

LL.B. VI Term

Paper – LB – 603 - Minor Acts and Supreme Court Rules

[The Registration Act, 1908, The Indian Stamp Act, 1899, The Court Fees Act, 1870, The Suits Valuation Act, 1887, Transfer of Property Act, 1882 and The Supreme Court Rules, 2013]

Note: Students are advised to refer to the bare Acts and the following mentioned cases. However, the list of cases given below is not exhaustive. During the semester any other important case may also be referred, so as to elaborate any particular issue.

Part I : THE REGISTRATION ACT, 1908

Cases:1	Hansia v. Bakhtawarmal, AIR 1958 Raj. 102	01
2	Ghulam Ahmad v. Ghulam Qadir, AIR 1968 J & K 35	07
3	Raghunath v. Kedar Nath, (1969) 1 SCC 497: AIR1969 SC 1316	12
4	Swaminathan v. Koonavalli, AIR 1982 Mad. 276	16
5	Budh Ram v. Ralla Ram, (1987) 4 SCC 75	19
6	Roshan Singh v. Zile Singh, AIR 1988 SC 881	21
7	Dina Ji v. Daddi, (1990) 1 SCC 1 : AIR 1990 SC 1153	27
8	S.V. Chandra Pandian v. S.V. Sivalinga Nadar, (1993) 1 SCC 589	30
9	Sardar Singh v. Krishna Devi, (1994) 4 SCC 18	41
10	Bakhtawar Singh v. Gurdev Singh, (1996) 9 SCC 370	47
11	Harendra H. Mehta v. Mukesh H. Mehta, (1999) 5 SCC 108	49
12	Chiranjilal Srilal Goenka v. Jasjit Singh, (2001) 1 SCC 486	51
13	Ram Rattan v. Bajrang Lal, (1978) 3 SCC 236	58
14	Yellapu Uma Maheswari & Anr. V. Buddha Jagadheeswararao & Ors., Civil Appeal No. 8441 of 2015	63
15	Phool Patti and Anr. V. Ram Singh (Dead) Through Lrs. & Anr., 2015 3 SCC 164	68
16	Aspire Investments Private Ltd. V. Nexgen Edusolutions Private Ltd., CS(OS) 192/2009 (Delhi High Court).	75

Part II : THE INDIAN STAMP ACT, 1899

17	Saiyed Shaban Ali v. Sheikh Mohammad Ishaq, AIR 1939 All. 724	81
18	Member, Board of Revenue v. Arthur Paul Benthall, (1955) 2 SCR 842 : AIR 1956 SC 35	82
19	Govt. of U.P. v. Raja Mohd. Amir Ahmad Khan, (1962) 1 SCR 97 : AIR 1961 SC 787	90
20	Javer Chand v. Pukhraj Surana, (1962) 2 SCR 333 : AIR 1961 SC 1655	94
21	Board of Revenue v. Rai Saheb Sidhnath Mehrotra, (1965) 2 SCR 269 : AIR 1965 SC 1092	97
22	Hindustan Steel Ltd. v. Dilip Construction Co., (1969) 1 SCC 597 : AIR 1969 SC 1238	101
23	The Madras Refineries Ltd. v. The Chief Controlling Revenue Authority, Board of Revenue, (1977) 2 SCC 308 : AIR 1977 SC 500	104
24	Trideshwar Dayal v. Maheshwar Dayal, (1990) 1 SCC 357	109
25	Hameed Joharan v. Abdul Salam, (2001) 7 SCC 573	111
26	Addl. District Sub-Registrar Siliguri V. Pawan Kumar Verma & Others, 2013 (7) SCC 537	127

Part III : THE COURT FEES ACT, 1870

27	Nemi Chand v. Edward Mills Co. Ltd., 1953 SCR 97 : AIR 1953 SC 28	132
28	Sathappa Chettiar v. Ramanathan Chettiar, 1958 SCR 1024 : AIR 1958 SC 245	137
29	Gopalakrishna Pillai v. Meenakshi Ayal, 1966 Supp SCR 128 : AIR 1967 SC 155	145
30	Shamsher Singh v. Rajinder Prashad, (1973) 2 SCC 524 : AIR 1973 SC 2384	149
31	Ashok v. Narasingh Rao, AIR 1975 MP 39	153
32	Tara Devi v. Sri Thakur Radha Krishna Maharaj, (1987) 4 SCC 69	155
33	Abdul Hamid Shamsi v. Abdul Majid, (1988) 2 SCC 575 : AIR 1988 SC 1150	157
34	Commercial Aviation and Travel Co. v. Vimla Pannalal, (1988) 3 SCC 423 : AIR 1988 SC 1636	160
35	Gopal Chandra Jena v. Sri Laxmi Narayan Bijo Maura Alava, AIR 1990 Ori. 98	166

36	Ram Narain Prasad v. Atul Chander Mitra , (1994) 4 SCC 349	169
37	Smt. Chintamani Devi v. Vijay Kumar , 2015 (3) Capital Law Judgement 115 (Delhi HC)	172
38	Suhrid Singh @ Sardool Singh V. Randhir Singh & Ors. , 2010 (12) SCC 112	173
39	Hardeep Singh v. Baldev Singh & Ors. , CM (M) No.476 of 2013 decided on 01.12.2014	176
40	Nand Kishore Kalra v. Harish Mathur , 2015 (3) Capital Law Judgement 612 (Delhi HC)	179

PURPOSE OF LAW IS TO HAVE PEACE IN THE SOCIETY

It is needless to emphasize the importance of peace in society, since we cannot enjoy life to its fullest extent without peace. This aspect is further substantiated in terrorist-stricken world of today, where in the agenda of every world leader 'peace' finds top priority. In fact, peace means and exists when there is no dispute. The dispute arises only when a person claims his right over a particular thing and the same is disputed by the other, which creates tension and ultimately leads to breach of peace. Here law plays a very vital and significant role in the society, because through justice delivery system it adjudicates these kinds of disputes, arising out of clash of interests amongst the people.

LAW CAN BE SUBSTANTIVE LAW OR PROCEDURAL LAW

The law can be substantive law or procedural law. The substantive law is the one which actually decides the rights, liabilities and duties of the respective persons. On the other hand, the procedural law is the one which lays down guidelines as to how to decide those rights, liabilities and duties. In other words, the procedural law lubricates substantive law. It helps in determining the rights, liabilities and duties of the litigants. It is procedural law which puts life into the substantive law by providing remedy for enforcement of those rights and liabilities. In this way, both the branches of law are complementary to each other and at the same time independent of each other. Indian Penal Code, 1860, Customs Act, 1962, Prevention of Food Adulteration Act, 1954, Sale of Goods Act, 1930, Transfer of Property Act, 1982 and Rent Control Legislations, etc. are the examples of substantive laws, whereas Code of Criminal Procedure, 1973, Code of Civil Procedure, 1908, Indian Evidence Act, 1872, etc. are procedural laws. However, there are certain laws, regarding which, due to the nature of their provisions and the object, for which they were legislated, it is difficult to point out as to whether they are substantive laws or procedural laws. In such cases, on one hand the provision of such a law provides procedure for enforcement of certain rights and at the same time violation of that procedure leads to taking away of that substantive right of the violator. For example, under the Registration Act, 1908 if a particular document, which requires compulsory registration, is not registered then the party to that document, claiming right on the strength of the contents of the said document would not be able to establish his substantive right under that unregistered instrument. Similarly, the Indian Stamp Act, 1899 falls in the same category.

“MINOR ACTS AND SUPREME COURT RULES” DIVIDED INTO FOUR DIFFERENT PARTS

In this particular subject of “Minor Acts and Supreme Court Rules”, we have divided our study into four different parts namely: (1) The Indian Registration Act, 1908, (2) The Indian Stamp Act, 1899, (3) The Court-Fees Act, 1870, and The Suit Valuation Act, 1887, which substantially form part of procedural laws. Besides this, fourthly, we would be studying Supreme Court Rules framed by the Supreme Court under article 145 of the Constitution, enabling it to regulate its own practice and procedure.

INDIAN STAMP ACT, 1899 AND THE REGISTRATION ACT, 1908, FALL UNDER 'CONVEYANCING', WHEREAS THE COURT-FEES ACT, 1870 AND THE SUIT VALUATION ACT, 1887 RELATE TO PLEADINGS BEFORE THE COURT

Meaning of pleadings: In order to understand the provisions of the Indian Stamp Act, 1899 and the Registration Act, 1908, it would be beneficial to distinguish between the pleadings and conveyancing. The dictionary meaning of the term 'plead' means 'to state and argue a case'. Therefore, pleading comprises of respective contentions of the parties in a dispute, which are reduced into writing. The term pleading would be applicable to the Court proceedings including filing of the complaint/plaint, etc., replies thereto and other incidental documents related to the dispute filed by either of the parties. Needless to mention here that, our legal system is adversary legal system wherein there are two contesting parties. One party stakes its claim or right to a particular thing, which is disputed by the opposite side before the Court. Under these circumstances each of the parties in support of its claim files in writing various contentions and submissions in terms of the different provisions under the law before the Court. All these documents constitute pleadings. It is only after the completion of the pleadings that a matter is argued and subsequently the dispute is adjudicated by the Court.

Meaning of conveyancing: On the other hand the dictionary meaning of the 'conveyance' is 'an act by which property is conveyed or voluntarily transferred from one person to another by means of a written statement and other formalities'. It also means 'instrument' itself. Therefore, the term conveyancing does not apply to the Court proceedings, rather it is applicable to the instrument, which have been documented not for the purpose of Court proceedings, rather for the purpose of creating evidence of a particular transaction, which may be used before the Court in case of any dispute. So broadly speaking the pleading and conveyancing may be distinguished by simply stating that while the pleadings are applicable to Court proceedings and conveyancing is applicable to the documentation done outside the Court and not meant for the Court proceedings particularly, though they may be used in the Court proceeding, in order to substantiate a particular contention, claim or submission. Therefore, these two parts of the subject, namely Indian Stamp Act, 1899 and the Registration Act, 1908, fall under 'conveyancing', whereas the Court-Fees Act, 1870 and the Suit Valuation Act, 1887 relate to pleadings before the Court.

1. THE INDIAN REGISTRATION ACT, 1908

In this part of the subject, we would be studying as to which kind of document, in respect of transfer of property, requires compulsory registration. In fact, Statement of Objects and Reasons of this Act states that the provisions relating to the registration of documents, being scattered in different enactments, the Act has been brought into existence to consolidate those provisions.

Sanctity to a document/deed is provided by registration: Transfer of movable property may be affected by transferring its physical possession from transferor to transferee. However, in case of immovable properties this is not possible due to their immovable nature. Therefore, such a transfer takes place by way of writing a deed in this regard. Sanctity to such a document/deed is provided by registration with a Central Agency called "Registrar",

wherein name of the seller and purchaser alongwith the details of the property on the date of transaction are recorded. Purpose of the registration is that before purchasing the property in question the purchaser may verify its history from the office of the Registrar, so as to find out who is the real owner of that particular property. That is why the general principle involving transaction of immovable property is that “purchaser beware”. This aspect is substantiated by section 17(1) of the Registration Act, 1908, which makes it obligatory to get some particular kinds of documents registered with the “Registrar”. Therefore, under this part of the subject the basic question would remain as to whether it is obligatory to register a particular document, involving transfer of property, under the Registration Act, 1908 and, further, what is the consequence of non-registration of such a document.

2. THE INDIAN STAMP ACT, 1899

The whole purport of the Indian Stamp Act is to collect revenue: The Indian Stamp Act, 1899 is a fiscal measure enacted to secure revenue for the State on certain classes of instruments. If a document is not sufficiently stamped, in terms of the said Act, it also carries certain consequences, the way a document, requiring compulsory registration under the Registration Act, 1908, if is not registered, is held to be inadmissible in evidence. But at the same time, the Act is not enacted to arm a litigant with a weapon of such a technicality to meet the case of his opponent. It has been rightly observed by the Apex Court in a case that, the endeavour should be to avoid snap decisions and to afford litigants a real opportunity of fighting out their cases fairly and squarely. Costs will be adequate compensation in many cases and in other Court has almost unlimited discretion about the terms it can impose provided always the discretion is judicially exercised and is not arbitrary (*Sangram Singh v. Election Tribunal, Kotah, Bhurey Lal Baya, AIR 1955 SC 425*). The stringent provisions of the Act are conceived in the interest of the revenue. Once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of the initial defect in the instrument. This object is achieved by making those documents inadmissible in evidence, if they are not properly stamped according to the Indian Stamp Act, 1899. The Court generally does not encourage the objections taken merely on account of the insufficiency of stamps, the matter really relating to the revenue. Objects and Reasons in this regard may be looked into to find out as to what mischief is sought to be remedied and how the Government proposed to get over the situation faced by it by seeking to amend the law. Further, it is pertinent to mention here that, the enactment is prohibitory in nature and not confined to affording a party a protection of which he may avail himself or not as he pleases. Although the protection of revenue is its primary object, it is not framed solely for the protection of the revenue and to be enforced solely at the instance of the revenue officials, nor is the penalty limited in cases for which a penalty is exigible. Further, the whole purport of the Indian Stamp Act is to make available certain dues and to collect revenue but it does not mean and imply overriding the effect over another statute operating in a completely different spheres.

3. THE COURT-FEES ACT, 1870 AND THE SUIT VALUATION ACT, 1887

Under both the legislations value of the suit is fixed: For the purpose of adjudication his dispute with the defendant plaintiff has to pay fees to the Government in the form of court

fees, which is to be computed in terms of the provisions contained in the Court Fees Act, 1870. The Court-Fees Act, 1980 and the Suits Valuation Act, 1887 cannot be treated as forming a Code, nor they are parimateria with regard to their respective provisions. In other words, they cannot be read together. The only common feature between the two Acts is that under both the legislations value of the suit is fixed. Generally, under Suits Valuation Act, 1887, the value is fixed for the purpose of jurisdiction and under the Court Fee Act, 1870, the value of the suit is fixed in order to determine the amount of Court-fee to be paid to the Court.

Invariably, one of the preliminary objections taken by the Advocates in their written statements to the plaints is with regard to valuation of the suit. Since the question whether or not a suit has been properly valued goes to the root of the matter, the same ought to be decided at the first instance and the trial Court should not wait till the conclusion of the case and the same should be determined by the Court, which has to try the case. If on examining the plaint, the Court finds that the relief claimed is undervalued it should require the plaintiff to correct the valuation within a time and consequently on his failure to do so, the plaint is liable to be rejected under Order VII, rule 11 of the Civil Procedure Code, 1908. If the matter requires investigation, the Court may record evidence of the parties bearing on the point and consequently adjudicate the issue at the earliest after staying further proceedings in the matter. It is pertinent to mention here that section 10 of the Court-Fees Act, 1870 specifically provides that if the plaintiff fails to make good the deficiency despite the directions of the Court, within specified period, the suit shall be dismissed. Before parting with this introductory portion, it is necessary to reiterate with regard to the Court-Fees Act, 1870 that, like the Registration Act, 1908 and the Indian Stamp Act, 1899, even this statute is a fiscal statute and, consequently, must be interpreted strictly. Therefore, it is further reiterated that the present statute is not intended to arm a litigant with the weapon of technicality but to secure revenue to the State.

4. SUPREME COURT RULES

With a view to regulate its own practice and procedure has been empowered to frame Supreme Court Rules, 1966 under article 145 of the Constitution: The Constitution seeks to ensure the independence of Supreme Court Judges in various ways. A Judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the President in the same Session for such removal on the ground of proved misbehavior or incapacity. Similarly, Supreme Court, with a view to regulate its own practice and procedure has been empowered to frame Supreme Court Rules, 1966 under article 145 of the Constitution. In *Navavati, K.M. v. State of Bombay* (1961(1) SCR 497: AIR1961 SC 112) the Supreme Court laid down that the power to make rules to regulate its own procedure is in aid of the power of the Apex Court under article 142, to make such order as is necessary for doing complete justice in any cause or matter pending before it. However, this rule making power of the Supreme Court is subject to laws made by Parliament and being subordinate legislation, having been framed under article 145 in exercise of delegate power, such Rules cannot override the provisions of the Constitution of India. Therefore, the power cannot be exercised so as to affect the fundamental rights conferred under Part III of the Constitution of

India. The students would be required to study particular Supreme Court Rules from the examination point of view.

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