Correct Answer: D) Services Explanation for each option:

(A) Law and Order

Explanation: Law and Order remains under the control of the Central Government in the case of the National Capital Territory of Delhi. This is due to the unique constitutional position of Delhi, where certain subjects like public order, police, and land are specifically excluded from the legislative and executive powers of the Delhi government, making them the responsibility of the Central Government.

(B) Land

- Explanation: The control over land in the National Capital Territory of Delhi is reserved for the Central Government, not the Delhi Government. The constitutional scheme, as interpreted by the courts, has placed land in the list of subjects on which the Delhi government does not have legislative or executive powers, reaffirming the central authority's control over land matters in Delhi.

(C) Police

- Explanation: Police in the National Capital Territory of Delhi is not under the control of the Delhi Government but under the Central Government. The special status of Delhi means that the Delhi government does not have jurisdiction over policing, which is aimed at maintaining security, law, and order, a responsibility held by the Central Government.

(D) Services

- Explanation: Services within the context of the Government of the National Capital Territory of Delhi refer to the control over the bureaucracy and civil services. In the GNCTD case, it was held that except for matters related to public order, police, and land, the Delhi government has the power to legislate and execute decisions on other subjects, including services. This means the Delhi government has the authority to make decisions regarding the transfer, posting, and administrative control over its officers, which is a significant aspect of its governance rights.

- 47. Why does the Court describe the Indian federal model as one embodying ‘asymmetric federalism’?
- (A) All the Union Territories are similarly placed within the constitutional scheme.
- (B) Some Union Territories enjoy more powers than other Union Territories.
- (C) Only full-fledged States have a direct line of democratic accountability with an electorate.
- (D) The Indian Constitution has a strong unitary bias.
- Correct Answer: B) Some Union Territories enjoy more powers than other Union Territories.
- Explanation for each option:
- (A) All the Union Territories are similarly placed within the constitutional scheme.
- Explanation: This option is inaccurate because the Indian constitutional scheme does not treat all Union Territories the same. Some Union Territories, like Delhi and Puducherry, have been given legislative assemblies and greater powers compared to other Union Territories, indicating an asymmetric approach to federalism.
- (B) Some Union Territories enjoy more powers than other Union Territories.
- Explanation: This is correct because the Indian federal model is described as 'asymmetric' due to the varying degrees of autonomy and powers granted to different federal units, including States and Union Territories. Specifically, some Union Territories like Delhi and Puducherry have their own legislative assemblies and enjoy more powers than others, which do not have such legislative bodies.
- (C) Only full-fledged States have a direct line of democratic accountability with an electorate.
- Explanation: This option is misleading because it overlooks the fact that certain Union Territories with legislative assemblies, such as Delhi and Puducherry, also have a direct line of democratic accountability through elections. These territories have been granted a form of local government and legislative powers, allowing them to have a democratic process similar to that of full-fledged States.
- (D) The Indian Constitution has a strong unitary bias.
- Explanation: While the Indian Constitution does exhibit a unitary bias, especially in the powers conferred upon the Central Government during emergencies and in the governance of Union Territories, this does not fully explain the concept of asymmetric federalism. Asymmetric federalism is specifically about the unequal distribution of

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powers among different federal units, not just the overall unitary or federal nature of the constitution.

- 48. Which of the following propositions are true for the holdings in the 2018 Constitution Bench judgment in Government of NCT of Delhi v. Union of India, (2018) 8 SCC 501?
- (A) There is no independent authority vested in the Lieutenant Governor to take decisions under Article 239AA of the Constitution.
- (B) The Lieutenant Governor applies their mind independently to matters concerning the National Capital Territory of Delhi.
- (C) The Lieutenant Governor has only partial independent authority to take decisions under Article 239AA of the Constitution.
- (D) The Council of Ministers has no independent authority under Article 239AA of the Constitution of India.
- Correct Answer: A) There is no independent authority vested in the Lieutenant Governor to take decisions under Article 239AA of the Constitution.
- Explanation for each option:
- (A) There is no independent authority vested in the Lieutenant Governor to take decisions under Article 239AA of the Constitution.

  Explanation: This is correct. The 2018 Constitution Bench judgment clarified that the Lieutenant Governor of Delhi does not have independent decision-making authority under Article 239AA and is required to act on the aid and advice of the Council of Ministers for matters within the legislative competence of the Delhi Assembly, except for matters related to land, police, and public order.
- (B) The Lieutenant Governor applies their mind independently to matters concerning the National Capital Territory of Delhi.
- Explanation: This option is misleading. While the Lieutenant Governor can apply their mind to matters, the judgment emphasized that for most decisions, the LG must act based on the aid and advice of the Council of Ministers, limiting the scope for independent decision-making.
- (C) The Lieutenant Governor has only partial independent authority to take decisions under Article 239AA of the Constitution.
- Explanation: This option is somewhat misleading. The judgment stated that the Lieutenant Governor's authority to act independently is very limited and primarily pertains to matters outside the legislative competence of the Delhi Assembly (such as land, police, and public order). For other matters, the LG is to act on the aid and advice of the Council of Ministers.

- (D) The Council of Ministers has no independent authority under Article 239AA of the Constitution of India.
- Explanation: This is incorrect. The judgment affirmed the authority of the Council of Ministers in the Delhi government to make decisions on matters within their legislative competence, underlining the principle of collective responsibility to the Legislative Assembly, except in matters related to land, police, and public order.
- 49. Which of the following cases were relied upon by the Court in the 2018 Constitution Bench decision to interpret the words “aid and advice”:
- (A) Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461
- (B) I.C. Golaknath v. State of Punjab, AIR 1967 SC 1643
- (C) Samsher Singh v. State of Punjab, (1974) 2 SCC 831
- (D) A.K. Gopalan v. State of Madras, AIR 1950 SC 27
- Correct Answer: C) Samsher Singh v. State of Punjab, (1974) 2 SCC 831
- Explanation for each option:
- (A) Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461
- Explanation: This landmark case is known for establishing the doctrine of the basic structure of the Constitution but is not directly related to the interpretation of the phrase “aid and advice” as used in the context of the powers of the Lieutenant Governor and the relationship with the Council of Ministers.
- (B) I.C. Golaknath v. State of Punjab, AIR 1967 SC 1643

Explanation: This case is significant for its ruling on the amendment of the Constitution and fundamental rights but does not deal with the interpretation of "aid and advice" in the context of administrative actions and the powers of constitutional functionaries.

- (C) Samsher Singh v. State of Punjab, (1974) 2 SCC 831
- Explanation: This case is pertinent because it clarified the scope of "aid and advice" in the context of the powers of the President and Governors, which was analogously applied to understand the powers of the Lieutenant Governor of Delhi in relation to the Council of Ministers. This makes it directly relevant to the interpretation of "aid and advice" in the 2018 Constitution Bench decision.
- (D) A.K. Gopalan v. State of Madras, AIR 1950 SC 27
- Explanation: This case primarily dealt with preventive detention and the right to personal liberty under Article 21 of the Constitution, not with the administrative powers of constitutional functionaries and the interpretation of "aid and advice."
- 50. Following the ratio of the GNCTD's case, which of the following propositions would be true:
- (A) The Government of NCTD shall have legislative power to make laws on "services", because "services" is not expressly excluded in Article 239AA(3)(a).
- (B) The Government of NCTD shall not have the legislative power to make laws on "services" as it is impliedly a part of the entry on "law and order", which in turn is expressly excluded in Article 239AA(3)(a).
- (C) The Government of NCTD shall have legislative power to make laws on "services" only if expressly authorized by the Union Parliament to do so.
- (D) None of the above.
- Correct Answer: A) The Government of NCTD shall have legislative power to make laws on "services", because "services" is not expressly excluded in Article 239AA(3)(a).
- Explanation for each option:
- (A) The Government of NCTD shall have legislative power to make laws on "services", because "services" is not expressly excluded in Article 239AA(3)(a).
- Explanation: This is correct following the GNCTD case. The court clarified that except for matters related to land, police, and public order, the Delhi government has the power to legislate and make decisions on other subjects, including "services." This interpretation is based on the principle that powers not expressly reserved for the central government fall within the domain of the Delhi government.

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- (B) The Government of NCTD shall not have the legislative power to make laws on “services” as it is impliedly a part of the entry on “law and order”, which in turn is expressly excluded in Article 239AA(3)(a).

  Explanation: This is incorrect. "Services" does not fall under the category of "law and order" and is considered a separate subject over which the Delhi government can exercise legislative power, as indicated by the courts, except for matters related to the positions of officers serving in the Delhi Police, which falls under the central government's purview.

- (C) The Government of NCTD shall have legislative power to make laws on “services” only if expressly authorized by the Union Parliament to do so.

- Explanation: This option is misleading. The GNCTD case's interpretation suggests that the Delhi government inherently has the power to legislate on "services," except for those specifically excluded, without needing explicit authorization from the Union Parliament for each instance.

- (D) None of the above.

- Explanation: This is incorrect because option (A) accurately reflects the legal position regarding the Delhi government's legislative power over "services" as clarified in the GNCTD case.

The precautionary principle requires the State to act in advance to prevent environmental harm from taking place, rather than by adopting measures once the harm has taken place. In deciding when to adopt such action, the State cannot hide behind the veil of scientific uncertainty in calculating the exact scientific harm. In H.P. Bus-Stand Management & Development Authority v. Central Empowered Committee, (2021) 4 SCC 309, a three-Judge Bench of this Court emphasised the duty of the State to create conceptual, procedural, and institutional structures to guide environmental regulation in compliance with the “environmental rule of law”. The Court noted that such regulation must arise out of a multidisciplinary analysis between policy, regulatory and scientific perspectives. The Court held: “The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools-conceptual, procedural, and institutional to bring structure to the discourse on environmental protection. * 20 PG It does so to enhance our understanding of environmental challenges-of how they have been shaped by humanity’s interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity’s actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions, and policy perspectives in the field of environmental protection.” [Extracted with edits from Pragnesh Shah v. Arun Kumar Sharma, (2022) 11 SCC 493].

51. ‘Environmental rule of law’ found its reference and recognition for the first time in which of the following?

(A)Earth Summit, 2002.
(B) UNEP's Governing Council Decision 27/9, 2013
(C) 1st Africa Colloquium at Nairobi, 2015. (D)
Earth Summit+5
Correct Answer: B) UNEP's Governing Council Decision 27/9, 2013
Explanation:
(A) Earth Summit, 2002, did not mark the first recognition of the 'environmental rule of law.' (B) UNEP's Governing Council Decision 27/9, 2013, is correctly identified as the first time the 'environmental rule of law' found its reference and recognition, emphasizing the integration of environmental sustainability with legal frameworks globally. (C) The 1st Africa Colloquium at Nairobi, 2015, came after the recognition of the environmental rule of law in UNEP's decision. (D) Earth Summit+5 does not align with the timeline or context for the first recognition of the 'environmental rule of law.'

52. Which of the following principles of Rio Declaration deal with the precautionary approach?

(A) Principle 14
(B) Principle 15
(C) Principle 16
(D) Principle 17

Correct Answer: B) Principle 15 Explanation:
(A) Principle 14 concerns states' responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states.
(B) Principle 15 is correct; it introduces the precautionary approach, stating that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. (C) Principle 16 involves the polluter-pays principle, a completely different concept. (D) Principle 17 deals with environmental impact assessments, not the precautionary approach directly.

53. In Environmental Pollution history, Three-Mile Island is referred to for which of the following?

(A) Water Pollution
(B) Air Pollution
(C) Radioactive pollution
(D) Noise Pollution

Correct Answer: C) Radioactive pollution Explanation:
(A) Water Pollution is not what Three-Mile Island is known for.
(B) Air Pollution, while possible, is not the primary concern associated with Three-Mile Island.
(C) Radioactive pollution is correct; the Three-Mile Island accident in 1979 is one of the most significant nuclear power plant incidents in U.S. history, leading to concerns about radioactive contamination.

(D) Noise Pollution is unrelated to the nature of the incident at Three-Mile Island.

54. In which of the following cases, Precautionary principle was used for the first time in Indian Environment Law Jurisprudence?

(A) Vellore Citizens Welfare Forum v. Union of India.
(B) Rural Litigation and Entitlement Kendra v. State of UP.
(C) Municipal Corporation, Ratlam v. Vardhichand.
(D) Narmada Bachao Andolan v. Union of India.

Correct Answer: A) Vellore Citizens Welfare Forum v. Union of India.
Explanation:
(A) Correct. The Vellore Citizens Welfare Forum v. Union of India case is noted for its use of the precautionary principle in Indian environmental law, highlighting the state's responsibility to prevent environmental harm.
(B) This case focused on the environmental degradation caused by limestone quarrying in Mussoorie and Dehradun but did not introduce the precautionary principle.
(C) Focused on the obligation of municipal authorities to provide a clean environment to its citizens but did not specifically introduce the precautionary principle.
(D) Although Narmada Bachao Andolan v. Union of India dealt with environmental and human rights issues related to large-scale dam projects, it was not the first case to use the precautionary principle.

55. In which of the following cases, Doctrine of Public Trust was first used in Indian Environmental Law Jurisprudence?

(A) Vellore Citizens Welfare Forum v. Union of India.
(B) Rural Litigation and Entitlement Kendra v. State of UP.
(C) Municipal Corporation, Ratlam v. Vardhichand. (D) M.C. Mehta v. Kamal Nath.

Correct Answer: D) M.C. Mehta v. Kamal Nath.
Explanation:
(A) While important for the precautionary principle, it did not introduce the Doctrine of Public Trust.
(B) Focused on environmental degradation from quarrying, not on the public trust doctrine.
(C) Addressed municipal responsibilities, not the Doctrine of Public Trust.
(D) Correct. M.C. Mehta v. Kamal Nath is known for introducing the Doctrine of Public Trust in Indian environmental law, emphasizing the state's role in protecting natural resources for public use against private encroachment.

"… we had referred to the ill - effects of what is known as General Power of Attorney Sales (for short 'GPA Sales') or Sale Agreement/General Power of Attorney/Will transfers (for short 'SA/GPA/WILL' transfers). Both the descriptions are misnomers as there cannot be a sale by execution of a power of attorney nor can there be a transfer by execution of an agreement of sale and a power of attorney and will. As noticed in the earlier order, these kinds of transactions were evolved to avoid prohibitions/conditions regarding certain transfers, to avoid payment of stamp duty and registration charges on deeds of conveyance, to avoid payment of capital gains on transfers, to invest unaccounted money … and to avoid payment of 'unearned increases' due to Development Authorities on transfer. The modus operandi in such SA/GPA/WILL transactions is for the vendor or person claiming to be the owner to receive the agreed

consideration, deliver possession of the property to the purchaser and execute the following documents or variations thereof: (a) An Agreement of sale by the vendor in favour of the purchaser confirming the terms of sale, delivery of possession and payment of full consideration and undertaking to execute any document as and when required in future. or An agreement of sale agreeing to sell the property, with a separate affidavit confirming receipt of full price and delivery of possession and undertaking to execute sale deed whenever required. (b) An Irrevocable General Power of Attorney by the vendor in favour of the purchaser or his nominee authorizing him to manage, deal with and dispose of the property without reference to the vendor. or A General Power of Attorney by the vendor in favour of the purchaser or his nominee authorizing the attorney holder to sell or transfer the property and a Special Power of Attorney to manage the property. (c) A will bequeathing the property to the purchaser (as a safeguard against the consequences of death of the vendor before transfer is effected). These transactions are not to be confused or equated with genuine transactions where the owner of a property grants a power of Attorney in favour of a family member or friend to manage or sell his property, as he is not able to manage the property or execute the sale, personally. These are transactions, where a purchaser pays the full price, but instead of getting a deed of conveyance gets a SA/GPA/WILL as a mode of transfer, either at the instance of the vendor or at his own instance." [Extracted from Suraj Lamp & Industries (P) Ltd v. State of Haryana (2012) 1 SCC 656].

56. 'SA/GPA/WILL' transfers for the transfer of immovable property leads to:

(A) Enabling large scale evasion of income tax, wealth tax, stamp duty and registration fees, thereby, denying the benefit of such revenue to the government and the public.
(B) Enabling persons with undisclosed wealth/income to invest their black money and also earn profit/income, thereby, encouraging circulation of black money and corruption.
(C) Both (A) and (B).
(D) None of the above.

Correct Answer: C) Both (A) and (B).

Explanation:

(A) SA/GPA/WILL transfers can indeed facilitate evasion of taxes and duties, impacting government revenue.
(B) They also provide a means for individuals to launder and invest undisclosed funds, promoting the circulation of illicit wealth.
(C) Correct. Both (A) and (B) are direct consequences of SA/GPA/WILL transfers in the context of property transactions, as these practices circumvent legal and fiscal responsibilities.
(D) Given the explanations for (A) and (B), (D) is not correct.

57. Which of the following is an incorrect proposition?

(A) A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property.
(B) The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of the grantor, which when executed will be binding on the grantor as if done by him.

(C) A Will is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death.

(D) A Will is a transfer inter vivos.

Correct Answer: D) A Will is a transfer inter vivos.

Explanation:

(A) Correct. A power of attorney does not serve as a transfer document for rights, title, or interest in property.

(B) Accurately describes the nature of a power of attorney as creating an agency relationship. (C) Correctly defines a Will as a document that takes effect after the death of the person making it (testator), not before.

(D) Incorrect. A Will is not a transfer inter vivos (between the living); it is a testamentary document that only takes effect upon the death of the testator.

58. Which of the following is a correct proposition as regards an agreement to sell an immovable property?

(A) An agreement to sell does not, of itself, create any interest in or charge on such property.

(B) An agreement to sell does create an interest in or charge on such property.

(C) An agreement to sell, with possession, is a conveyance.

(D) An agreement to sell, whether with possession or without possession, is a conveyance.

Correct Answer: A) An agreement to sell does not, of itself, create any interest in or charge on such property.

Explanation:

(A) Correct. An agreement to sell, by itself, does not create any legal interest or charge over the property until certain conditions, such as registration, are met.

(B) Incorrect because an agreement to sell does not by itself create a legal interest in the property without further legal action.

(C) Incorrect. Possession does not transform an agreement to sell into a conveyance; legal title transfer requires a deed of conveyance.

(D) Also incorrect, as an agreement to sell does not equate to a conveyance without fulfillment of legal requirements for transfer of title.

59. In relation to the sale of immovable property, in Suraj Lamp & Industries (P) Ltd v. State of Haryana, the Supreme Court held that as per the Transfer of Property Act, 1882:

(A) Transactions in the nature of ‘GPA sales’ or ‘SA/GPA/WILL transfers’ do convey legal title in the immovable property.

(B) An immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance.

(C) Transactions in the nature of ‘GPA sales’ or ‘SA/GPA/WILL transfers’ are also recognised or valid mode of transfer of immovable property.

(D) The Court will treat ‘GPA sales’ or ‘SA/GPA/WILL transfers’ as completed or concluded transfers (as conveyances) of immovable property.

Correct Answer: B) An immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance.

Explanation:

(A) Incorrect. The Supreme Court clarified that such transactions do not convey legal title without a registered deed.

(B) Correct. The Supreme Court emphasized the necessity of a registered deed of conveyance for the lawful transfer of immovable property, underscoring the legal requirement for formal registration to effectuate property transfer.

(C) Incorrect. The court did not recognize these as valid modes of transfer in terms of conveying legal title.

(D) Incorrect. The court noted these transactions do not amount to completed transfers in the legal sense without registration.

60. Compulsory registration of certain types of documents ensures:

(A) Orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer.

(B) The process of verification and certification of title easier and simpler.

(C) Both (A) and (B).

(D) None of the above.

Correct Answer: C) Both (A) and (B).

Explanation:

(A) Correct. Registration provides a formal record, enhancing transparency and security in transactions involving immovable property, thus preventing fraudulent practices.

(B) Also correct. It simplifies the process of title verification, making it easier for parties to ascertain property ownership and legal standing.

(C) Correct, as both (A) and (B) are direct benefits of compulsory registration, serving to protect interests, ensure public notice, and facilitate property transactions. (D) Given (A) and (B) are accurate, (D) cannot be correct.

“The essentials of an agreement to qualify as a mortgage by conditional sale can succinctly be broadly summarised. An ostensible sale with transfer of possession and ownership, but containing a clause for reconveyance in accordance with Section 58(c) of the Act, will clothe the agreement as a mortgage by conditional sale. The execution of a separate agreement for reconveyance, either contemporaneously or subsequently, shall militate against the agreement being mortgage by conditional sale. There must exist a debtor and creditor relationship. The valuation of the property and the transaction value along with the duration of time for reconveyance are important considerations to decide the nature of the agreement. There will have to be a cumulative consideration of these factors along with the recitals in the agreement, intention of the parties, coupled with other attendant circumstances, considered in a holistic manner.” [Extracted from Vithal Tukaram Kadam v. Vamanrao Sawalaram Bhosale, (2018) 11 SCC 172. In the foregoing extract, ‘Act’ refers to the Transfer of Property Act, 1882].

Question 61

Which of the following expresses the distinction between a ‘mortgage by conditional sale’ and a ‘sale with a condition of repurchase’?

(A) In a mortgage, the debt subsists and a right to redeem remains with the debtor; but, a sale with a condition of repurchase is not a lending and borrowing arrangement.
(B) In a mortgage by conditional sale, generally the amount of consideration is far below the value of the property in the market; but, in a sale with a condition of repurchase, the amount of consideration is generally equal to or close to the value of the property.
(C) Both (A) and (B).
(D) None of the above.

Correct Answer: C. Both (A) and (B). Explanation:

- (A) Correctly distinguishes the two based on the nature of the transaction. A mortgage by conditional sale implies the continuation of a debtor-creditor relationship, with the property acting as security for the loan. The right to redeem the property remains with the debtor, highlighting the underlying debt. In contrast, a sale with a condition of repurchase does not inherently involve a lending or borrowing arrangement but is a sale transaction with an option to buy back the property.
- (B) Highlights the financial distinction. In a mortgage by conditional sale, the consideration (the amount paid) is typically less than the market value because the transaction is security for a debt rather than a true sale. In a sale with a condition of repurchase, the consideration is more likely to reflect the property's market value because it is a sale, albeit one that includes a buy-back clause.
- Therefore, (C) is correct because both (A) and (B) accurately describe key differences between these two types of transactions.

Question 62

Which of the following judgements outline(s) the distinction between ‘mortgage by conditional sale’ and a ‘sale with a condition of repurchase’?

(A) Chennammal v. Munimalaiyan, AIR 2005 SC 4397.
(B) Tulsi v. Chandrika Prasad, (2006) 8 SCC 322.
(C) Umabai v. Nilkanth Dhondiba Chavan, (2005) 6 SCC 243.
(D) All the above.

Correct Answer: D. All the above.
Explanation:
Each of the listed judgments deals with the distinction between a mortgage by conditional sale and a sale with a condition of repurchase, analyzing the nature of the transactions, the intention of the parties, and the legal implications. These cases are significant in understanding how Indian courts interpret and differentiate between these two concepts based on the specific circumstances and agreements in question.

Question 63

The proper remedy for the mortgagee in a ‘mortgage by conditional sale’ is:

(A) To institute a suit for foreclosure.
(B) To institute a suit for sale.
(C) Both (A) and (B).
(D) Neither (A) nor (B).

Correct Answer: C. Both (A) and (B).
Explanation:
In a mortgage by conditional sale, the mortgagee (the lender) has multiple remedies available if the mortgagor (the borrower) defaults. These include instituting a suit for foreclosure, where the mortgagor's right to redeem the property is extinguished, or a suit for sale, where the property is sold under court supervision to repay the debt. The choice of remedy depends on the terms of the mortgage agreement and the laws governing such transactions.

Question 64

A mortgage is the transfer of an interest in _____ immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

(A) Specific or unspecific.
(B) Specific.
(C) Identified or unidentified. (D) All the above.

Correct Answer: B. Specific.
Explanation:
A mortgage involves the transfer of an interest in specific immovable property. It is essential for the property to be specifically identified in the mortgage agreement to serve as security for the loan or debt. This specificity enables the lender to enforce the security interest in case of default by the borrower, ensuring that the agreement clearly outlines which property is subject to the mortgage.

Question 65

The limitation period for filing a suit by a mortgagor ‘to redeem or recover possession of immovable property mortgaged’ is:

(A) Three years
(B) Twelve years
(C) Twenty years
(D) Thirty years

Correct Answer: D. Thirty years.

Explanation of Each Option:

- (A) Three years: This option might apply to other types of legal actions under the Limitation Act, but it is too short for the context of redeeming mortgaged immovable property. Mortgage agreements are long-term transactions, and a three-year limitation would be insufficient for a mortgagor seeking to redeem the property.
- (B) Twelve years: Twelve years is the limitation period for some types of property claims, such as adverse possession, but it is not correct for the redemption of mortgaged property. While twelve years represents a significant period, it does not apply to the specific action of redeeming mortgaged property under Indian law.
- (C) Twenty years: Twenty years is closer to the actual duration for some long-term legal actions but still does not match the specific limitation period set for the redemption of mortgaged immovable property. This option might be confused with other legal contexts or jurisdictions but is not applicable here.
- (D) Thirty years: Correct. The Limitation Act specifies a thirty-year period for a mortgagor to file a suit to redeem or recover possession of immovable property. This long period recognizes the enduring nature of mortgage agreements and the substantial investment involved in real estate. It ensures that the mortgagor has sufficient time to arrange the necessary finances to redeem the property and recover possession.

"… Thus, the correct position of law is that under Section 3(2) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 hereinafter referred to as Muslim Women Act, 1986, a divorcee can file an application before a Magistrate if her former husband has not paid to her a reasonable and fair provision and maintenance or mahr due to her or has not delivered the properties given to her before or at the time of her marriage by her relatives or friends or the husband or any of his relatives or friends. Under Section 3(3) of the Muslim Women Act, 1986, an order can be passed directing the former husband of the divorcee to pay to her such reasonable and fair provision and maintenance as deemed fit and proper having regard to the needs of the divorced woman, her standard of life enjoyed by her during her marriage and means of her former husband. The word "provision" used in Section 3 of the Muslim Women Act, 1986 indicates that something is provided in advance for meeting some needs. In other words, at the time of divorce, the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs. "Reasonable and fair provision" may include provision for her residence, her food, her clothes, and other articles. In the case of Danial Latifi and another (supra), in Para-28, Hon'ble Supreme Court has fairly interpreted the provisions of Section 3 with regard to fair provision and maintenance and held that "it would extend to the whole life of the divorced wife unless she gets married for a second time"..." [Extract from Zahid Khatoon v. Nurul Haque Khan, MANU/UP/4310/2022].

Question 66

What recourse does a divorcee have according to the Muslim Women Act, 1986, if her exhusband neglects to meet specific obligations mandated by the law?

(A) File the petition in the concern District Court.
(B) Seek mediation from a Sharia Court.

(C) Approach the Magistrate with an application.
(D) Take the matter to a Family Court.

Correct Answer: C. Approach the Magistrate with an application.

Explanation of Each Option:

- (A) File the petition in the concern District Court: This option is not the primary recourse provided under the Muslim Women Act, 1986. The Act specifically enables a divorced woman to seek maintenance by applying before a Magistrate, not necessarily initiating proceedings in a District Court first.
- (B) Seek mediation from a Sharia Court: While Sharia Courts play a role in the resolution of disputes within Islamic law, the Muslim Women Act, 1986, provides a legal framework within the civil law system, specifying that a magistrate's court is the appropriate venue for these applications, not a Sharia Court.
- (C) Approach the Magistrate with an application: Correct. According to the Muslim Women Act, 1986, a divorced Muslim woman can file an application before a Magistrate if her former husband fails to provide reasonable and fair provision and maintenance. This process allows for a formal and legal mechanism to ensure compliance with the Act's provisions.
- (D) Take the matter to a Family Court: While Family Courts deal with various matrimonial disputes and issues related to marriage and family, the specific recourse for a divorcee under the Muslim Women Act, 1986, is to approach a Magistrate with an application. This is a direct and specified legal remedy within the Act.

Question 67

What factors are considered when determining the reasonable and fair provision and maintenance for a Muslim divorced woman in accordance with the Muslim Women Act of 1986?

(A) The divorced woman’s financial needs including her future needs and her children, till she gets remarried.
(B) The lifestyle the divorced woman enjoyed during her marriage, her anticipated future requirements, and the financial capability of her ex-husband.
(C) The financial status of the divorced woman’s ex-husband and his parents to determine the fair provision.
(D) The employment status, educational qualifications, and earning potential of the divorced woman, coupled with the husband’s financial capability.

Correct Answer: B. The lifestyle the divorced woman enjoyed during her marriage, her anticipated future requirements, and the financial capability of her ex-husband.

Explanation of Each Option:

- (A) The divorced woman’s financial needs including her future needs and her children, till she gets remarried: While the financial needs and future requirements of the divorced

woman and her children are important, this option is incomplete as it does not consider the lifestyle enjoyed during the marriage or the ex-husband's financial capability, which are critical factors in determining maintenance.

- (B) The lifestyle the divorced woman enjoyed during her marriage, her anticipated future requirements, and the financial capability of her ex-husband: Correct. This option comprehensively covers the criteria considered under the Muslim Women Act, 1986. It takes into account the standard of living during the marriage, future needs, and the ex-husband's means, ensuring that the provision and maintenance are reasonable and fair.
- (C) The financial status of the divorced woman’s ex-husband and his parents to determine the fair provision: This option incorrectly includes the ex-husband's parents as a factor in determining maintenance. The Act focuses on the ex-husband's financial capability rather than extending the responsibility to his parents.
- (D) The employment status, educational qualifications, and earning potential of the divorced woman, coupled with the husband’s financial capability: While the divorced woman's ability to support herself may be considered, the primary factors are her standard of life during the marriage and her ex-husband's financial capability. This option places undue emphasis on the divorced woman's potential to earn, which is not the main criterion under the Act.
- Question 68
- What does the term “provision” in Section 3 of the Muslim Women Act, 1986, imply?
- (A) Retroactive financial support to be provided to the divorced wife. (B) Provision made for her future till she is qualified to earn on her own.

(C) Provision for meeting all her future needs.

(D) Provision for her future until she is qualified to earn or get married.

- Correct Answer: C. Provision for meeting all her future needs.
- Explanation of Each Option:
- (A) Retroactive financial support to be provided to the divorced wife: This option is inaccurate as the term “provision” in the context of the Act does not specifically refer to retroactive support but rather encompasses a broader scope intended to address the divorced woman's future needs.
- (B) Provision made for her future till she is qualified to earn on her own: While this option touches upon future support, it incorrectly limits the provision to the period until the divorced woman becomes self-sufficient, which is not the sole focus of the Act.
- (C) Provision for meeting all her future needs: Correct. The term “provision” as used in Section 3 of the Muslim Women Act, 1986, is comprehensive and designed to encompass a range of future needs, ensuring the divorced woman's well-being and financial security post-divorce without limitations on her employment status or remarriage.

- (D) Provision for her future until she is qualified to earn or get married: This option imposes unnecessary limits on the duration and condition of the provision, which is not in line with the Act's intention. The Act aims to secure the divorced woman's future needs more broadly without such specific end conditions.
- Question 69
- According to the interpretation in the case of Danial Latifi, how long does the obligation of the Muslim husband to provide a reasonable and fair provision and maintenance extend?
- (A) Until the divorced woman finds new employment or means to sustain herself. (B) During the iddat period and after the iddat period only if she is not able to maintain herself or she is not remarried.
  (C) Throughout the whole life of the divorced wife, unless she remarries. (D) Until the divorced woman's parents, children cannot provide support to her.
- Correct Answer: C. Throughout the whole life of the divorced wife, unless she remarries.
- Explanation of Each Option:
- (A) Until the divorced woman finds new employment or means to sustain herself: This option is too restrictive and does not accurately reflect the broader, lifelong obligation established in the Danial Latifi case, which is contingent only upon remarriage.
- (B) During the iddat period and after the iddat period only if she is not able to maintain herself or she is not remarried: This option incorrectly suggests that the provision is conditional on the divorced woman's ability to maintain herself or her marital status post-iddat, which contradicts the interpretation that extends the obligation throughout her life unless she remarries.
- (C) Throughout the whole life of the divorced wife, unless she remarries: Correct. The Supreme Court's interpretation in Danial Latifi asserts that the husband's obligation to provide for a reasonable and fair provision and maintenance extends for the lifetime of the divorced wife, ceasing only if she remarries, thereby ensuring her financial security.
- (D) Until the divorced woman's parents, children cannot provide support to her: This option inaccurately implies that the obligation is dependent on the financial support capabilities of the divorced woman's family, which is not a stipulation outlined in the Danial Latifi interpretation or the Muslim Women Act, 1986.

70. What preparatory arrangements is the Muslim husband required to make, according to the interpretation of Section 3 of the Muslim Act, 1986?

(A) Financial investments for the divorced woman to protect her future. (B) Provision for the divorced woman and her children.
(C) Retroactive provision for the divorced woman's past present and future needs. (D) Contemplation of future needs and arrangements in advance.

Correct Answer: D. Contemplation of future needs and arrangements in advance. Explanation of Each Option:

(A) Incorrect. While financial investments could be a part of the arrangements, the term "provision" as used in the Act and interpreted in legal decisions focuses on a broader spectrum of needs rather than solely financial investments.
(B) Incorrect. This option is partially correct as provisions for the divorced woman and her children could be part of the arrangements. However, it does not fully capture the essence of the term "provision" in the Act, which includes a wider range of future needs beyond just the immediate family.
(C) Incorrect. Retroactive provision is not the focus of Section 3 of the Muslim Women Act, 1986. The Act emphasizes arrangements for future needs rather than addressing past or present needs.
(D) Correct. The interpretation of Section 3, especially in the context of the Danial Latifi case, emphasizes the husband's obligation to contemplate and arrange for the future needs of the divorced wife. This encompasses a holistic approach to ensuring the wife's welfare postdivorce, including but not limited to residence, food, clothes, and other essentials for her future well-being.

“Such assertions of illicit relationship made by a spouse have been held to be acts of cruelty by the Supreme Court in Vijay Kumar Ramchandra Bhate v. Neela Vijaykumar Bhate (MANU/ SC/0316/2003:(2003) 6 SCC 334). While deliberating on the accusations of unchastity and extra-marital relationships levelled by the husband, the Apex Court observed that such allegations constitute grave assault on the character, honour, reputation and health of the wife and amount to the worst form of cruelty. Such assertions made in the Written Statement or suggested in the course of cross-examination, being of a quality, which cause mental pain, agony and suffering are sufficient by itself to amount to the reformulated concept of cruelty in matrimonial law. Placing reliance on this judgement, the Supreme Court, in Nagendra v. K. Meena (MANU/ SC/1180/2016:(2016) 9 SCC 455), observed that unsubstantiated allegations of the extra-marital affair with the maid levelled by the wife against the husband, amount to cruelty. When there is a complete lack of evidence to suggest such an affair, the baseless and reckless allegations are serious actions which can be a cause for mental cruelty warranting a decree of divorce. Making such serious allegations against the respondent/husband again amounts to cruelty as has been held in Jayachandra v. Aneel Kaur (MANU/SC/1023/2004:(2005) SCCR 65) and Harminder Kaur v. Major M.S. Brar (II (1992) DMC 431). In view of above discussion and settled position of law, we are of the considered opinion that the learned Additional District Judge in its well-reasoned judgment of 16.07.2005 has rightly concluded that the appellant/wife had treated the respondent/husband with physical and mental cruelty entitling him to divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955”. [Extract from Saroj v. Suraj Mal decided on October 31, 2023 by Delhi High Court, MANU/ DE/7461/2023].

71. What does the Supreme Court consider as the worst form of cruelty in matrimonial law, based on the provided para?

(A) Allegations which lack evidence and affects the reputation of a spouse.

(B) Allegations which could cause mental pain and agony.

(C) Unsubstantiated allegations of unchastity and extra-marital relationships. (D) Wrong allegations made in written statement or suggested in the course of examination.

Correct Answer: C. Unsubstantiated allegations of unchastity and extra-marital relationships.

Explanation of Each Option:
(A) Incorrect. While allegations lacking evidence and affecting reputation are considered cruel, they are not specified as the worst form of cruelty in matrimonial law according to the Supreme Court's view.
(B) Incorrect. Allegations causing mental pain and agony are indeed forms of cruelty, but the Supreme Court specifically highlights allegations of unchastity and extra-marital relationships as the worst form.
(C) Correct. The Supreme Court has identified unsubstantiated allegations of unchastity and extra-marital relationships as constituting the worst form of cruelty because they assault the character, honor, reputation, and health of the spouse, leading to severe mental pain and agony.

(D) Incorrect. While wrong allegations in any form are cruel, the Supreme Court specifically points out that allegations of unchastity and extra-marital relationships are the worst form of cruelty, beyond just being wrong or suggested during examination.

72. In the case of Nagendra v. K. Meena, the Supreme Court of India concluded that:

(A) Unsubstantiated allegations of an extra-marital affair with the maid by the wife are evidence of the character of the wife and hence divorce can be granted.
(B) Baseless and reckless allegations of an extra-marital affair with the maid by the wife cannot be accepted and can be considered as cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955.
(C) Lack of evidence in the case of an extra-marital affair with the maid is inconclusive. (D) The husband’s actions are irrelevant in determining cruelty. When there is a complete lack of evidence to suggest an affair a decree of divorce can be granted.

Correct Answer: B. Baseless and reckless allegations of an extra-marital affair with the maid by the wife cannot be accepted and can be considered as cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955. Explanation of Each Option:

(A) Incorrect. The Supreme Court's conclusion was not based on the character of the wife but on the nature of the allegations and their impact on the husband, constituting cruelty. (B) Correct. The Supreme Court found that baseless and reckless allegations, especially without evidence, constitute mental cruelty, which can be a ground for divorce under the Hindu Marriage Act. This is because such allegations can cause significant distress and damage to the spouse's mental well-being.
(C) Incorrect. The Supreme Court did not conclude that the lack of evidence in allegations is inconclusive; rather, it focused on how baseless allegations constitute cruelty.

(D) Incorrect. The conclusion was specifically about the impact of baseless allegations on the husband and how they amount to cruelty, not about the relevance of the husband's actions in determining cruelty.

73. In the case of Jayachandra v. Aneel Kaur, what action is considered as cruelty against the respondent/husband?

(A) Any serious allegation, which cannot be proved with evidence.
(B) Any unsubstantiated allegations, which cannot be considered as a ground for divorce under the Hindu Marriage Act, 1955.
(C) Physical or mental violence, which can be considered as cruelty under the Hindu Marriage Act, 1955.
(D) Allegations of the unproved extra-marital affair.

Correct Answer: D. Allegations of the unproved extra-marital affair. Explanation

of Each Option:

(A) Incorrect. While serious allegations without proof are indeed a form of cruelty, this option is too broad and does not specify the type of allegations, which in the context of Jayachandra v. Aneel Kaur, specifically pertains to unproved extra-marital affairs. (B) Incorrect. This option inaccurately suggests that any unsubstantiated allegations cannot be considered grounds for divorce under the Hindu Marriage Act, 1955. The Act does consider certain types of unsubstantiated allegations, such as those of extra-marital affairs, as grounds for divorce due to cruelty.
(C) Incorrect. Although physical or mental violence is a form of cruelty under the Hindu Marriage Act, 1955, the specific action considered in Jayachandra v. Aneel Kaur relates to allegations of an unproved extra-marital affair.
(D) Correct. The Supreme Court in Jayachandra v. Aneel Kaur specifically considered allegations of an unproved extra-marital affair as a form of mental cruelty against the respondent/husband. Such allegations, without evidence, can severely affect the mental health and reputation of the accused spouse, constituting cruelty under the Act.

74. Based on the above passage, give the reason why the Supreme Court in the mentioned para concluded that the appellant/wife treated the respondent/husband with cruelty?

(A) Her actions before the court fit in the meaning of cruelty under Section 13(1)(ia) of the HMA, 1955.
(B) It is a settled position of law that unsubstantiated serious allegations amount to cruelty.
(C) Under the reformulated concept of cruelty in matrimonial law, not only physical violence but causing mental agony is a matrimonial offence.
(D) There is lack of evidence for the allegations made by wife.

Correct Answer: B. It is a settled position of law that unsubstantiated serious allegations

amount to cruelty. Explanation of Each Option:

(A) Incorrect. While the actions before the court could fit the definition of cruelty under Section 13(1)(ia) of the Hindu Marriage Act (HMA), 1955, this option does not directly address the specific reason provided by the Supreme Court regarding unsubstantiated allegations.
(B) Correct. The Supreme Court's conclusion was based on the principle that unsubstantiated serious allegations, such as those of unchastity or extra-marital affairs without evidence, amount to cruelty. This principle is a settled position of law that addresses the severe impact such allegations can have on the mental well-being and reputation of the accused spouse. (C) Incorrect. Although the reformulated concept of cruelty includes mental agony, this option does not specifically address the core reason mentioned in the passage, which focuses on the nature of the allegations themselves.
(D) Incorrect. The lack of evidence for the allegations made by the wife is indeed a factor, but the specific reason for concluding cruelty is the nature of the unsubstantiated allegations and their recognized impact under law, not merely the absence of evidence.

75. According to the Supreme Court’s observations in the provided para, what did the court emphasize regarding the quality of allegations related to unchastity and extramarital relationships?

(A) False allegations of unchastity and extra-marital relationships is a ground for divorce. (B) They are one of the factors in determining cruelty.

(C) They constitute a grave assault on the character, honour, and reputation of the spouse. (D) They should only be considered if proven beyond a reasonable doubt.

Correct Answer: C. They constitute a grave assault on the character, honour, and reputation of the spouse. Explanation of Each Option:

(A) Incorrect. While false allegations can indeed be a ground for divorce, this option does not capture the emphasis placed by the Supreme Court on the nature of the allegations as a grave assault on the spouse's personal integrity.
(B) Incorrect. Although these allegations are a factor in determining cruelty, this option does not fully capture the Supreme Court's emphasis on the severe impact these allegations have on a spouse's character and reputation.
(C) Correct. The Supreme Court emphasized that unsubstantiated allegations of unchastity and extra-marital relationships are considered a grave assault on the character, honour, and reputation of the spouse, highlighting the profound negative impact such allegations have on an individual's social standing and mental well-being.
(D) Incorrect. The focus of the Supreme Court's observation is not on the burden of proof but on the nature and impact of the allegations themselves, specifically how they assault the character and reputation of the accused spouse.

“The question can also be considered from another point of view. Supposing the police send a report viz. a charge-sheet, under Section 170 of the Code. As we have already pointed out, the Magistrate is not bound to accept that report, when he considers the matter judicially. But can he differ from the police and call upon them to submit a final report, under Section 169? In our opinion, the Magistrate has no such power. If he has no such power, in law, it also follows that the Magistrate has no power to direct the police to submit a charge-sheet, when the police have submitted a final report that no case is made out for sending the accused for trial. The functions of the Magistracy and the police, are entirely different, and though, in the circumstances mentioned earlier, the Magistrate may or may not accept the report, and take suitable action, according to law, he cannot certainly infringe upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view. Therefore, to conclude, there is no power, expressly or impliedly conferred, under the Code, on a Magistrate to call upon the police to submit a charge-sheet, when they have sent a report under Section 169 of the Code, that there is no case made out for sending up an accused for trial.” [Extracted from Abhinandan Jha v. Dinesh Mishra, (1967) 3 SCR 668, para 19-20].

76. The above-mentioned case deals with the power of magistrate to take cognizance on police report under which provision of the Code of Criminal Procedure, 1973?

(A) Section 190(1)(b)
(B) Section 159
(C) Section 190(1)(a)
(D) Section 173(8)

Correct Answer: A. Section 190(1)(b)

Explanation of Each Option:
(A) Correct. Section 190(1)(b) of the Code of Criminal Procedure, 1973, empowers a magistrate to take cognizance of an offense upon receiving a police report of such facts that constitute an offense. This is the relevant section under which a magistrate has the authority to proceed based on the information provided by the police through their report.
(B) Incorrect. Section 159 is related to the power of a magistrate to direct an investigation, or in certain cases, a preliminary inquiry. It does not directly deal with the power of a magistrate to take cognizance of an offense based on a police report.
(C) Incorrect. Section 190(1)(a) allows a magistrate to take cognizance of any offense upon receiving a complaint of facts that constitute such offense, not specifically on receiving a police report.
(D) Incorrect. Section 173(8) deals with the power of the police to conduct further investigation after a report has been filed under Section 173(2), not the magistrate's power to take cognizance based on a police report.

77. If the Court is not satisfied with the police report, does the Code of Criminal Procedure allow for direction of further investigation?

(A) No, the role of court is limited to adjudication.
(B) Yes, court can direct further investigation with specific instruction for a desired result.
(C) Yes, court can direct further investigation at pre-cognizance stage.
(D) None of the above.

Correct Answer: C. Yes, court can direct further investigation at pre-cognizance stage.

Explanation of Each Option:

(A) Incorrect. The court's role is not strictly limited to adjudication. Under certain provisions of the Code of Criminal Procedure, courts have the authority to direct further investigation if they are not satisfied with the report submitted by the police.
(B) Incorrect. While the court can indeed direct further investigation, the direction is not typically for a desired result in terms of outcome but rather to ensure that all aspects of the case have been thoroughly investigated. The objective is to gather all relevant facts and evidence.
(C) Correct. The Code of Criminal Procedure allows the court to direct further investigation if it is not satisfied with the initial investigation or the police report, even before taking cognizance of the offense. This ensures that sufficient evidence is gathered to proceed with the case.
(D) Incorrect. The Code of Criminal Procedure does provide for the direction of further investigation, making this option incorrect.

78. If police submit a final report, does the Code of Criminal Procedure, allow Magistrate to take cognizance on the final report?

(A) Yes, magistrate can take cognizance on final report despite no charges listed in it.
(B) No, Magistrate cannot take cognizance till the time chargesheet is filed.
(C) Magistrate can take cognizance provided an order under section 156 has been given for investigation.
(D) None of the above.

Correct Answer: A. Yes, magistrate can take cognizance on final report despite no charges listed in it. Explanation of Each Option:

(A) Correct. A magistrate has the authority to take cognizance of an offense based on a final report submitted by the police, even if no charges have been listed. The magistrate can evaluate the report and decide whether to proceed with the case based on the evidence presented.
(B) Incorrect. The magistrate's power to take cognizance is not strictly conditional upon the filing of a charge sheet. The magistrate can take cognizance based on a final report, which might conclude that no offense has been made out.
(C) Incorrect. While a magistrate can order an investigation under section 156(3), this option does not accurately describe the magistrate's power to take cognizance on a final report submitted by the police.

(D) Incorrect. The correct answer is provided in option (A), indicating that a magistrate can indeed take cognizance based on a final report.

79. If after submission of police report, there is a requirement to add further report on the basis of newly found evidence, is it permissible under the Code of Criminal Procedure?

(A) No, it is permissible only at the first instance, once a report has been submitted there cannot be further reports to the same under section 173(6).
(B) It is permissible under section 160 with the permission of the court.
(C) Yes, it is permissible under section 173(8).
(D) None of the above.

Correct Answer: C. Yes, it is permissible under section 173(8). Explanation

of Each Option:

(A) Incorrect. The Code of Criminal Procedure does allow for further investigation and submission of additional reports even after the initial report has been submitted.
(B) Incorrect. Section 160 pertains to the police's power to require attendance of witnesses, not to the submission of additional reports following further investigation.
(C) Correct. Section 173(8) specifically provides for further investigation and submission of supplementary reports if new evidence is found after the initial report has been filed. This ensures that all relevant evidence is considered before the case proceeds.
(D) Incorrect. The correct provision allowing for additional reports based on newly found evidence is mentioned in option (C), making this option incorrect.

80. In case one of the alleged offenses is of cognizable nature and there are three additional alleged offenses of a non-cognizable nature, what would be the nature of the case?

(A) There will be two separate cases depending on the nature of the offence as per section 155(1).
(B) It will be collectively considered as a non-cognizable case under section 155(4).
(C) The nature of the case would be cognizable as per section 155(4).
(D) None of the above.

Correct Answer: C. The nature of the case would be cognizable as per section 155(4).

Explanation of Each Option:

(A) Incorrect. The Code of Criminal Procedure does not require splitting offenses based on their nature (cognizable or non-cognizable) into separate cases. The entire case can be processed based on the nature of the most serious offense.

(B) Incorrect. The presence of a cognizable offense dictates the nature of the case. The case does not become non-cognizable simply because there are additional non-cognizable offenses alleged.
(C) Correct. According to the principles governing criminal procedure in India, if any part of a case involves a cognizable offense, the entire case is treated as cognizable. This allows the police to investigate without a warrant, which is necessary for effectively addressing the cognizable offense(s).
(D) Incorrect. The correct approach to determining the nature of the case when both cognizable and non-cognizable offenses are alleged is provided in option (C), where the case is treated as cognizable if it includes at least one cognizable offense.

"There is no gainsaying that an able bodied youthful Jawan when physically assaulted by his superior may be in a state of provocation. The gravity of such a provocation may be heightened if the physical beating was meant to force him to submit to unnatural carnal intercourse to satisfy the superior's lust. The store room incident involving the appellant and the deceased is alleged to have taken place when the deceased had bolted the door of the store room to keep out any intruder from seeing what was happening inside. By any standard the act of a superior to humiliate and force his subordinate in a closed room to succumb to the lustful design of the former was a potent recipe for anyone placed in the appellant's position to revolt and retaliate against the treatment being given to him. What may have happened inside the store room if the appellant had indeed revolted and retaliated against the unbecoming conduct of the deceased is a matter of conjecture. The appellant or any one in his position may have retaliated violently to the grave peril of his tormentor. The fact of the matter, however, is that the appellant appears to have borne the assault without any retaliation against the deceased-superior and somehow managed to escape from the room…All that the evidence proves is that after the said incident * 28 PG the appellant was seen crying and depressed and when asked by his colleagues, he is said to have narrated his tale of humiliation at the hands of the deceased…. That appears to have happened in the present case also for the appellant's version is that he and his colleagues had planned to avenge the humiliation by beating up the deceased in the evening when they all assemble near the water heating point. That apart, the appellant attended to his normal duty during the day time and after the evening dinner, went to perform his guard duty at 2100 hrs." [Extracted from B.D Khunte v. Union of India, Criminal Appeal No. 2328 of 2014, para 12-13].

Question 81 Which of the following are specific exceptions to Section 300,

IPC 1860?

(A) Private defence, Sudden fight without premeditation, consent.
(B) Duress, Intoxication, private defence.
(C) Grave and sudden provocation, private defence, Insanity.
(D) Grave and sudden provocation, Exceeding the right of private defence in good faith, Sudden fight without premeditation.

Correct Answer: (D) Grave and sudden provocation, Exceeding the right of private defence in good faith, Sudden fight without premeditation.

Explanation:

- (A) While private defence and sudden fight without premeditation are exceptions, consent is not specifically listed under the exceptions to Section 300 of the IPC.
- (B) Duress and intoxication are not listed as specific exceptions under Section 300 of the IPC. Private defence is a valid exception, but not sufficient alone for this option.
- (C) Grave and sudden provocation and insanity are exceptions under Section 300, but the inclusion of private defence alone does not cover the full range of exceptions listed.
- (D) Correct. This option accurately represents specific exceptions under Section 300 of the IPC: grave and sudden provocation, exceeding the right of private defence in good faith, and sudden fight without premeditation are all recognized exceptions.

Question 82 What is the difference between general and specific defences

in IPC 1860?

(A) There is no difference, they both apply to all offences in exceptional cases.
(B) General defences apply to all kinds of offences and covered in Chapter III of IPC 1860 while specific defences are specific to the respective offence.
(C) General defences apply to all kinds of offences and covered in Chapter-IV of IPC 1860 while specific defences are specific to the respective offence. (D) None of the above.

Correct Answer: (B) General defences apply to all kinds of offences and covered in Chapter III of IPC 1860 while specific defences are specific to the respective offence.

Explanation:

- (A) Incorrect. There is a clear distinction between general and specific defences in the IPC.
- (B) Correct. General defences are covered under Chapter III of the IPC and apply universally across offences, whereas specific defences are tailored to particular offences or situations.
- (C) Incorrect. The correct chapter covering general defences in the IPC is Chapter III, not Chapter IV.
- (D) Incorrect. There are distinct differences between general and specific defences as outlined in the IPC.

Question 83

Under which exception, it is expressly stated that it is immaterial which party offered the provocation?
(A) Sudden Fight without premeditation
(B) Grave and sudden provocation

(C) Duress
(D) Consent

Correct Answer: (A) Sudden Fight without premeditation Explanation:

- (A) Correct. In the context of sudden fight without premeditation, it is immaterial which party offered the provocation. This exception acknowledges the spontaneous nature of the conflict.
- (B) Incorrect. For grave and sudden provocation, the source of provocation is relevant to determine if the provoked reaction was reasonable.
- (C) Incorrect. Duress refers to being forced or coerced into committing an act, and the concept of provocation does not directly apply.
- (D) Incorrect. Consent implies agreement or permission, which does not relate to the immateriality of provocation.

Question 84 Which of the following is a proviso to the exception of Grave and Sudden

Provocation?

(A) Provocation has to be grave and sudden.
(B) Provocation has to be enough to lose self-control.
(C) Provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant. (D) All of the above.

Correct Answer: (D) All of the above.

Explanation:

- (A) Correct as part of the definition, but not sufficient alone.
- (B) Correct as it describes the effect of provocation on the accused.
- (C) Correct as it specifies exceptions to what constitutes provocation.
- (D) Correct. All provided options are aspects of the proviso to the exception of grave and sudden provocation under Section 300 of the IPC, making this the most comprehensive and accurate answer.

Question 85

Which of the following were stated in K.M. Nanavati v. State of Maharashtra case? (A) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control.
(B) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to s. 300 of the Indian Penal Code.

(C) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (D) All of the above.

Correct Answer: (D) All of the above.

Explanation:

- (A) Correct. This principle was affirmed in the Nanavati case, emphasizing the subjective and societal context of the accused.
- (B) Correct. The judgment recognized that not only physical but also verbal actions can provoke grave and sudden provocation.
- (C) Correct. The court acknowledged that the accused's mental state, influenced by prior actions of the victim, is relevant to assessing provocation.
- (D) Correct. All the statements accurately summarize principles elucidated in the K.M. Nanavati case regarding grave and sudden provocation.

It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in section 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, as section 84 of the Indian Penal Code provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. This being an exception, under section 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused; and the court shall presume the absence of such circumstances. Under section 105 of the Evidence Act, read with the definition of “shall presume” in section 4 thereof, the court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a “prudent man”. If the material placed before the court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of “prudent man”, the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under section 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a Judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the Judge whether the accused had the requisite intention laid down in section 299 of the Indian Penal Code. If the Judge has such reasonable doubt, he has to acquit the accused, for in that

event the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity. [Extract from Dahyabhai Chhaganbhai Thakker v. State of Gujarat, AIR 1964 SC 1563, para 5].

Question 86

The standard of proof referred to as the “prudent man” standard in the excerpt and in Section 4 of the Indian Evidence Act, 1872 would correspond to which of the following explanations?

(A) Preponderance of probabilities standard.

(B) Beyond reasonable doubt.

(C) Clear and convincing.

(D) Prima facie.

Correct Answer: (A) Preponderance of probabilities standard.

Explanation:

- (A) Correct. The "prudent man" standard is akin to the preponderance of probabilities standard, which means that something is more likely to be true than not. It is used in civil cases and some aspects of criminal cases, particularly in defenses.
- (B) Incorrect. Beyond reasonable doubt is a higher standard of proof used in criminal cases to determine the guilt of the accused, not directly related to the "prudent man" standard.
- (C) Incorrect. Clear and convincing is a higher standard of proof than preponderance of probabilities but lower than beyond reasonable doubt. It is not directly referred to as the "prudent man" standard.
- (D) Incorrect. Prima facie refers to the establishment of a legally required rebuttable presumption and is not equivalent to the "prudent man" standard of proof.

Question 87

In common parlance, the terms “onus of proof” and “burden of proof” are used interchangeably. However, in accurate usage in evidence law, the terms correspond to which of the following?

(A) Burden of proof refers to an evidential burden whereas onus of proof refers to a legal burden.

(B) Onus of proof refers to evidential burden whereas burden of proof refers to legal burden. (C) Onus of proof may refer to both evidential and legal burdens whereas burden of proof refers only to the evidential burden.

(D) Burden of proof and onus of proof are the same concept. “Burden” is used in Indian law, whereas “onus” is used in the common law system.

Correct Answer: (B) Onus of proof refers to evidential burden whereas burden of proof refers to legal burden.

Explanation:

- (A) Incorrect. The roles are reversed in this option; the legal burden (burden of proof) is the obligation to prove one's assertion or defense, whereas the evidential burden (onus of proof) involves producing evidence to support a claim.
- (B) Correct. The legal burden (burden of proof) lies with the party who would fail if no evidence at all were presented, typically the prosecution in criminal cases. The evidential burden (onus of proof) refers to the duty to present evidence to prove or disprove a disputed fact.
- (C) Incorrect. This option confuses the distinct roles of onus of proof and burden of proof.
- (D) Incorrect. While there may be regional differences in terminology, the conceptual distinction between the burden of proof (legal burden) and onus of proof (evidential burden) is recognized in both Indian and common law systems.

Question 88

Section 4 of the Indian Evidence Act, 1872 also refers to the concept of “conclusive proof”. In simple terms, the concept can be explained as:
(A) The proof of a fact through persuasive evidence which cannot be considered false. (B) The proof of a fact by the doctrine of judicial notice, and therefore not requiring any further proof.
(C) The declaration of a fact as conclusively proved by the statute, and then not allowing any evidence to disprove it.
(D) The presumption that a fact need not be proved when admitted as true by both parties to a suit or proceeding.

Correct Answer: (C) The declaration of a fact as conclusively proved by the statute, and then not allowing any evidence to disprove it.

Explanation:

- (A) Incorrect. Persuasive evidence that cannot be considered false does not fully capture the essence of "conclusive proof," which implies no room for counter-evidence.
- (B) Incorrect. Judicial notice involves recognizing certain facts as true without needing evidence, but it doesn't fully align with the definition of "conclusive proof."
- (C) Correct. "Conclusive proof" means that the fact is legally recognized as true beyond dispute, preventing any evidence to the contrary from being considered.
- (D) Incorrect. While admission by both parties does negate the need for proof, this is not what is typically meant by "conclusive proof" in the context of Section 4 of the Indian Evidence Act.

Question 89

With reference to the above excerpt, which of the following propositions emerges true in a criminal trial?

(A) Where the defence raises a plea of insanity under S.84, IPC, the prosecution must disprove this by leading evidence.

(B) Where the defence raises a plea of insanity under S.84, IPC, the prosecution has no additional burden, but the defence assumes the burden of proving insanity.

(C) Where the defence raises a plea of insanity under S.84, IPC, the prosecution must specifically prove mens rea by disproving the plea of insanity. (D) All of the statements above are true.

Correct Answer: (B) Where the defence raises a plea of insanity under S.84, IPC, the prosecution has no additional burden, but the defence assumes the burden of proving insanity.

Explanation:

- (A) Incorrect. While the prosecution must prove the guilt beyond a reasonable doubt, disproving insanity specifically is not their burden once the defense raises it; the defense must prove the insanity.
- (B) Correct. Once the defense raises the plea of insanity under Section 84 of the IPC, it is their burden to prove it to the satisfaction of the court.
- (C) Incorrect. The prosecution's requirement to prove mens rea does not change; however, it does not specifically have to disprove the plea of insanity beyond the general burden of proving guilt.
- (D) Incorrect. Only statement (B) accurately reflects the legal responsibilities regarding the plea of insanity in a criminal trial.

Question 90

Section 105 of the Indian Evidence Act, 1872 applies in which of the following circumstances?

(A) Where circumstances are pleaded by the accused bringing the case within a General Exception in the IPC.

(B) Where circumstances are pleaded by the accused bringing the case within a General Exception, special exception or proviso in the IPC or in any law defining the offence.

(C) Where the mens rea required for the offence is expressly negatived by the accused. (D) Where circumstances are pleaded by the accused bringing the case within a special exception that is recognised by the law.

Correct Answer: (B) Where circumstances are pleaded by the accused bringing the case within a General Exception, special exception or proviso in the IPC or in any law defining the offence.

Explanation:

- (A) Incorrect. While it covers general exceptions, it does not fully encompass the scope of Section 105, which also includes special exceptions and provisos.

- (B) Correct. This option correctly identifies that Section 105 applies when the accused claims the benefit of any exception, whether general, special, or proviso, in the IPC or any other law.
- (C) Incorrect. While negating mens rea is a strategy, this statement does not capture the breadth of circumstances under which Section 105 applies.
- (D) Incorrect. This is too narrow, as Section 105 applies not just to special exceptions but also to general exceptions and provisos in the IPC or other laws defining the offence.

Section 25-N of the Industrial Disputes Act, 1947 prescribes the conditions precedent to retrenchment of workmen. Section 25-O provides for the procedure for closing an undertaking of an industrial establishment. Under Section 25-N of the Act before retrenchment of workman can be affected two conditions must be fulfilled namely (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment or paid in lieu of such notice, wages for the said period; and (b) the prior permission of the appropriate Government has been obtained by the employer upon an application having been made. Sub-section (3) of Section 25-N vests power in the State Government to grant or refuse permission to retrench an employee. Section 25-O enjoins an employer, who intends to close an undertaking to apply for prior permission at least ninety days before the date on which the intended closure is to become effective, setting out the reasons for the intended closure and simultaneously serve a copy of such application on the representatives of the workmen in the prescribed manner. Sub-section (9) of Section 25-O provides that where an undertaking is permitted to be closed or permission for closure is deemed to be granted, every workman, who is employed in that undertaking immediately before the date of application for permission under the said section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. Evidently, both Section 25-N and 25-O are couched in a mandatory form. They give effect to the public policy of preventing the exploitation of labour by commanding the employer to follow the defined process for retrenchment of an individual or group of employees or for closure of the establishment as such. [Extracted with edits from the decision of the Bombay High Court in Esselworld Leisure Pvt. Ltd. v. Syam Kashinath Koli, 2023 SCC OnLine Bom 2102, decided on September 29, 2023].

Question 91

A workman shall be deemed to have rendered continuous service of one year under the Industrial Disputes Act, if

(A) Workman has worked under the same employer for Not less than 120 days. (B) Workman has worked under the same employer for Not less than 180 days.

(C) Workman has worked under the same employer for Not less than 240 days.

(D) Workman has worked under the same employer for Not less than 300 days.

Correct Answer: (C) Workman has worked under the same employer for Not less than 240 days.

Explanation:

- (A) Incorrect. While 120 days might apply in certain contexts, it is not the standard for determining a year of continuous service under the Industrial Disputes Act.
- (B) Incorrect. 180 days is closer but still not the standard used for a year of continuous service under the Industrial Disputes Act.
- (C) Correct. According to the Industrial Disputes Act, a workman is considered to have completed a year of continuous service if they have worked for at least 240 days in a year under the same employer.
- (D) Incorrect. 300 days exceeds the requirement for considering a year of continuous service under the Act.

Question 92

Consider the given statements.
I. Onus to prove continuous service for prescribed number of days lies on the workman.
II. The period of continuous service need not be in the same service or same type of service. III. Worked for not less than the prescribed period does not include paid holidays.

Choose the correct answer from the code given below:

(A) I and II are correct, III is incorrect.
(B) II and III are correct and I is incorrect.
(C) II is correct, I and III are incorrect.
(D) Only I is correct, II and III are incorrect.

Correct Answer: (A) I and II are correct, III is incorrect.

Explanation:

- (A) Correct. The onus to prove continuous service indeed lies on the workman, and the Act does not require the service to be of the same type for the duration. Paid holidays are typically included in the calculation of continuous service, making statement III incorrect.
- (B) Incorrect because statement I is also correct, and statement III is not correct as paid holidays are generally included in the count of days worked.
- (C) Incorrect because both statements I and II are correct.
- (D) Incorrect because statement II is also correct.

Question 93 Section 25N is applicable to which of the following industrial establishment(s)?

(A) Industrial Establishment where not less than 50 workmen were employed on an average per working day for the preceding twelve months. (B) Industrial establishment of a seasonal character.

(C) Industrial Establishment where not less than 100 workmen were employed on an average per working day for the preceding twelve months. (D) Both (b) and (c).

Correct Answer: (C) Industrial Establishment where not less than 100 workmen were employed on an average per working day for the preceding twelve months.

Explanation:

- (A) Incorrect. The threshold is not 50 workmen but higher for the applicability of Section 25N of the Industrial Disputes Act.
- (B) Incorrect. The nature of the establishment (seasonal or otherwise) is not the determining factor for the applicability of Section 25N, which is based on the number of employees.
- (C) Correct. Section 25N of the Industrial Disputes Act applies to industrial establishments where not less than 100 workmen were employed on an average per working day for the preceding twelve months.
- (D) Incorrect. Only the criteria regarding the number of workmen (not less than 100) determines the applicability of Section 25N, making option (C) the correct answer.

Question 94

What are the conditions for refusal of application of retrenchment by the appropriate government under section 25(3)?
(A) The workmen and the employer must be given a reasonable opportunity of being heard.
(B) The reasons for retrenchment must be genuine and adequate.
(C) The reasons for refusing the permission must be recorded in writing. (D) All of the above.

Correct Answer: (D) All of the above.

Explanation:

- (A) Correct. Fair hearing is a fundamental principle of natural justice, and both parties must have the opportunity to present their case.
- (B) Correct. The reasons for retrenchment need to be substantial and justifiable to ensure fairness and legality in the process.
- (C) Correct. Documentation and transparency in the decision-making process are essential, requiring reasons for refusal to be recorded in writing.
- (D) Correct. All listed conditions are necessary for the refusal of a retrenchment application under the relevant section of the Industrial Disputes Act, making this the most comprehensive and accurate answer.

Question 95 Consider the

given statements.

I. Application for closure shall be deemed to have been granted, if the appropriate government does not communicate the order granting or refusing permission within 30 days from the date of the application.

II. Section 25-O makes it mandatory for the employer, who intends to close down an undertaking to apply for prior permission at least ninety days before the date on which the intended closure is to become effective, setting out the reasons for the intended closure and to simultaneously serve a copy of such application on the representatives of the workmen in the prescribed manner.

III. Section 25-O is not applicable to an undertaking engaged in Construction of buildings, bridges, roads, canals, dams or for other construction work. Choose the correct answer from the code given below:

(A) I and II are correct, III is incorrect.
(B) II and III are correct and I is incorrect.
(C) II is correct, I and III are incorrect.
(D) Only I is correct, II and III are incorrect.

Correct Answer: (B) II and III are correct and I is incorrect.

Explanation:

- (A) Incorrect. This option suggests that statements I and II are correct while III is incorrect, but based on the adjustment, this is not the intended accurate response.
- (B) Correct. Statement II accurately describes the mandatory process for employers intending to close down an undertaking, including the requirement for prior permission and notice to workmen. Statement III correctly notes the exemption of constructionrelated undertakings from Section 25-O, reflecting specific provisions or interpretations of the law that exclude certain types of work from standard closure procedures. Statement I is incorrect as the actual period for deemed approval may vary or require more specific conditions than simply not receiving communication within 30 days.
- (C) Incorrect. This option does not recognize the accuracy of statement III alongside II.
- (D) Incorrect. This option inaccurately suggests that only statement I is correct, disregarding the valid points made in statements II and III.

Indeed, in England, in the celebrated Sea Angel case, 2013 (1) Lloyds Law Report 569, the modern approach to frustration is well put, and the same reads as under: “In my judgment, the application of the doctrine of frustration requires a multi-factorial approach. Among the factors that have to be considered are the terms of the contract itself, its matrix or context, the parties’ knowledge, expectations, assumptions and contemplations, in particular as to risk, as at the time of the contract, at any rate so far as these can be ascribed mutually and objectively, and then the nature of the supervening event, and the parties’ reasonable and objectively ascertainable calculations as to the possibilities of future performance in the new circumstances. Since the subject matter of the doctrine of frustration is contract, and contracts are about the allocation of risk, and since the allocation and assumption of risk is not simply a matter of express or implied

provision but may also depend on less easily defined matters 33 * PG such as “the contemplation of the parties”, the application of the doctrine can often be a difficult one. In such circumstances, the test of “radically different” is important: it tells us that the doctrine is not to be lightly invoked; that mere incidence of expense or delay or onerousness is not sufficient; and that there has to be as it were a break in identity between the contract as provided for and contemplated and its performance in the new circumstances.” “… It is clear from the above that the doctrine of frustration cannot apply to these cases as the fundamental basis of the PPAs remains unaltered. Nowhere do the PPAs state that coal is to be procured only from Indonesia at a particular price. In fact, it is clear on a reading of the PPA as a whole that the price payable for the supply of coal is entirely for the person who sets up the power plant to bear. The fact that the fuel supply agreement has to be appended to the PPA is only to indicate that the raw material for the working of the plant is there and is in order. It is clear that an unexpected rise in the price of coal will not absolve the generating companies from performing their part of the contract for the very good reason that when they submitted their bids, this was a risk they knowingly took. We are of the view that the mere fact that the bid may be non-escalable does not mean that the respondents are precluded from raising the plea of frustration, if otherwise it is available in law and can be pleaded by them. But the fact that a non-escalable tariff has been paid for, for example, in the Adani case, is a factor which may be taken into account only to show that the risk of supplying electricity at the tariff indicated was upon the generating company”. [Extracted from Energy Watchdog v. Central Electricity Regulatory Commission (2017) 14 SCC 80].

Question 96 Which of the following is incorrect about a force

majeure clause?

(A) The burden of proving the applicability of a force majeure clause rests on the party seeking to invoke it.
(B) A force majeure clause ensures that non-performance is no breach because no performance was due in the circumstances which have occurred.
(C) ‘Frustration of contract’ and ‘force majeure’ are indeed one and the same concept. (D) Force majeure clauses come in many shapes and sizes, ranging from the simple clause providing for cancellation/termination of the contract in the event that performance is prevented by circumstances comprehended within the term force majeure, to clauses of immense complexity containing, inter alia, a list of excusing events, provisions for notices to be issued to the promisee and detailing the consequences of the force majeure event.

Correct Answer: (C) ‘Frustration of contract’ and ‘force majeure’ are indeed one and the same concept.

Explanation:

- (A) Incorrect. It is established legal principle that the party invoking a force majeure clause must demonstrate its applicability to the situation at hand.
- (B) Incorrect. This accurately describes the protective purpose of a force majeure clause, which is to excuse non-performance under specific, uncontrollable circumstances.

- (C) Correct (as the incorrect statement). This is false because frustration of contract and force majeure are distinct concepts. Frustration automatically applies under law when unforeseeable events render contractual obligations impossible, without the need for a specific clause. Force majeure must be explicitly included in the contract and specifically defines the scope of excusable non-performance.
- (D) Incorrect. This statement correctly outlines the variability and detailed nature of force majeure clauses in contracts.

Question 97 Which of the following is a leading judgement on 'frustration

of contract'?

(A) Central Inland Water Transport Corporation v. Brojo Nath Ganguly, (1986) 3 SCC 156. (B) Satyabrata Ghose v. Mugneeram Bangur & Co., 1954 SCR 310.
(C) Fateh Chand v. Balkishan Dass, (1964) 1 SCR 515.
(D) Thornton v. Shoe Lane Parking Ltd., (1971) 2 QB 163 (CA).

Correct Answer: (B) Satyabrata Ghose v. Mugneeram Bangur & Co., 1954 SCR 310.

Explanation:

- (A) Incorrect. While an important case, it's not primarily focused on the doctrine of frustration of contract.
- (B) Correct. This case is a landmark judgment by the Supreme Court of India on the doctrine of frustration of contract, elucidating when a contract becomes void if it becomes impossible to perform, due to an unforeseen event.
- (C) Incorrect. Although relevant to contract law, it deals with different aspects of contractual obligations and remedies.
- (D) Incorrect. This is a notable case in English law regarding the conditions of entering a contract, not specifically about frustration of contract.

Question 98 Which of the following is an incorrect proposition as regards frustration of contract? (A) The courts have the general power to absolve a party from the performance of its part of the contract if its performance has become onerous on account of an unforeseen turn of events.
(B) If a contract contains a term according to which it would stand discharged on the happening of certain contingencies, dissolution of the contract would take place under the terms of the contract itself and such cases would be outside the purview of section 56 of the Indian Contract Act; such cases have to be dealt with under section 32 of the Indian Contract Act.
(C) The application of the doctrine of frustration must always be within narrow limits.
(D) Section 56 of the Indian Contract Act does not apply to lease (completed conveyance).

Correct Answer: (D) Section 56 of the Indian Contract Act does not apply to lease (completed conveyance).

Explanation:

- (A) Incorrect. This is a correct proposition, reflecting the principle that courts can relieve parties from their contractual obligations if unforeseen events make performance unduly burdensome.
- (B) Incorrect. This statement accurately reflects the legal distinction between contracts that contain specific terms for their termination under certain conditions (Section 32) and the general doctrine of frustration (Section 56).
- (C) Incorrect. This is a correct statement, emphasizing that frustration of contract is a doctrine applied cautiously and within specific, narrow confines.
- (D) Correct (as the incorrect statement). This statement is misleading because Section 56 of the Indian Contract Act, which deals with the impossibility of performance, does

  indeed apply to contracts in general, including agreements that could cover leases. The doctrine of frustration can apply to lease agreements under certain circumstances, making the performance of the contract impossible. However, the application of this doctrine to leases is nuanced and subject to specific legal interpretation, particularly in jurisdictions where lease agreements are considered differently under property law. The statement oversimplifies the legal reality by implying a blanket non-applicability of Section 56 to leases, which is not accurate across all legal contexts.

Question 99

In Energy Watchdog v. Central Electricity Regulatory Commission, the Supreme Court found that the fundamental basis of the power purchase agreements (PPAs) between the parties was not premised on the price of coal imported from Indonesia. In fact, in the PPAs, there was a clause providing that changes in the cost of fuel, or the agreement becoming onerous to perform, are not treated as force majeure. Therefore, on the ground of the rise in price of Indonesian coal, the Court held that:

(A) Alternative modes of performance were available, albeit at a higher price; and that alone could not lead to the contract, as a whole, being frustrated.

(B) The contract was frustrated on account of an unexpected rise in the price of Indonesian coal excusing the generating company from performing its part of the contract.

(C) Even though the PPAs are not frustrated, on account of an unexpected rise in the price of Indonesian coal, the force majeure clause could be invoked in the given case to extend relief to the generating company.

(D) The contract was frustrated on account of an unexpected rise in the price of Indonesian coal because the performance of an act might not be literally impossible, but it may be impracticable and useless from the point of view of the object and purpose of the contract.

Correct Answer: (A) Alternative modes of performance were available, albeit at a higher price; and that alone could not lead to the contract, as a whole, being frustrated.

Explanation:

- (A) Correct. The Supreme Court's decision emphasized that an increase in fuel costs does not constitute a force majeure event under the PPAs, as the contracts did not specifically tie performance obligations to stable coal prices. The availability of alternatives, despite higher costs, negates the argument for contract frustration based on economic hardship.
- (B) Incorrect. The court did not find that the contract was frustrated by the rise in coal prices. Instead, it held that such economic changes were risks assumed by the generating companies.
- (C) Incorrect. The court explicitly stated that the force majeure clause could not be invoked to excuse non-performance due to the rise in coal prices, as the contracts anticipated such fluctuations as part of the business risk.

(D) Incorrect. The court rejected the notion that an increase in coal prices could frustrate the PPAs, indicating that the contracts were designed to allocate the risk of such price volatility to the generating companies.

Question 100 The maxim lex non cogit ad

impossibilia means:

(A) A personal right of action dies with the person.
(B) The burden of proof lies upon him who asserts and not upon him who denies.

(C) No person can claim any right arising out of his own wrongdoing.

(D) The law does not compel a promisor to do that which is impossible to perform.

Correct Answer: (D) The law does not compel a promisor to do that which is impossible to perform.

Explanation:

- (A) Incorrect. This statement is related to another legal principle, often summarized by the Latin maxim "actio personalis moritur cum persona," which means a personal right of action dies with the person.
- (B) Incorrect. This describes the general principle of the burden of proof, often encapsulated in the maxim "ei incumbit probatio qui dicit, non qui negat," meaning the burden of proof lies on the one who declares, not on one who denies.
- (C) Incorrect. This principle is associated with the doctrine of "ex turpi causa non oritur actio," indicating that no action arises from a base cause, or in simpler terms, one cannot pursue legal remedy for a situation one created through their own illegal actions.
- (D) Correct. "Lex non cogit ad impossibilia" is a principle acknowledging that the law does not expect individuals to perform tasks that are impossible. This maxim underlines the legal understanding that contracts and obligations are bound by the realm of what is feasibly possible.

“The Specific Relief Act, 1963 was enacted to define and amend the law relating to certain kinds of specific relief. It contains provisions, inter alia, specific performance of contracts, contracts not specifically enforceable, parties who may obtain and against whom specific performance may be obtained, etc. It also confers wide discretionary powers upon the courts to decree specific performance and to refuse injunction, etc. As a result of wide discretionary powers, the courts in majority of cases award damages as a general rule and grant specific performance as an exception. The tremendous economic development since the enactment of the Act have brought in enormous commercial activities in India including foreign direct investments, public private partnerships, public utilities infrastructure developments, etc., which have prompted extensive reforms in the related laws to facilitate enforcement of contracts, settlement of disputes in speedy manner. It has been felt that the Act is not in tune

with the rapid economic growth happening in our country and the expansion .In view of the above, it is proposed to do away with the wider discretion of courts to grant specific performance and to make specific performance of contract a general rule than exception subject to certain limited grounds. Further, it is proposed to provide for substituted performance of contracts, where a contract is broken, the party who suffers would be entitled to get the contract performed by a third party or by his own agency and to recover expenses and costs, including compensation from the party who failed to perform his part of contract. This would be an alternative remedy at the option of the party who suffers the broken contract. It is also proposed to enable the courts to engage experts on specific issues and to secure their attendance, etc. A new section 20A is proposed for infrastructure project contracts which provides that the court shall not grant injunction in any suit, where it appears to it that granting injunction would cause hindrance or delay in the continuance or completion of the infrastructure project... Special courts are proposed to be designated to try suits in respect of contracts relating to infrastructure projects and to dispose of such suits within a period of twelve months from the date of service of summons to the defendant and also to extend the said period for another six months in aggregate, after recordings reasons therefor." [Extracted from Statement of Objects and Reasons, the Specific Relief (Amendment) Bill, 2017].

101. At present, which of the following is the correct proposition as regards the specific performance of a contract:

- (A) As a general rule, the specific performance of a contract is now a general remedy.
- (B) As a general rule, the specific performance of a contract is enforced by the court when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done.
- (C) As a general rule, the specific performance of a contract is enforced by the court when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.
- (D) Both (B) and (C). Correct Answer: (A) Explanation:
- (A) Correct. This reflects the legislative intent behind the Specific Relief (Amendment) Act, 2018, making specific performance a general rule to facilitate contract enforcement and adapt to economic developments.
- (B) Incorrect. While true in specific circumstances, this option does not represent the general rule after the amendment.
- (C) Incorrect. This was more applicable prior to the amendments when specific performance was considered an exception rather than the rule.
- (D) Incorrect. This combines two conditions that are more specific and do not accurately represent the shift towards making specific performance the general remedy.

102. At present, the specific performance of a contract is enforced by the court subject to:

- (A) The provisions contained in sections 11(2) and 16 of the Specific Relief Act, 1963.

(B) The provisions contained in sections 11(2), 16, and 20 of the Specific Relief Act, 1963.

- (C) The provisions contained in sections 11(2), 14, and 20 of the Specific Relief Act, 1963.
- (D) The provisions contained in sections 11(2), 14, and 16 of the Specific Relief Act, 1963.

Correct Answer: (D) Explanation:

- (A) Incorrect because it excludes critical sections that detail the enforceability of contracts.
- (B) Incorrect as it incorrectly combines sections that are not all directly related to the enforcement criteria.
- (C) Incorrect because it suggests section 20 plays a direct role in the enforceability of all contracts, which is not the case.
- (D) Correct. It correctly identifies the sections that outline the conditions under which specific performance can be enforced, including who can seek it (section 11(2)), what contracts can be specifically enforced (section 14), and the personal bars to relief (section 16).

103. Which of the following is the correct proposition regarding ‘substituted performance of a contract’?

- (A) Where the contract is broken due to non-performance of promise by any party, the party who suffers by such breach has the option of substituted performance through a third party or by his own agency, and recover the expenses and other costs actually incurred, spent or suffered by him, from the party committing such breach.
- (B) The party who suffers by breach of contract can concurrently obtain substituted performance of the contract and specific performance against the party in breach.
- (C) Both (A) and (B).
- (D) Neither (A) nor (B).

Correct Answer: (A) Explanation:

- (A) Correct. This option accurately reflects the concept of substituted performance introduced by the amendments, allowing a non-breaching party to seek alternative means to fulfill the contract's obligations and recover costs from the breaching party.
- (B) Incorrect. The law does not allow for both substituted performance and specific performance to be pursued concurrently against the breaching party as remedies.
- (C) Incorrect because (B) is not a correct representation of the legal provisions.

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(D) Incorrect as (A) correctly describes the legal provision for substituted performance.

104. The dismissal of a suit for specific performance of a contract or part thereof _____ the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be, _____ his right to sue for any other relief to which he may be entitled, by reason of such breach:

- (A) Shall not bar; but shall bar.
- (B) Shall bar; but shall not bar.
- (C) Shall bar; but shall bar.
- (D) Shall not bar; nor shall it bar.

Correct Answer: (B) Explanation:

- (A) Incorrect because the dismissal of a suit for specific performance does not prevent the plaintiff from suing for compensation or other reliefs related to the breach.
- (B) Correct. The first part is incorrect as dismissal does not necessarily bar suing for compensation, but correctly states that it does not bar the right to seek other reliefs.
- (C) Incorrect because it suggests the dismissal bars all further claims, which is not the case.
- (D) Incorrect as it suggests no bar exists on any form of subsequent legal action, which is not accurate in terms of compensation.

105. The _____, in consultation with the _____, shall designate, by notification published in the Official Gazette, one or more Civil Courts as Special Courts, within the local limits of the area to exercise jurisdiction and to try a suit under the Specific Relief Act, 1963 in respect of contracts relating to infrastructure projects:

- (A) Central Government; Chief Justice of India.
- (B) State Government; Chief Justice of India.
- (C) State Government; Chief Justice of the High Court.
- (D) Central Government; Chief Justice of the High Court. Correct Answer: (C)

Explanation:

- (A) Incorrect because the central government's role is not specified in this context for designating civil courts as special courts.
- (B) Incorrect as it incorrectly assigns the consultation role to the Chief Justice of India instead of the Chief Justice of the High Court within a state's jurisdiction.

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(C) Correct. This accurately reflects the procedure for designating civil courts as special courts for infrastructure project contracts, emphasizing the collaboration between state government and judiciary at the state level.

- (D) Incorrect because it mistakenly involves the Central Government in a process that is typically conducted at the state level.

While Section 245C of the Income Tax Act, 1961 provides that the disclosures as to income "not disclosed before the Assessing Officer" must accompany the application filed before the Settlement Commission, Section 245H provides that if the assessee has cooperated with the Settlement Commission and has made "full and true disclosure of his income", the Settlement Commission may grant immunity from prosecution and penalty. It is the case of the Revenue that Section 245H (1) cannot be read in isolation as Section 245C is embedded in 245H(1), and hence, both the Sections must be read harmoniously. That when so read, the requirement under Section 245H would be that disclosure of income "not disclosed before the Assessing Officer" must be made before the Commission. In this regard, it is observed that even if the pre-conditions prescribed under Section 245C are to be read into Section 245H, it cannot be said that in every case, the material "disclosed" by the assessee before the Commission must be something apart from what was discovered by the Assessing Officer. Section 245C read with Section 245H only contemplates full and true disclosure of income to be made before the Settlement Commission, regardless of the disclosures or discoveries made before/by the Assessing Officer. It is to be noted that the Order passed by Assessing Officer based on any discovery made, is not the final word, for, it is appealable. However, the assessee may accept the liability, in whole or in part, as determined in the assessment order. In such a case, the assessee may approach the Settlement Commission making 'full and true disclosure' of his income and the way such income has been derived. Such a disclosure may also include the income discovered by the Assessing Officer. [Extracted with edits from the decision of the Supreme Court in Kotak Mahindra Bank Ltd. v. Commissioner of Income Tax, Bangalore, 2023 LiveLaw (SC) 822, dated September 25, 2023].

106. The Settlement Commission, on an application for settlement of a case by the assessee can grant immunity from prosecution. Which of the following is correct?

- (A) The immunity from prosecution can be granted by the Settlement Commission only when the income disclosed by the Assessee to the Settlement Commission has not been discovered by the assessing officer before the disclosure by the assessee.
- (B) The immunity from prosecution can be granted by the Settlement Commission even if the Assessee has not cooperated with the Settlement Commission.
- (C) Immunity from prosecution can be granted only if the assessee makes before the Settlement Commission full and true disclosure of his income, the way income was derived, additional amount of tax payable on such income and other particulars.
- (D) The immunity from prosecution can be granted by the Settlement Commission for offences under the Income Tax Act as well offences under the IPC post 2007. Correct Answer: (C) Explanation:

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(A) Incorrect because immunity is not solely dependent on whether the income was previously undiscovered but on full and true disclosure and cooperation.

- (B) Incorrect because cooperation with the Settlement Commission is a prerequisite for granting immunity.
- (C) Correct. This emphasizes the conditions under which immunity from prosecution is granted, highlighting the importance of full and true disclosure by the assessee.
- (D) Incorrect as immunity from prosecution is specifically related to offences under the Income Tax Act, and the conditions do not extend to all IPC offences post 2007.

107. Chapter XIX-A, sections 245A-245M dealing with Settlement of Cases was inserted in the Income Tax Act, 1961 by which of the following amendment Act?

- (A) Taxation Laws (Amendment) Act, 1975.
- (B) Taxation Laws (Amendment) Act, 1987.
- (C) Taxation Laws (Amendment) Act, 2007.
- (D) Taxation Laws (Amendment) Act, 2014.

Correct Answer: (A) Explanation:

- (A) Correct. The Taxation Laws (Amendment) Act, 1975, introduced the concept of settlement of cases to streamline tax litigation and provide a mechanism for settlement.
- (B) Incorrect as this amendment came after the introduction of the settlement provisions.
- (C) Incorrect because it pertains to amendments made much later than the original introduction of settlement provisions.
- (D) Incorrect as it refers to more recent amendments not related to the initial insertion of settlement case provisions.

108. Consider the following statements.

1. The High Courts and Supreme Court while exercising powers under Articles 32, 226 or 136 of the Constitution of India, as the case may be, should not interfere with an order of the Settlement Commission except on the ground that the order contravenes provisions of the Act or has caused prejudice to the opposite party.
2. The High Courts and Supreme Court while exercising powers under Articles 32, 226 or 136 of the Constitution of India, as the case may be, may interfere with an order of the Settlement Commission on the grounds of fraud, bias or malice.
3. The Settlement Commission provided quick and easy remedy to the assessee allowing him to make full and true disclosure and therefore avoid the prosecution and appeals. Thus, the order of the Settlement Commission cannot be questioned by the Supreme Court or the High Court on any ground.

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Choose the correct answer from the Code given below.

(A) All are true.

- (B) Only III is true.
- (C) I and II are true
- (D) II and III are true.

Correct Answer: (C) Explanation:

- (A) Incorrect because statement III is not accurate; the High Courts and Supreme Court can question the orders on specific grounds.
- (B) Incorrect as statement III is not true, and the other statements are not acknowledged.
- (C) Correct. Statements I and II accurately reflect the limited circumstances under which the judiciary can interfere with the Settlement Commission's orders, emphasizing judicial oversight on procedural and substantive fairness grounds.
- (D) Incorrect because statement III inaccurately suggests absolute immunity from judicial review, which is not the case.

109. Consider the given statements.

1. An immunity granted to a person from prosecution shall stand withdrawn if such person fails to pay any sum specified in the settlement order.
2. Settlement Commission cannot grant immunity from prosecution where the proceedings for the prosecution have been instituted before the date of receipt of the application under section 245C.
3. An immunity from prosecution once granted by the Settlement Commission cannot be withdrawn on any ground.

Choose the correct answer from the Code given below.

- (A) Only I is true.
- (B) I and II are true but III is not true.
- (C) II and III are true.
- (D) All are true. Correct Answer: (B) Explanation:
- (A) Incorrect because it does not acknowledge the accuracy of statement II.
- (B) Correct. Statements I and II reflect conditions affecting the grant and maintenance of immunity from prosecution, highlighting circumstances where immunity can be either granted or revoked.

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(C) Incorrect as statement III is not true; immunity can be withdrawn under certain conditions.

- (D) Incorrect because statement III is not accurate regarding the irrevocability of immunity from prosecution.

110. Choose the most appropriate answer from the following.

- (A) When a person has made an application for settlement of a case before the Settlement Commission and the same has been allowed, such person shall not be allowed to make subsequent application for settlement in future cases.
- (B) When a person has made an application for settlement of a case before the Settlement Commission and the same has been allowed, any company in which such person holds more than fifty per cent of the shares shall not be allowed to make subsequent application for settlement in future cases.
- (C) When a person has made an application for settlement of a case before the Settlement Commission and the same has been allowed, there is no bar on such person or any related person of such person from making subsequent applications for settlement in future cases.
- (D) Both (a) and (b).

Correct Answer: (D) Explanation:

- (A) Correct within the context of (D), indicating restrictions on individuals who have previously utilized the settlement process.
- (B) Also correct within the context of (D), extending restrictions to entities controlled by individuals who have utilized the settlement process.
- (C) Incorrect because (D) establishes that there are indeed restrictions on subsequent applications for those involved in a previous settlement.
- (D) Correct. It consolidates the implications of options (A) and (B), providing a comprehensive view of the restrictions placed on subsequent applications for settlement by individuals and their closely controlled entities.

“In India, the government can be held liable for tortious acts of its servants and can be ordered to be paid compensation to the persons suffering as a result of the legal wrong. Article 294(b) of the Constitution declares that the liability of the Union Government or the State Government may arise “out of any contract or otherwise”. The word otherwise implies that the said liability may arise for tortious acts as well. Article 300 enables the institution of appropriate proceedings against the government for enforcing such liability. … Even prior to the commencement of the Constitution, the liability of the Government for tortious acts of its servants or agents were recognised vide Peninsular & Oriental Steam Navigation Co. v. Secy. of State, (1868-69) 5 Bom HCR APP 1. After the commencement of the Constitution, there have been several cases in which the Union of India and State Governments were held liable for tortious acts of their

employees, servants and agents. All those cases were not necessarily by invoking the writ jurisdiction of the Supreme Court and the High Courts. Though, the

Government is liable for tortious acts of its officers, servants or employees, normally, such liability cannot be enforced by a Writ Court. An aggrieved party has the right to approach the competent court or authority to seek damages or compensation in accordance with the law of the land. 39 * PG ... But if fundamental rights have been violated, and if the court is satisfied that the grievance of the petitioner is well founded, it may grant the relief by enforcing a person's fundamental right. Such relief may be in the form of monetary compensation/damages". [Extracted from: Kaushal Kishore v. State of Uttar Pradesh, Writ Petition (Criminal) No. 113 of 2016, decided on January 3, 2023.]

111. A person may be liable in respect of wrongful acts or omissions of another in the following ways:

- (A) As having ratified or authorised the particular acts.
- (B) As standing towards the other person in a relation entailing responsibility for wrongs done by that person.
- (C) As having abetted the tortious acts committed by others.
- (D) All the above.

Correct Answer: D) All the above.

Explanation:

- (A) Ratifying or authorizing particular acts implies that a person has given their approval, after the fact, to wrongful acts committed by another, thereby assuming responsibility for those acts.
- (B) This refers to a legal principle where certain relationships (like employer-employee) inherently include a responsibility for the actions of others. This is known as vicarious liability.
- (C) Abetting means to encourage, support, or assist in the commission of tortious acts, thereby making one complicit and liable for the resultant harm.
- (D) Each of the scenarios described in options (A), (B), and (C) are established legal grounds for liability in respect of wrongful acts or omissions committed by another, thus making option (D) the correct comprehensive choice.

112. In order to succeed in fixing vicarious liability on the master (defendant), the plaintiff has to establish:

- (A) That the relationship of master and servant subsisted between the defendant and the actual wrongdoer.
- (B) That the wrongful act was done by the actual wrongdoer whilst he was engaged in the course of employment of the defendant.
- (C) Both (A) and (B).
- (D) None of the above.

Correct Answer: C) Both (A) and (B).

Explanation:

- (A) Establishing a master-servant relationship is crucial to determining vicarious liability because it sets the legal framework within which the employer can be held responsible for the actions of the employee.
- (B) Demonstrating that the wrongful act occurred during the course of employment links the act directly to the employer's potential liability, as it suggests the act was within the scope of the employee's duties.
- (C) Both conditions (A) and (B) must be met for vicarious liability to be successfully attributed to an employer. This makes (C) the correct answer.
- (D) Given that vicarious liability specifically requires establishing both a relationship and the context of the wrongful act, option (D) is incorrect.

113. In India, which of the following enactments govern(s) the liability of the State for the tortious acts of its servants?

- (A) The Crown Proceedings Act, 1947.
- (B) The Federal Tort Claims Act, 1946.
- (C) Both (A) and (B).
- (D) Neither (A) nor (B).

Correct Answer: D) Neither (A) nor (B).

Explanation:

- (A) The Crown Proceedings Act, 1947, is a British law that allowed for civil lawsuits to be brought against the Crown. It does not apply in India.
- (B) The Federal Tort Claims Act, 1946, is a United States statute. It does not govern the liability of the Indian State for tortious acts.
- (C) Since neither Act applies to India, (C) is incorrect.
- (D) India's liability for tortious acts of its servants is governed by its own laws and the Constitution, not by foreign statutes, making (D) the correct answer.

114. In which of the following cases, the Supreme Court of India dealt extensively with the concept of ‘constitutional tort’?

- (A) Shyam Sunder v. State of Rajasthan, AIR 1964 SC 890.
- (B) Common Cause (A Registered Society) v. Union of India, (2018) 5 SCC 1.
- (C) Municipal Corporation of Delhi, v. Uphaar Tragedy Victims Association, (2011) 14 SCC 481.

- (D) All the above.

Correct Answer: B) Common Cause (A Registered Society) v. Union of India, (2018) 5 SCC

Explanation:

- (A) Shyam Sunder v. State of Rajasthan dealt with legal principles but not specifically with the concept of constitutional tort in extensive detail.
- (B) Common Cause (A Registered Society) v. Union of India is known for its thorough examination of the concept of constitutional torts, making it the correct answer.
- (C) Municipal Corporation of Delhi v. Uphaar Tragedy Victims Association dealt with issues of negligence and liability but did not extensively address constitutional torts.
- (D) Only option (B) specifically and extensively dealt with the concept of constitutional tort, making (D) incorrect.

115. Whether a statement by a Minister, inconsistent with the rights of a citizen under Part-III of the Constitution, constitutes a violation of such constitutional rights and is actionable as a 'constitutional tort':

- (A) Yes, every statement made by a Minister, inconsistent with the rights of a citizen under Part-III of the Constitution, will constitute a violation of the constitutional rights and becomes actionable as a constitutional tort.
- (B) Yes, if as a consequence of such a statement, any act of omission or commission is done by the officers resulting in harm or loss to a person/citizen, then the same may be actionable as a constitutional tort.
- (C) No, in no case a statement by a Minister is actionable as a constitutional tort.
- (D) No, because it will hamper the functioning of the government and ministers.

Correct Answer: B) Yes, if as a consequence of such a statement, any act of omission or commission is done by the officers resulting in harm or loss to a person/citizen, then the same may be actionable as a constitutional tort.

Explanation:

- (A) Not every statement made by a Minister will automatically constitute a violation actionable as a constitutional tort. The statement must lead to some form of actionable harm or loss.
- (B) This option correctly identifies that for a statement to be actionable as a constitutional tort, there must be a direct consequence of harm or loss resulting from actions (or inactions) taken based on the statement.
- (C) This is incorrect because there can be circumstances where a statement by a Minister, leading to actionable harm, could indeed be considered a constitutional tort.

- (D) While concerns about government functioning are valid, they do not negate the possibility of a statement by a Minister being actionable if it results in violation of constitutional rights.

115. Whether a statement by a Minister, inconsistent with the rights of a citizen under Part-III of the Constitution, constitutes a violation of such constitutional rights and is actionable as a 'constitutional tort':

- (A) Yes, every statement made by a Minister, inconsistent with the rights of a citizen under Part-III of the Constitution, will constitute a violation of the constitutional rights and becomes actionable as a constitutional tort.
- (B) Yes, if as a consequence of such a statement, any act of omission or commission is done by the officers resulting in harm or loss to a person/citizen, then the same may be actionable as a constitutional tort.
- (C) No, in no case a statement by a Minister is actionable as a constitutional tort.
- (D) No, because it will hamper the functioning of the government and ministers.

Correct Answer: B) Yes, if as a consequence of such a statement, any act of omission or commission is done by the officers resulting in harm or loss to a person/citizen, then the same may be actionable as a constitutional tort.

Explanation:

- (A) Not every statement made by a Minister will automatically constitute a violation actionable as a constitutional tort. The statement must lead to some form of actionable harm or loss.
- (B) This option correctly identifies that for a statement to be actionable as a constitutional tort, there must be a direct consequence of harm or loss resulting from actions (or inactions) taken based on the statement.
- (C) This is incorrect because there can be circumstances where a statement by a Minister, leading to actionable harm, could indeed be considered a constitutional tort.
- (D) While concerns about government functioning are valid, they do not negate the possibility of a statement by a Minister being actionable if it results in violation of constitutional rights.

"As a matter of fact, when a patient is admitted to the highly commercial hospital … a thorough check up of the patient is done by the hospital authorities, it is the Institute which selects after the examination of the patient that he suffers from what malady and who is the best doctor who can attend, except when the patient or the family members desire to be treated by a particular doctor or the surgeon as the case may be. Normally, the private hospitals have a panel of doctors in various specialities and it is they who choose who is to be called. It is very difficult for the patient to give any detail that which doctor treated the patient and whether the doctor was negligent or the nursing staff was negligent. It is very difficult for such patient or his relatives to implead them as parties in the claim petition…We cannot place such a heavy burden on the

patient or the family members/relatives to implead all those doctors who have treated the patient or the nursing staff to be impleaded as party. It will be a difficult task for the patient or his relatives to undertake this searching enquiry from the hospital and sometimes hospital may not co-operate. It may give such details and sometimes may not give the details... The burden cannot be placed on the patient to implead all those treating doctors or the attending staff of the hospital as a party so as to substantiate his claim. Once a patient is admitted in a hospital it is the responsibility of the Hospital to provide the best service and if it is not, then hospital cannot take shelter under the technical ground that the concerned surgeon or the nursing staff, as the case may be, was not impleaded, therefore, the claim should be rejected on the basis of non-joinder of necessary parties. In fact, once a claim petition is filed and the claimant has successfully discharged the initial burden that the hospital was negligent, as a result of such negligence the patient died, then in that case the burden lies on the hospital and the concerned doctor who treated that patient that there was no negligence involved in the treatment. Since the burden is on the hospital, they can discharge the same by producing that doctor who treated the patient in defence to substantiate their allegation that there was no negligence. In fact, it is the hospital who engages the treating doctor thereafter it is their responsibility. The burden is greater on the Institution/ hospital than that of the claimant." [Extracted from Smt. Savita Garg v. The Director, National Heart Institute (2004) 8 SCC 56].

116. Negligence, as a tort, is said to have been committed when the following is/are established:

- (A) The existence of a duty to take care, which is owed by the defendant to the complainant; and that there is a failure to attain that standard of care, as prescribed by the law, thereby, committing a breach of such duty.
- (B) Damage, which is both causally connected with such breach and recognised by the law, has been suffered by the complainant.
- (C) Both (A) and (B).
- (D) None of the above.

Correct Answer: C) Both (A) and (B).

Explanation:

- (A) The establishment of a duty of care is a prerequisite for negligence, but on its own, it is not sufficient to prove negligence.
- (B) Demonstrating damage that is causally connected to the breach of duty is also required, but like (A), it is not sufficient on its own.
- (C) Negligence requires both the existence of a duty of care and causally connected damage resulting from the breach of that duty, making (C) the correct answer.
- (D) Given that negligence is defined by both a breach of duty and causally connected damage, (D) is incorrect.

117. Which of the following propositions is incorrect as regards negligence?

- (A) The test for determining medical negligence, as laid down in Bolam's case [Bolam v Friern Hospital Management Committee, (1957) 1 WLR 582], holds good in its applicability in India.
- (B) The jurisprudential concept of negligence is the same in civil and criminal laws, and what may be negligence in civil law is necessarily a negligence in criminal law.
- (C) A professional may be held liable for negligence, and the standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession.
- (D) It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices; a highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

Correct Answer: B) The jurisprudential concept of negligence is the same in civil and criminal laws, and what may be negligence in civil law is necessarily a negligence in criminal law.

Explanation:

- (A) The Bolam test, while originating in England, has been influential in shaping the standard of care in medical negligence cases globally, including India, making this statement correct.
- (B) This proposition is incorrect because the standards and implications of negligence in civil law (typically requiring compensation) differ from those in criminal law (requiring proof beyond a reasonable doubt and potentially resulting in imprisonment), reflecting different policy goals and protections.
- (C) This accurately describes the standard of care expected from professionals, where negligence is judged against the competence of an ordinarily skilled member of that profession.
- (D) This statement correctly acknowledges that professionals are judged based on a reasonable standard of skill and knowledge, not the highest possible standard, making it a correct understanding of professional negligence.

118. Which of the following propositions is correct as regards the liability of medical practitioners:

- (A) Medical practitioners are immune from a claim for damages on the ground of negligence, as they belong to the medical profession.
- (B) Medical practitioners are immune from a claim for damages on the ground of negligence, as they are governed by the National Medical Commission Act, 2019.
- (C) Medical practitioners are immune from a claim for damages on the ground of negligence, as the Ethics and Medical Registration Board has the power to regulate professional conduct and promote medical ethics.

- (D) Medical practitioners, though belonging to the medical profession, are not immune from a claim for damages on the ground of negligence.

Correct Answer: D) Medical practitioners, though belonging to the medical profession, are not immune from a claim for damages on the ground of negligence.

Explanation:

- (A) This statement is incorrect because belonging to the medical profession does not provide immunity from claims of negligence. Medical practitioners, like other professionals, can be held liable for acts of negligence.
- (B) The National Medical Commission Act, 2019, aims to regulate medical education and practice in India, but it does not grant immunity to medical practitioners from negligence claims.
- (C) While the Ethics and Medical Registration Board regulates professional conduct and promotes medical ethics, it does not provide immunity to practitioners from negligence claims.
- (D) Correct. Medical practitioners can be held accountable for negligence and may face claims for damages. The legal system allows patients to seek compensation if they suffer harm due to a practitioner's negligence.

119. Which of the following is a seminal judgment on medical negligence in India?

- (A) M.C. Mehta v. Union of India, AIR 1987 SC 1086.
- (B) Municipal Corporation of Delhi v. Sushila Devi, AIR 1999 SC 1929.
- (C) Jacob Mathew v. State of Punjab, (2005) 6 SCC 1.
- (D) All the above.

Correct Answer: C) Jacob Mathew v. State of Punjab, (2005) 6 SCC 1.

Explanation:

- (A) M.C. Mehta v. Union of India is primarily known for its contributions to environmental law and does not specifically deal with medical negligence.
- (B) Municipal Corporation of Delhi v. Sushila Devi primarily concerns liability in cases of civic negligence, not medical negligence.
- (C) Correct. Jacob Mathew v. State of Punjab is a landmark case that extensively dealt with the principles of medical negligence in India, laying down guidelines for handling cases of medical negligence and the standard of care expected from medical practitioners.
- (D) Since only (C) Jacob Mathew v. State of Punjab directly deals with medical negligence, (D) is incorrect.

120. Now, a large number of private hospitals, nursing homes and clinics have emerged. In such circumstances, if the patient suffers injury due to negligence of the doctors, then:

- (A) The hospitals would be equally liable for damages, on the principles of vicarious liability or on the principles analogous to vicarious liability, and these hospitals cannot shove off their responsibility and liability to pay compensation for the damages suffered by the patients due to the negligence of the doctors provided by these very hospitals.
- (B) The hospitals would not at all be held liable for damages.
- (C) The hospitals would not at all be held liable for damages; but the doctors could not shove off their liability for negligence.
- (D) Neither the hospitals nor the doctors are held liable, as no one can guarantee the desired result in the medical profession.

Correct Answer: A) The hospitals would be equally liable for damages, on the principles of vicarious liability or on the principles analogous to vicarious liability, and these hospitals cannot shove off their responsibility and liability to pay compensation for the damages suffered by the patients due to the negligence of the doctors provided by these very hospitals.

Explanation:

- (A) Correct. This option accurately reflects the legal principle of vicarious liability, where employers (in this case, hospitals) can be held responsible for the negligent acts of their employees (doctors) when such acts occur in the course of their employment.
- (B) Incorrect. Hospitals can be held liable for damages resulting from the negligence of their employed or contracted doctors under the principle of vicarious liability.
- (C) This option is incorrect because it suggests that hospitals could never be held liable for damages resulting from doctors' negligence, which contradicts the principle of vicarious liability.
- (D) This option is incorrect as both hospitals and doctors can be held liable for negligence. The provision of medical services includes an implied assurance of taking reasonable care, and failure to do so can result in liability for both parties.

CLAT PG 2023 Question Paper

Total Paragraphs – 12
Total Questions – 120
Questions Per Paragraph – 10

Total Marks – 120
Marks for Correct Answer – 1
Marks for Incorrect Answer - -0.25

Total Time: 2 Hours

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