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4 SEM LLB (N) CPC 2

2018

(June)

LAW

Paper : 4.2

(Civil Procedure Code and Limitation Act)

(New Course)

Full Marks : 80

Time : Three hours

The figures in the margin indicate full marks for the questions.

1. Choose the correct answers : $1 \times 10 = 10$

(i) A decision in a suit may operate as *Res Judicata* against persons not expressly named as parties to the suit by virtue of explanation —

(a) II to section II of CPC

(b) IV to section II of CPC

(c) VI to section II of CPC

(d) VIII to section II of CPC.

(ii) In which of the following suits attachment before judgment can be ordered ?

(a) Suit for possession of immovable property

(b) Suit for partition of immovable property

(c) Suit for determination of right or interest in immovable property

(d) Suit for compensation for wrong to immovable property.

(iii) Substitution of the legal representative of either party, in case of death is permissible —

(a) when the right to sue survives

(b) when the right to sue does not survive

(c) when the right to sue may or may not survive

(d) All of the above.

(iv) Which of the following deals with the power of the High Court to determine issues of fact in the CPC ?

- (a) section 111
- (b) section 105
- (c) section 108
- (d) section 103.

(v) Which of the following deals with the effect of failure to furnish security in the CPC ?

- (a) Order 12 Rule 1
- (b) Order 10 Rule 9
- (c) Order 25 Rule 2
- (d) Order 17 Rule 10
- (e) None of the above.

(vi) Count in which suits to be instituted comes under which of the following in the CPC ?

- (a) section 11
- (b) section 12
- (c) section 15
- (d) section 16.

(vii) District means :

- (a) The local limits of jurisdiction of a principal civil court of original
- (b) The local limits of the ordinary original civil jurisdiction of a High Court
- (c) Both (a) and (b)
- (d) None of these.

(viii) Can a court summon a person who is not called as a witness by any party ? State the provision.

(ix) When shall a suit filed by an indigent person be deemed to be instituted and under what provision ?

(x) Can a suit once withdrawn be filed again on the same cause of action ?

2. Answer in short the following questions :

2×5=10

(a) What is the nexus that must be established by the defendant while making a counter-claim against the plaintiff ?

- (b) State the in-built limitations in allowing amendment of pleadings.
- (c) What are the *four* remedies available to a defendant for setting aside an *ex parte* decree? Are they concurrent or mutually exclusive?
- (d) What are the *three* different options open to either of the parties when a suit is decided partly in favour of the plaintiff and partly in favour of the defendant?
- (e) State the circumstances under which the Court may issue a Commission for examination on interrogatories or otherwise of any person.
3. How are the words 'causes of action' and 'jurisdiction' relevant in determining the authority of a court to try a suit and discuss the provisions given in the CPC for determining the place where the suit is to be filed?

Or

Discuss the provisions laid down in the C.P.C. for filing suit in the public interest so as to avoid multiplicity of litigation, highlighting the conditions that must be satisfied for involving the said provisions.

4. 'The provisions of the CPC are based on a general principle that, as far as possible no proceeding in a court of law should be conducted to the detriment of any party in his absence'. Discuss the provisions in brief, as given in the CPC, to ensure compliance of this principle. 12

Or

How is the property in dispute preserved by law till the legal rights and conflicting claims of parties before the court are adjudicated? Discuss in details with reference to the provisions given in the CPC.

5. Discuss in details as to how and when the law takes care to protect the interest of persons of immature intelligence and discretion. State with reference to law as to what happens when such a person attains the necessary intelligence and discretion.

Or

- (a) Can a suit be filed without following the regular procedure of presenting a plaint ? Discuss with reference to the law in details.
- (b) Discuss in brief the procedure adopted by the plaintiff for deciding rival claims made by two defendants in respect of movable properties.
6. What are the *three* basic elements of an Appeal ? Is an appeal a continuation of the suit ? If so, justify your answer with reference to the different provisions of law relating to appeal as given in the CPC drawing similarities, if possible, with the said rules with the rules applicable during the trial of the original suit. 12

Or

Discuss the statement that a decree which remains to be satisfied is a paper decree and state in brief the rules regarding the sale of movable and immovable properties as given in the CPC.

7. Explain in brief the principles of exclusion of time while computing the period of limitation for suits and appeals. 12

Or

Discuss in brief the effects of death, fraud or mistake in counting the period of limitation.
