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UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

End Semester Examination, May 2018

Program: Int. B.B.A. LL.B. Corporate Law, B.A. LL.B. Energy Law, Int. B. Com LL.B. Taxation Law, B.B.A. LL.B. ITIL, B.A. LL.B. Criminal/ Labour Law
Semester –IV
Subject (Course): Code of Civil Procedure and Law of Limitation
Max. Marks: 100
Course Code: LLBL 131
Duration: 3 Hrs
No. of page/s: 03

Part A

10*1= 10 marks

Q1. Answer the following:

- I. Who is a *Pauper*?
- II. What is the purpose for appointment of *Receiver*?
- III. Define *Mesne Profit*. Cite relevant provision of Code of Civil Procedure (hereinafter referred to as C.P.C. 1908)
- IV. The Limitation Act, 1963 is consolidatory and amending in nature. True/False.
- V. List out modes of ADR given in section 89.
- VI. Why does one file for a *Caveat*?
- VII. Give limitation period of any one civil wrong as given in the schedule of Limitation Act, 1963.
- VIII. Denial in WS can be only be specific not evasive. True/False.
- IX. Section 151 of C.P.C. 1908.
- X. Who is Guardian ad litem?

Part B

5*4= 20 marks

Q2. Write short notes on any *five* of the following:

- I. Summary Suit
- II. Arrest and attachment before judgement
- III. Garnishee Proceeding
- IV. Difference between decree and order
- V. Issue of summons
- VI. Interpleader suit
- VII. Section 9 of Limitation Act, 1963

Part C**10*2= 20 marks**

Q3. The code of civil procedure clearly states unambiguous provisions of appeal, **review**, **revision** and **reference** that signifies not only the importance of regulating the civil cases but dispensing it with utmost principle of justice. Explaining the above statement give the differences between review, revision and reference in civil procedure.

Q4. *“Where State has not been impleaded nor a Notice under Section 80 of Civil Procedure Code 1908 was issued to the Government, the suit in itself is not maintainable and is liable to be dismissed.”* In the light of the above statement elaborate on the concept of Suit by or against the Government or Public Officer in their official capacity with the help of relevant provisions and case laws.

Part D**50 marks**

Q5. Avinash, a boy of 17 years old filed a suit in the court of law for recovery of the disputed estate through a next friend. Before the decision is given out, he celebrates his 18th birthday. State the law in the two following cases also discuss about the status of the next friend:

1. He elects to proceed with the suit. 8 marks
1. He elects NOT to proceed with the suit. 8 marks

OR

'K' files a suit in the District Court of Townsville city stating that the coalition of GKP political party with PKT political party in the coming elections in the province called Utopia of India is not politically viable and hence the coalition is barred by law and henceforth be declared so by the court. Court presumed its jurisdiction and proceeded with the suit.

- a. With reference to the ambit of C.P.C. decide if such case is validly instituted and decided.
8 marks
- b. Discuss suits of civil nature and presumption as to jurisdiction of the civil court. 8 marks

Q6. 'X' in a will bequeaths on his unborn child his house at Shimla. A week later 'X' and his wife met with a car accident where 'X' dies, and his wife dies after giving birth to 'Y'. The house was illegally taken over by his brother 'A'. 'Y' after attaining age of 18 years, he files suit against 'A' for recovery of the house as

rightful owner. 'A' argues that the limitation period for such suits are 12 years and since 18 years have passed, the suit is time barred. Decide. 15 marks

OR

XYZ was a partnership firm established at Dehradun in the year 2007 which dealt in the sale of sports goods. However, the partnership was dissolved in the year 2010 and certain sports goods worth Rs. 5,00,000/- remained unsold. Various claims and counter-claims were made regarding them. Some articles worth Rs. 3,50,000/- remained in the custody of Z.

X & Y filed a suit for injunction to restrain Z from selling the goods which were in his custody.

Will X & Y be able to fulfill all the essentials for grant of Temporary Injunction? Decide with the help of Relevant case laws. 15 marks

Q7. Mr. Puran Singh (Head of the Family) with his three minor sons, Rakesh (born on 25th January 1960), Rajesh (born on 10th February 1962) and Jitesh (born on 15th Oct. 1965) constituted a Joint Hindu Family. As per Hindu Law, Karta is having the power to alienate Joint Hindu Family without obtaining the Consent of other members of the family in certain cases like for Legal necessity. So, by exercising his power as the Karta, Mr. Puran Singh sold Ancestral House of the family to one Mr. Prem Chand on 20th June 1969 and possession of the said house was delivered to the buyer of the house on the same day. Due to heart Attack, Mr. Puran Singh passed away on 31st March 1974. Rakesh and Jitesh instituted a suit on 1st January 1987 for setting aside the alienation made by their deceased father. Determine whether the suit filed against Mr. Prem Chand is sustainable or not? (Note- Limitation Period for setting aside the alienation is 12 years from the date vendee takes possession of the property).

a) Apply the relevant provisions of Limitation Act, 1963 in order to determine the issue.

(12 Marks)

b) What are the various defenses available to Vendee in this given situation? (7 Marks)

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Part A

10*1= 10 marks

Q1. Answer the following:

- I. Order XXXVII of Civil Procedure Code, 1908 talks about.....
- II. Permanent Injunction can be claimed by using Order XXXIX of C.P.C (True) or (False).
- III. Limitation bars the but not the Right.
- IV. Legal disability as per section 6 of Limitation Act means.....
- V. means a person who is not having a sufficient means to pay court fees.
- VI. Right to Appeal is an Inherent Right. (True) or (False)

VII Match the Following- (1x4= 4 Marks)

- | | |
|-----------------------------------|--------------------------------|
| a) Continues running of Time | (i) Order 27 CPC. |
| b) Suits by or Against Govt | (ii) Section 89 CPC. |
| c) Condonation of delay | (iii) Section 9 Limitation Act |
| d) Alternative Dispute Resolution | (iv) Section 5 Limitation Act |

Part B**4*5= 20 marks**

Q2. Write Short notes on the Following:

- i) Garnishee Order
- ii) Set off
- iii) Arrest and Detention
- iv) Properties that cannot be attached, while executing a decree.
- v) Section 80 Notice

Part C**2*10= 20 marks**

Q3. Differentiate between Reference, Review and Revision in civil procedure. Comment

Q4. Explain the law relating to First and Second Appeals as provided under C.P.C. 1908 with help of relevant case laws and provisions.

Part D**50 marks**

Q5. 'P' bequeaths on his unborn child his house at Delhi. Soon after that 'P' and his wife met with a car accident where 'P' dies and his wife dies after giving birth to 'Y'. The house was illegally taken over by his brother 'A'. 'Y' after attaining age of 18 years, he files suit against 'A' for recovery of the house as rightful owner. 'A' argues that the limitation period for such suits are 12 years and since 18 years have passed, the suit is time barred. Decide. 15 marks

Q6. A entered into a written contract with B at Delhi on 1.04.2017 for supply of cement at the rate of Rs. 100 per bag weighing 50 kgs. A has his registered office in Delhi, and other offices at Rohtak and Gurugram. B has registered office only in Rohtak. On 20.04.2017, A supplied cement worth Rs. 25,00,000/- to B at Rohtak. B made payments from time to time, sometimes vide cheque and sometimes in cash. The last payment through cheque was made on 25.06.2017. an amount of Rs. 5,00,000/- remained unpaid. A wants to initiate ordinary Civil proceedings against B for the recovery of the money In the light of the above facts answer the following questions:

a) Is there any other Judicial recourse available to A for Speedy recovery of the unpaid amount?
(11 Marks)

b) Does B in any way have a right to defend himself in the current proceeding. If yes, how? Assist B with the help of Case laws. (12 Marks)

c) How this suit will be different from Ordinary Civil suit? Mention any two points of differences.
(12 Marks)