GUIDELINE ANSWERS
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GROUP 1 PAPER 1
EXECUTIVE PROGRAMME
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Answer to question no. 1(a)(i)

The facts of the given situation are similar to the case of *G. Chawla v. State of Rajasthan, AIR 1959 SC 544*. The Rajasthan Legislature passed a law restricting the use of sound amplifiers. The law was challenged on the ground that it dealt with a matter which fell in entry 31 of List I which reads: "Post and telegraphs, telephones, wireless broadcasting and other like forms of communication", and, therefore, the State Legislature was not competent to pass it. The Supreme Court rejected this argument on the ground that the object of the law was to prohibit unnecessary noise affecting the health of public and not to make a law on broadcasting, etc. Therefore, the pith and substance of the law was "public health" and not "broadcasting".

Therefore, in the given situation, the pith and substance rule can be applied. According to this rule, where a law in reality and substance falls within an entry on which the legislature which enacted that law is competent to legislate, then such law shall not become invalid merely because it incidentally touches a matter outside the competence of legislature.

Answer to question no. 1(a)(ii)

Judicial review is the authority of Courts to declare void the acts of the legislature and executive if they are found in violation of provisions under Part-III of the Constitution of India. Judicial Review is the power of the highest Court of a jurisdiction to invalidate on Constitutional grounds, the acts of other Government agencies within that jurisdiction.

Answer to question no. 1(a)(iii)

A Bill is a draft statute which becomes law after it is passed by both the house of parliament or State legislature and assented to by the President or Governor. All legislative proposals are brought before parliament or State legislature in the forms of Bills.

Answer to question no. 1(a)(iv)

Procedurally, the Bills can be classified as:

1. Ordinary Bills

2. Money and Financial Bills
3. Ordinance Replacing Bill and
4. Constitution Amendment Bills.

Answer to question no. 1(a)(v)

The word 'law' according to the definition given in Article 13 of the Constitution includes - “any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India, the force of law."

Answer to question no. 1(b)(i)

A contract with the Government of the Union or State will be valid and binding only if the following conditions are followed:

1. The contract with the Government must be made in the name of the President or the Governor, as the case may be.
2. The contract must be executed on behalf of the President or the Governor of the State as the case may be. The word executed indicates that a contract with the Government will be valid only when it is in writing.
3. A person duly authorised by the President or the Governor of the State, as the case may be, must execute the contract.

Answer to question no. 1(b)(ii)

As soon as the contract is executed with the Government in accordance with Article 299 of the Constitution of India, the whole law of contract as contained in the Indian Contract Act, 1872 comes into operation. In India, the remedy for the breach of a contract with Government is simply a suit for damages.

Further, writ of mandamus can be issued for the enforcement of contractual obligations (*Gujarat State Financial Corporation v. Lotus Hotels, 1983 3 SCC 379*).

Answer to question no. 1(b)(iii)

Section 70 of the Indian Contract Act, 1872 enables a person who actually supplies goods or renders some services not intending to do gratuitously, to claim compensation from the person who enjoys the benefit of the supply made or services rendered. Section 70 is not based on any subsisting contract between the parties but is based on quasi-contract. If the requirements of Section 70 are fulfilled even the Government becomes liable to pay compensation for the work actually done or services rendered by the State.

Answer to question no. 1(b)(iv)

Like all other employers the State should also be made vicariously liable for the wrongful acts of its servants. The Court in India are conscious about increasing cases of excesses and negligence

on the part of the administration resulting in the negation of personal liberty. Hence, they are coming forward with pronouncement holding the Government liable for damages even in those cases where the plea of sovereign function could have negatived the governmental liability.

In view of the above, it can be said that state is also vicariously liable for the wrongful acts of its servants.

Answer to question no. 2(a)

The given situation comes in the bracket of *Damnum Sine Injuria*. Damnum means harm, loss or damage in respect of money, comfort, health, etc. Injuria means infringement of a right conferred by law on the plaintiff. The maxim means that in a given case, a man may have suffered damage and yet have no action in tort, because the damage is not to an interest protected by the law of torts. Therefore, causing damage, however substantial to another person is not actionable in law unless there is also a violation of a legal right of the plaintiff.

In ***Gloucester Grammar School Case***, defendant after leaving Plaintiff's School where he worked as a teacher, started his own school. Being a teacher of standing, many students of Plaintiff's school left and enrolled themselves into the defendant's school. The plaintiff filed a suit for monetary damages incurred by his own. The court held that the defendant is not liable because competition is no ground of action even though monetary loss is caused.

In case of ***Chasemore V Richards, 1859***, water supply to Plaintiff's mill was disrupted due to defendant's digging of his well. This resulted in cutting of water supply to plaintiff's mill due to which it was shut down. Court held defendant not liable because although monetary losses were incurred there was no violation of legal right.

In view of the above mentioned principle and case laws, it can be said that B is not liable to pay because although monetary might have been incurred but there was no violation of legal right.

Answer to question no. 2 (b)

As the presiding officer of the court, I would carefully consider X's suit to recover possession of the movable property against Y, along with the allegation that Y may dispose of the property to his benefit. In such cases, the issuance of a temporary injunction or stay order can be crucial to prevent the alleged wrongful disposal of the property.

It is necessary to refer to the following points:

A. The case of *Dalpat Kumar and Ors. vs. Prahlad Singh and Ors. (16.12.1991 - SC) : AIR 1993 SC 276*

In this case, Court held that three main requirements are to be satisfied while granting a temporary injunction:

1. There should be a Prima facie case

2. If an injunction is not granted, it would lead to irreparable loss and,
3. Balance of convenience.

It was stated by the Court that:

"Satisfaction that there is a prima facie case by itself is not sufficient to grant the injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant the injunction and he needs protection from the consequences of apprehended injury or dispossession. The third condition also is that "the balance of convenience" must be in favor of granting an injunction.

B. Provision relating to Power to order interim sale

As per Rule 6 of Order XXXIX, the Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural delay, or which for any other just and sufficient cause, it may be desirable to have sold at once.

After analyzing the facts and circumstances of the case, I am likely to give necessary relief as per the above mentioned discussion.

Answer to question no. 2(c)

Section 403 and 404 of the Indian Penal Code, 1860 (IPC) provides the provisions related to criminal misappropriation of property. The provision relevant to the given situation is section 403. According to section 403, whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The facts of the given situation are similar to the case of *U. Dhar v. State of Jharkhand, (2003) 2 SCC 219*, where the Supreme Court observed that the matter was of a civil nature and the criminal complaint was not maintainable and was liable to be quashed. The Supreme Court also observed that money paid by the principal to the contractor was not money belonging to the complainant, sub-contractor, hence there was no question of misappropriation.

In view of the provision and case law discussed above, it can be said that no offense has been committed.

Essential Ingredients of Criminal Misappropriation of Property

Dishonestly is an essential ingredient of the offense of Dishonest Misappropriation of Property and IPC provides that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that 'dishonestly'. Misappropriation means the intentional, illegal use of the property or funds of another person for one's own use or other

unauthorized purpose. There are two things necessary before an offence under section 403 can be established. Firstly, that the property must be misappropriated or converted to the use of the accused, and, secondly, that he must misappropriate or convert it dishonestly.

Answer to question no. 3(a)

Sections 7 and 8 of the Specific Relief Act, 1963 provide the provisions relating to recovery of specific movable properties.

As per Section 7, a person entitled to the possession of specific movable property may recover it in the manner provided by the Code of Civil Procedure, 1908.

Explanation 1.-A trustee may sue under this section for the possession of movable property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2.-A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.

Section 8 provides that any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases: -

(a) when the thing claimed is held by the defendant as the agent or trustee of the plaintiff;
(b) when compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed;
(c) when it would be extremely difficult to ascertain the actual damage caused by its loss;
(d) when the possession of the thing claimed has been wrongfully transferred from the plaintiff.

Explanation - Unless and until the contrary is proved, the court shall, in respect of any article of movable property claimed under clause (b) or clause (c) above, presume-

(a) that compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed, or, as the case may be;
(b) that it would be extremely difficult to ascertain the actual damage caused by its loss;

In view of above mentioned provisions, it can be said that "X" has not repaid the loan, therefore, he is not entitled for the possession.

Answer to question no. 3(b)

Section 14 of the Specific Relief Act, 1963 (SRA) lays down the provisions relating to contracts which cannot be specifically enforced. The following contracts cannot be specifically enforced, namely:-

(a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;

(b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;
(c) a contract that is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and
(d) a contract that is in its nature determinable.

Injunction to perform negative agreement

Section 42 of SRA provides that notwithstanding anything contained in section 41(e), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement. It may be noted that the plaintiff has not failed to perform the contract so far as it is binding on him.

There are two questions involved in the problem in given situation -

1. Can M succeed for specific performance of the Contract?
2. Can M succeed in getting injunctions restraining L to sing at any theatre?

There are two parts to the agreement. Positive one on the part of L to perform at M's theatre and the negative one on the part of L not to perform at any theatre other than that of M.

The court may in terms of section 42, prevent the breach of the negative part of the agreement i.e. not to sing at any other theatre by issuing a prohibitory injunction. However, obtaining specific performance of contract may not be possible due to section 14.

Answer to question no. 3(c)

Consequences of non-registration of documents required to be registered compulsorily

Section 49 of the Registration Act, 1908 provides that no document required by Section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall:

(a) affect any immovable property comprised therein; or
(b) confer any power to adopt; or
(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered.

Section 49 is mandatory, and a document which is required to be registered cannot be received in evidence as affecting immovable property. (Mulla, pages 223 to 228)

An unregistered document that comes within Section 17 cannot be used in any legal proceeding to bring out indirectly the effect which it would have if registered.

In the given situation, A buys land for Rs. 2.50 Crore from B in Delhi. A and B executed the sale deed but did not register it from the Sub-Registrar. After entering into the sale deed, it came into knowledge of A that some dispute was pending in the land. Now, A cannot knock the door of the court as the sale deed is not registered. This is because such a document is dealt with by Section 17 which contemplates mandatory registration. A also cannot give an excuse that he was unaware of the law because ignorance of the law is no excuse.

However, after payment of the duty he may be allowed subject to the compliance of necessary provisions.

Also as provided in Section 49 of the Registration Act, 1908, proviso, an unregistered document affecting immovable property and required by this Act or the Transfer of property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance or as evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882 or as evidence of any collateral transaction not to be effective by registered instrument. All that the proviso to Section 49 permits is that in a suit for specific performance an unregistered document affecting immovable property may be given in evidence. The purpose is that the document which has not conveyed or passed title may still be used as evidence of the terms.

Attempt all parts of either Q. No. 4 or Q. No. 4A

Answer to question no. 4 (a)

Expressio Unis Est Exclusio Alterius

The rule means that express mention of one thing implies the exclusion of another. At the same time, general words in a statute must receive a general construction, unless there is in the statute some ground for limiting and restraining their meaning by reasonable construction; because many things are put into a statute *ex abundanti* cautela, and it is not to be assumed that anything not specifically included is for that reason alone excluded from the protection of the statute. The method of construction according to this maxim must be carefully watched. The failure to make the '*expressio'* complete may arise from accident. Similarly, the '*exclusio*' is often the result of inadvertence or accident because it never struck the draftsman that the thing supposed to be excluded requires specific mention. The maxim ought not to be applied when its application leads to inconsistency or injustice.

Similarly, it cannot be applied when the language of the Statute is plain with clear meaning. (*Parbhani Transport Co-operative Society Ltd. v. Regional Transport Authority, AIR 1960 SC 801*)

Answer to question no. 4 (b)

The facts of the given situation are similar to the facts in the case of *Valliammai vs. K.P. Murali and Others* decided by Supreme Court on 11th September, 2023.

In this case the Supreme Court has referred to the provisions of Article 54 of Part II of the Schedule to the Limitation Act, 1963 which stipulates the limitation period for filing a suit for specific performance as three years from the date fixed for performance, and in alternative when no date is fixed, three years from the date when the plaintiff has notice that performance has been refused.

In this case, the Supreme Court referred to the case earlier decided in *Pachanan Dhara and Others v. Monmatha Nath Maity (2006) 5 SCC 340*. The Supreme Court in the referred case had held that for determining the applicability of the first or the second part, the court will have to see whether any time was fixed for the performance of the agreement to sell and if so fixed, whether the suit was filed beyond the prescribed period unless a case for the extension of time or performance was pleaded or established. However, when no time is fixed for performance, the court will have to determine the date on which the plaintiff had notice of refusal on the part of the defendant to perform the contract.

In view of the above mentioned case, it can be said that the limitation period starts when the plaintiff has notice that performance has been refused. The court will have to determine the date on which the plaintiff had notice of refusal on the part of the defendant to perform the contract.

Answer to question no. 4(c)

As per Section 20(1) of the Arbitration and Conciliation Act, 1996 (AC Act) the parties are free to agree on the place of arbitration and sub-section (2) states that if they fail to reach an agreement, the place of arbitration is determined by the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties. Section 20(3) of AC Act introduces an option by providing that the arbitrator/tribunal may, unless otherwise agreed by the parties, may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

Parties are free to agree on the place of arbitration. Party autonomy has to be construed in the context of parties choosing a court which has jurisdiction out of two or more competent courts having jurisdiction.

The case is similar to the Supreme Court judgement in Brahmani River Pellets Limited (Appellant) vs. Kamachi Industries Limited (Respondent).

In this case, the appellant contested the petition challenging the jurisdiction of the Madras High Court on the ground that the parties have agreed that the Seat of arbitration be Bhubaneswar.

The Hon'ble supreme court observed that Section 2(1) (e) of the Arbitration and Conciliation Act, 1996 (the Act) defines the "Court" with reference to the term "subject-matter of the suit". As per Section 2(1) (e) of the Act, if the "subject-matter of the suit" is situated within the arbitral

jurisdiction of two or more courts, the parties can agree to confine the jurisdiction in one of the competent courts. In para (96) of BALCO, the Supreme Court held that the term "subject matter" in Section 2(1) (e) of the Act is to identify the court having supervisory control over the arbitral proceedings. As per Section 20 of the Act, parties are free to agree on the place of arbitration. Party autonomy has to be construed in the context of parties choosing a court that has jurisdiction out of two or more competent courts having jurisdiction. The Supreme Court observed that when the parties agreed to have the "venue" of arbitration at Bhubaneswar, the Madras High Court erred in assuming the jurisdiction under Section 11(6) of the Act. Since only the Orissa High Court will have the jurisdiction to entertain the petition filed under Section 11(6) of the Act. The impugned order was liable to be set aside.

Therefore, the Madras High Court was not justified in appointing the arbitrator.

Alternate Answer

According to section 11(6) of Arbitration and Conciliation Act, 1996, where, under an appointment procedure agreed upon by the parties,—

> (a) a party fails to act as required under that procedure; or
> (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
> (c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

In view of the above mentioned provision, Madras High Court can appoint Arbitrator if the matter is under its Jurisdiction under section 11 of the Arbitration and Conciliation Act, 1996.

OR (Alternate question to Q. No. 4A)

Answer to question no. 4A(i)

Jeremy Bentham was of the initial contributors on the function that laws should perform in a society. He claimed that nature has placed man under the command of two sovereigns- pain and pleasure. 'Pleasure' in Bentham's theory has a somewhat large signification, including altruistic and obligatory conduct, the 'principle of benevolence'; while his idea of 'interest' was anything promoting pleasure. The function of laws should be to bring about the maximum happiness of each individual for the happiness of each will result in the happiness of all. The justification for having laws is that they are an important means of ensuring happiness of the members of community generally. Hence, the sovereign power of making laws should be wielded, not to guarantee the selfish desires of individuals, but consciously to secure the common good.

Bentham said that every law may be considered in eight different respects. These are as under:

1. **Source:** The source of a law is the will of the sovereign, who may conceive laws which he personally issues, or adopt laws previously issued by sovereigns or subordinate authorities, or he may adopt laws to be issued in the future by subordinate authorities. Sovereign according to Bentham is any person or assemblage of person to whose will a whole political community is supposed to be in a disposition to pay obedience, and then in preference to the will of any other person.
2. **Subjects:** These may be persons or things. Each of these may be active or passive subjects, i.e., the agent with which an act commences or terminates.
3. **Objects:** The goals of a given law are its objects.
4. **Extent:** Direct extent means that law covers a portion of land on which acts have their termination; indirect extent refers to the relation of an actor to a thing.
5. **Aspects:** Every law has 'directive' and a 'sanctional' part. The former concerns the aspects of the sovereign will towards an act-situation and the latter concerns the force of a law. The four aspects of the sovereign will are command, prohibition, non-prohibition and non-command and the whole range of laws are covered under it. These four aspects are related to each other by opposition and concomitancy.
6. **Force:** The motivation to obey a law is generated by the force behind the law.
7. **Remedial appendage:** These are a set of subsidiary laws addressed to the judges through which the judges cure the evil (compensation), stop the evil, or prevent future evil.
8. **Expression:** A law, in the ultimate, is an expression of a sovereign's will. The connection with will raises the problem of discovering the will from the expression.

Having listed the eight different respects through which a law can be considered, Bentham went on to analyse the 'completeness' of law in jurisprudential sense. He said that a complete law would have the features of integrality as well as unity. Integrality means that a law should be complete in expression, connection and design. A law is complete in expression when the actual will of the legislation has been completely expressed. A law is complete when various parts of it dealing with various aspects are well co-ordinated. If a law does not cover a specific situation that it might have wanted to cover while being enacted, it is incomplete in design. According to Bentham the unity of a law would depend upon the unity of the species of the act which is the object of the law.

Answer to question no. 4A(ii)

In India a statute or law is valid because it derives its legal authority from being duly passed by the Parliament and receiving the assent of the President, the Parliament, and the President, derive their authority from a norm i.e., the Constitution. As to the question from where the Constitution derives its validity, there is no answer and, therefore, it is the Grundnorm, according to Kelsen's conception of pure theory of law. Grundnorms are generally followed by the Superior Norms. Superior norms are laws that govern the subordinate laws. They are inferior to Grundnorm but superior to subordinate laws. Whereas Subordinate norms are derived or made to assist the superior norm. These norms derive their justification from superior norms.

Kelsen's pure theory of law is based on a pyramidical structure of hierarchy of norms which derive their validity from the basic norm.

Kelsen described the law as a "normative science' as distinguished from natural sciences which are based on cause and effect, such as the law of gravitation. The laws of natural science are capable of being accurately described, determined, and discovered whereas the science of law is knowledge of what law ought to be. Like Austin, Kelsen also considered sanction as an essential element of law but he preferred to call it 'norm'. According to Kelsen, 'law is a primary norm which stipulates sanction'.

According to Kelsen, 'norm (sanction) rules forbidding or prescribing a certain behaviour'. He saw legal order as the hierarchy of norms having sanctions, and jurisprudence was the study of these norms which comprised legal order. Kelsen distinguished moral norms from legal norms and said that though moral norms are 'ought' prepositions, a violation of it does not have any penal fallout. The 'ought' in the legal norm refers to the sanction to be applied for violation of law.

According to Kelsen, we attach legal-normative meaning to certain actions and not to others depending on whether that event is accorded any legal-normative by any other legal norm. This second norm gains its validity from some other norm that is placed above it. The successive authorizations come to an end at the highest possible norm which was termed by Kelsen as 'Grundnorm'.

Grundnorm or basic norm determines the content and gives validity to other norms derived from it. Under Kelsen's pure theory, the grundnorm does not derive its validity from any other norm and its validity must be presupposed. In his view, the basic norm is the result of social, economic, political and other conditions and it is supposed to be valid by itself.

Answer to question no. 4A(iii)

The law relating to limitation is incorporated in the Limitation Act of 1963(the Act), which prescribes different periods of limitation for suits, petitions or applications. The Act applies to all civil proceedings and some special criminal proceedings which can be taken in a Court of law unless its application is excluded by any enactment.

The Law of limitation indeed bars the remedy in a Court of law only when the period of limitation has expired, but it does not extinguish the right that it cannot be enforced by judicial process (*Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay, AIR 1958 SC 328*) Thus, if a claim is satisfied outside the Court of law after the expiry of period of limitation, that is not illegal.

Section 3 of the Act provides that any suit, appeal or application if made beyond the prescribed period of limitation, it is the duty of the Court not to proceed with such suits irrespective of the fact whether the plea of limitation has been set up in defense or not. The provisions of Section 3 are mandatory. The Court can *suo motu* take note of the question of limitation. The question whether a suit is barred by limitation should be decided on the facts as they stood on the date of presentation of the plaint. It is a vital section upon which the whole limitation Act depends for its efficacy. The effect of Section 3 is not to deprive the Court of its jurisdiction. Therefore, the

decision of a Court allowing a suit which had been instituted after the period prescribed is not vitiated for want of jurisdiction. A decree passed in a time barred suit is not a nullity.

In the case of *Noharlal Verma vs. District Cooperative Central Bank Limited, Jagdalpur, (SC), 2008*, the Supreme Court observed that, if the statute stipulates a particular period of limitation, no concession or order would make an application barred by time to be within the limitation and the authority had no jurisdiction to consider such application on merits.

Answer to question no. 5 (a)

As a general rule, the provisions applicable to bills payable on demand apply to cheques. However, there are few distinctions which are as under:

(a) A cheque is a bill of exchange and always drawn on a banker, while a bill may be drawn on any one, including banker.
(b) A cheque can only be drawn payable on demand, a bill may be drawn payable on demand, or on the expiry of a specified period after sight or date.
(c) A bill payable after sight must be accepted before payment can be demanded, a cheque does not require acceptance and is intended for immediate payment.
(d) A grace of 3 days is allowed in the case of time bills, while no grace is given in the case of a cheque, for payment.
(e) The drawer of a bill is discharged, if it is not presented for payment, but the drawer of a cheque is discharged only if he suffers any damage by delay in presentment for payment.
(f) Notice of the dishonour of a bill is necessary, but not in the case of a cheque.
(g) The cheque being a revocable mandate, the authority may be revoked by countermanding payment, and is determined by notice of the customer's death or insolvency. This is not so in the case of bill.
(h) A cheque may be crossed, but not a bill.

Answer to question no. 5 (b)

"Digital signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of Section 3 of the Information and Technology Act 2000. [Section 2(1) (p)]

Electronic Signature Certificate" means an Electronic Signature Certificate issued under section 35 and includes Digital Signature Certificate. [Section 2(1) (tb)]

Electronic Signature Certificates
Sections 35-39 of the Information and Technology Act deal with Electronic Signature Certificates. As per section 35 of the Act, certifying authority to issue electronic signature Certificates.

Procedure for obtaining an electronic signature Certificate

Following is the procedure for obtaining an electronic signature Certificate:

1. Any person may make an application in the prescribed form to the Certifying Authority for the issue of an electronic signature Certificate in such form as may be prescribed by the Central Government.
2. Every such application shall be accompanied by prescribed fees.
3. Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.
4. On receipt of an application, the Certifying Authority may, after consideration of the certification practice statement or the other statement and after making such enquiries as it may deem fit, grant the electronic signature Certificate or for reasons to be recorded in writing, reject the application. It may be noted that no application shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against the proposed rejection.

Answer to question no. 5(c)

In the case of Reliance Petrochemicals Limited v. Indian Express Newspapers, 1989 AIR 90 the Supreme Court read into Article 21 the right to know. In this case, the Supreme Court held that right to know is a necessary ingredient of participatory democracy. In view of transnational developments when distances are shrinking, international communities are coming together for cooperation in various spheres and they are moving towards a global perspective in various fields including Human Rights, the expression "liberty" must receive an expanded meaning. The expression cannot be limited to the mere absence of bodily restraint. It is wide enough to expand to full range of rights including the right to hold a particular opinion and the right to sustain and nurture that opinion. For sustaining and nurturing that opinion it becomes necessary to receive information. Article 21 of the Constitution of India confers on all persons a right to know which includes a right to receive information.

It may be pointed out that the right to impart and receive information is a species of the right to freedom of speech and expression. Article 19(1)(a) of Constitution of India guarantees to all citizens freedom of speech and expression. At the same time, Article 19(2) permits the State to make any law in so far as such law imposes reasonable restrictions on the exercise of the rights conferred by Article 19(1)(a) of the Constitution in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, morality, contempt of court, defamation and incitement of offence.

Thus, a citizen has a right to receive information and that right is derived from the concept of freedom of speech and expression comprised in Article 19(1) (a). The State is not only under an obligation to respect the Fundamental Rights of the citizens, but it is equally under an obligation to ensure conditions under which these rights can meaningfully and effectively be enjoyed by one and all.

Right to freedom of speech and expression in Article 19 (1) (a) carries with it the right to propagate and circulate one's views and opinions subject to reasonable restrictions as mentioned above. The prerequisite for enjoying this right is knowledge and information. Information adds something "new to our awareness and removes vagueness of our ideas".

The Right to Information Act considered as watershed legislation, is the most significant milestone in the history of the Right to Information movement in India allowing transparency, autonomy, and access to accountability.

Objectives of the Right to Information Act, 2005

The Right to Information Act, 2005(the Act/RTI Act) confers on all citizens a right to information. The Act provides for setting out the practical regime of right to information for citizens to secure access to information held by public authorities to promote transparency and accountability in the working of every public authority.

In the case of *Anjali Bhardwaj and Others Vs. Union of India and Others in Writ Petition (Civil) No. 436 of 2018* Judgement dated February 15, 2019, the Hon'ble Supreme Court of India in Paragraph 18, 19 and 68 observed that there is a definite link between right to information and good governance. In fact, the RTI Act itself lays emphasis on good governance and recognizes that it is one of the objectives which the said Act seeks to achieve. The RTI Act would reveal that four major elements/objectives required to ensure good governance are:

i. greater transparency in the functioning of public authorities;
ii. informed citizenry for promotion of partnership between citizens and the Government in the decision-making process;
iii. improvement in accountability and performance of the Government; and
iv. reduction in corruption in the Government departments.

The right to information, therefore, is not only a constitutional right of the citizens but there is now a legislation in the form of RTI Act which provides a legal regime for people to exercise their fundamental right to information and to access information from public authorities. The very preamble of the Act captures the importance of this democratic right which reads as "democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed."

This Act is enacted not only to sub-serve and ensure freedom of speech. On proper implementation, it has the potential to bring about good governance which is an integral part of any vibrant democracy. Attaining good governance is also one of the visions of the Constitution.

Attempt all parts of either Q. No. 6 or Q. No. 6A

Answer to question no. 6(a)

The case is related to the doctrine of *Lis pendens* [Section 52 of the Transfer of Property Act, 1882(T.P. Act)]. *Lis* means dispute, *Lis pendens* means a pending suit, action, petition, or the like. Section 52 of the T.P. Act incorporates the doctrine of *Lis pendens*. It states that during the pendency of a suit in a Court of Law, property that is subject to litigation cannot be transferred.

Essential requirements:

To constitute a *Lis pendens*, the following elements must be present-

1. There must be a suit or proceeding in a court of competent jurisdiction.
2. The suit or proceeding must not be collusive.
3. The litigation must be one in which the right to immovable property is directly and specifically in question.
4. There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.
5. Such transfer must effect the rights of the other party that may ultimately accrue under the terms of the decree or order.

The rule is based on the doctrine of expediency i.e., the necessity for final adjudication. A plea of *lis pendens* will be allowed to be raised even though the point is not taken in the pleadings or raised as an issue.

When an application to sue in *forma pauperis* is admitted, the suit is pending from the time of presentation of the application to the Court but not if it is rejected.

A suit in foreign Court cannot operate as *lis pendens*. The doctrine of *lis pendens* does not apply to moveables. It is the essence of the rule that a right to immoveable property is directly and specifically in question in the suit. The doctrine is not applicable in favour of a third-party.

Effect

If the parties to the litigation, are completely prevented from transferring the property in litigation, it would cause unnecessary delay and hardship, as they would have to wait till the final disposal of the case. So, Section 53 creates a limitation over the transfer by making it subject to the result of the litigation. The effect of this doctrine is not to invalidate or avoid the transfer, or to prevent the vesting of title in the transfer, but to make it subject to the decision of the case, and the rule would operate even if the transferee *pendente lite* had no notice of the pending suit or proceeding at the time of the transfer.

In the given situation, A and B are litigating in a Court of law over property X and during the pendency of the suit A transfers the property X to C. The suit ends in B's favour.

Here C who obtained the property during the time of litigation cannot claim the property. He is bound by the decree of the Court wherein B has been given the property. Section 52 lays down the Indian rule of *Lis pendens* being the legislative expression of the Maxim- "*ut lite pendente nihil innovetur*" 'During litigation nothing new should be introduced'.

Answer to question no. 6(b)

Forged Endorsement

The case of a forged endorsement is worth special notice. If an instrument is endorsed in full, it cannot be negotiated except by an endorsement signed by the person to whom or to whose order the instrument is payable, for the endorsee obtains title only through his endorsement. Thus, if an instrument be negotiated by means of a forged endorsement, the endorsee acquires no title even though he be a purchaser for value and in good faith, for the endorsement is a nullity. Forgery conveys no title. But where the instrument is a bearer instrument or has been endorsed in blank, it can be negotiated by mere delivery, and the holder derives his title independent of the forged endorsement and can claim the amount from any of the parties to the instrument.

Liability of Acceptor of Forged Endorsement (Section 41 of the Negotiable Instrument Act, 1881)

An acceptor of a bill of exchange already endorsed is not relieved from liability by reason that such endorsement is forged if he knew or had reason to believe the endorsement to be forged when he accepted the bill.

In the present case D, as the holder does not derive his title through the forged endorsement of B, but through the genuine endorsement of A and can claim payment from any of the parties to the instrument in spite of the intervening forged endorsement.

Answer to question no. 6(c)

Discharge by Impossibility or Frustration (Section 56 of the Indian Contract Act, 1872).

A contract that is entered into to perform something that is clearly impossible is void. For instance, A agrees with B to discover treasure by magic. The agreement is void by virtue of Section 56 para 1 which lays down the principle that an agreement to do an act impossible in itself is void.
Sometimes subsequent impossibility (i.e. where the impossibility supervenes after the contract has been made) renders the performance of a contract unlawful and stands discharged; as for example, where a singer contracts to sing and becomes too ill to do so, the contract becomes void. In this connection, para 2 of Section 56 provides that a contract to do an act, which after the contract is made, becomes impossible or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

If the impossibility is not obvious and the promisor alone knows of the impossibility or illegally then existing or the promisor might have known as such after using reasonable diligence, such

promisor is bound to compensate the promisee for any loss he may suffer through the non-performance of the promise inspite of the agreement being *void ab-initio* (Section 56, para 3).

Cases in which there is no supervening impossibility

In the following cases contracts are not discharged on the ground of supervening impossibility-

(a) Difficulty of performance: The mere fact that performance is more difficult or expensive than the parties anticipated does not discharge the duty to perform.
(b) Commercial impossibilities do not discharge the contract. A contract is not discharged merely because the expectation of higher profits is not realised.
(c) Strikes, lockouts and civil disturbances like riots do not terminate contracts unless there is a clause in the contract providing for non-performance in such cases. Supervising impossibility or illegality is known as frustration under English Law.

The facts of the given situation are similar to that of case of *Satyabarta Ghose v. Mugnuram A.I.R. 1954 S.C. 44.* In this case, the Supreme Court interpreted the term impossible appearing in second paragraph of Section 56. The Court observed that the word impossible has not been used here in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view; and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain; it can very well be said that the promisor found it impossible to do the act which he promised to do. In this case**,** A undertook to sell a plot of land to B but before the plot could be developed, war broke out and the land was temporarily requisitioned by the Government. A offered to return earnest money to B in cancellation of the contract. B did not accept and sued A for specific performance. A pleaded discharge by frustration. The Court held that Section 56 is not applicable on the ground that the requisition was of a temporary nature and there was no time limit within which A was obliged to perform the contract. The impossibility was not of such a nature which would strike at the root of the contract.

In view of the above discussion, it can be said that the doctrine of frustration will not be applicable in this case.

Answer to question no. 6(d)

Doctrine of Caveat Emptor

"Caveat emptor" is a Latin word that means "let the buyer beware".

This principle states that it is for the buyer to satisfy himself that the goods which he is purchasing are of the quality which he requires. If he buys goods for a particular purpose, he must satisfy himself that they are fit for that purpose. The doctrine of *caveat emptor* is embodied in Section 16 of the Sale of Goods Act, 1930 which states that "subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale". In simple words, it is not the seller's duty to give to the buyer the goods which are fit for a suitable purpose of the

buyer. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose.

The principle was applied in the case of *Ward vs. Hobbs, (1878) 4 A.C. 13*, where certain pigs were sold by auction and no warranty was given by seller in respect of any fault or error of description. The buyer paid the price for healthy pigs. But they were ill and all but one died of typhoid fever. They also infected some of the buyer's own pigs. It was held that there was no implied condition or warranty that the pigs were of good health. It was the buyer's duty to satisfy himself regarding the health of the pigs. Generally, it is no part of the seller's duty in a contract of sale of goods to give to the buyer an article suitable for a particular purpose, or of a particular quality. Also, the seller is under no obligation to point out the defects in the goods. It is the duty of the buyer to thoroughly examine the goods or to make known to the seller the purpose for which goods are required before he buys. If he makes the wrong choice, he cannot blame the seller.

In the given situation, A himself has made the selection without depending upon the skills and judgment of the seller. Therefore, A cannot avoid the contract.

OR(Alternate question to Q. No. 6)

Answer to question no. 6A(i)

As per Section 32(1) of the Arbitration and Conciliation Act, 1996 (the Act) the arbitral proceeding shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

Under Section 32(2) of the Act, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings where –

a. The claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in, obtaining a final settlement of the dispute,
b. The parties agree on the termination of the proceeding, or
c. The arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

Section 32(3) of the Act says that the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings. However, this is subject to the provisions of Section 33 and 34(4) of the Act.

Answer to question no. 6A(ii)

Section 4 of the Indian Stamp Act, 1899 provides that where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed.

The parties may determine for themselves which of the instrument so employed shall, for the purposes of section 4(1), be deemed to be the principal instrument. Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

However, notwithstanding anything contained in sub-sections (1) and (2), in the case of any issue, sale or transfer of securities, the instrument on which stamp-duty is chargeable under section 9A shall be the principal instrument for the purpose of this section and no stamp-duty shall be charged on any other instruments relating to any such transaction.

Answer to question no. 6A(iii)

Types of Mediation

1. **Court-Referred Mediation** - It applies to cases pending in Court and which the Court would refer for mediation under Section 89 of the Code of Civil Procedure, 1908. The courts have mediation centres where cases are referred, and following a preliminary investigation, the cases are assigned to skilled and qualified mediators from the Mediation Centres' Panel of Mediators.

   Court Annexed Mediation - In Court- Annexed Mediation the mediation services are provided by the court as a part and parcel of the same judicial system as against Court-Referred Mediation, wherein the court merely refers the matter to a mediator.

2. **Statutory/Mandatory Mediation** - Some disputes, like those involving labour and family laws, are required by law to go through the mediation procedure. Mandatory mediation simply refers to the act of attempting mediation rather than requiring parties to resolve their problems through mediation.

3. **Private Mediation** - In private mediation, qualified mediators offer their services on a private, fee-for-service basis to the Court, to members of the public, to members of the commercial sector, and also to the governmental sector to resolve disputes through mediation. Private mediation can be used in connection with disputes pending in Court and pre-litigation disputes.

4. **Online Mediation** - Online mediation including pre-litigation mediation may be conducted at any stage of mediation, with the written consent of the parties including by the use of electronic form or computer networks.

Distinction between Arbitration and Mediation

1. Mediation is when a neutral third party aims to assist the parties in arriving at a mutually agreeable solution whereas arbitration is like litigation which is outside the court and which results in an award like an order.
2. Mediation is more collaborative; arbitration is more adversarial.
3. The process of mediation is more informal than that of arbitration.

4. The outcome in mediation is controlled by the parties whereas in arbitration it is controlled by the arbitrator.
5. In mediation, the dispute may or may not be resolved whereas in arbitration it is always settled in either party's favour.

Answer to question no. 6A(iv)

Admissions

An admission is defined in Section 17 of the Indian Evidence Act, 1872(the Act) as a statement, oral or documentary or contained in electronic form which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances mentioned under Sections 18 to 20 of the Act. Thus, whether a statement amounts to an admission or not depends upon the question whether it was made by any of the persons and in any of the circumstances described in Sections 18-20 and whether it suggests an inference as to a fact in issue or a relevant fact in the case. Thus, admission may be verbal or contained in documents as maps, bills, receipts, letters, books etc. (However, the word 'statement' has not been defined in the Act. Therefore, the ordinary dictionary meaning is to be followed which is "something that is stated.") An admission may be made by a party, by the agent or predecessor-in-interest of a party, by a person having joint propriety of pecuniary interest in the subject matter (Section 18) or by a "reference" (Section 20).

Example: The question is, whether a horse sold by A to B is sound. A says to B-"Go and ask C, C knows all about it." C's statement is an admission. This is an example of reference.

An admission is the best evidence against the party making the same unless it is untrue and made under the circumstances which does not make it binding on him. An admission by the Government is merely relevant and non-conclusive, unless the party to whom they are made has acted upon and thus altered his detriment. An admission must be clear, precise, not vague or ambiguous. In *Basant Singh v. Janky Singh, (1967) 1 SCR 1*, the Supreme Court held:

"(1) Section 17 of the Indian Evidence Act, 1872 makes no distinction between an admission made by a party in a pleading and other admission. Under the Indian law, an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits. However, this admission cannot be regarded as conclusive and it is open to the party to show that it is not true.
(2) All the statements made in the plaint are admissible as evidence. The Court is, however, not bound to accept all the statements as correct. The Court may accept some of the statements and reject the rest." Admission means conceding something against the person making the admission. That is why it is stated as a general rule (the exceptions are in Section 21), that admissions must be self-harming; and because a person is unlikely to make a statement which is self-harming unless it is true evidence of such admissions as received in Court. These Sections deal only with admissions oral and written. Admissions by conduct are not covered by these sections. The relevancy of such admissions by conduct depends upon Section 8 and its explanations. Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the record produced is in question.

Distinction between Confessions and Admissions

A confession, however, is received in evidence for the same reason as an admission, and like an admission it must be considered as a whole. Further, there can be an admission either in a civil or a criminal proceeding, whereas there can be a confession only in criminal proceedings. An admission need not be voluntary to be relevant, though it may affect its weight; but a confession to be relevant, must be voluntary. There can be relevant admission made by an agent or even a stranger, but, a confession to be relevant must be made by the accused himself. A confession of a co-accused is not strictly relevant, though it may be taken into consideration, under Section 30 in special circumstances.

Confessions are classified as: (a) judicial, and (b) extra-judicial. Judicial confessions are those made before a Court or recorded by a Magistrate under Section 164 of the Criminal Procedure Code, 1973 after following the prescribed procedure such as warning the accused that he need not to make the confession and that if he made it, it would be used against him. Extra-judicial confessions are those which are made either to the police or to any person other than Judges and Magistrates as such. An extra-judicial confession, if voluntary, can be relied upon by the Court along with other evidence. It will have to be proved just like any other fact. The value of the evidence depends upon the truthfulness of the witness to whom it is made.

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