

Judiciary Digest

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Lis Pendens Prevails: Supreme Court's Verdict in Property Dispute

In the case of **Chander Bhan (D) through LR Sher Singh v. Mukhtiar Singh & Ors**, the Supreme Court reinforced the applicability of the principles of lis pendens, despite the non-applicability of Section 52 of the Transfer of Property Act, 1881 (TPA) in certain regions.

The bench, consisting of Justices Sudhanshu Dhulia and PB Varale, emphasised that justice, equity, and good conscience are paramount in such matters.

Reference was made to the precedent set in **Shiv Shankara and Another v. H.P. Vedavyasa Char**, where the Court affirmed the application of principles akin to those in Section 52 of the TPA, even in situations where the Act itself does not apply.

The dispute arose from an agreement to sell in the State of Punjab, where the appellant sought a permanent injunction against the alienation of the subject property by respondent no.3. Despite an injunction, respondent no.3 proceeded with the alienation, citing the non-applicability of Section 52 of the TPA in Punjab.

The doctrine of lis pendens, aimed at maintaining the status quo during litigation, was deemed applicable by the court. It clarified that the pendency of a suit begins when the plaintiff presents the case and extends until a final decree is passed.

In this case, as the appellant filed the suit before the alienation occurred, the court ruled that the alienation couldn't prejudice the appellant's interests.

The court nullified the subsequent transactions and directed respondent no.3 to execute the agreement to sell in favour of the appellant.

**Important Links for Judiciary Free Resources
(Click on Each to Open Respective Pages)**

Subject Wise Mains PYQ Solution	Essay for Judiciary
Subject Wise Notes	Legal Doctrines
Landmark Judgements	GS Notes
Weekly Current Affair	Subject Wise Prelims PYQ Solution
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Telegram Link	Youtube Link

Flexibility in Juvenile Justice Procedures

In the case of **Child in Conflict with Law through His Mother v. The State of Karnataka and Another**, the Supreme Court addressed the interpretation of Section 14(3) of the Juvenile Justice (Care & Protection) Act, 2015, regarding the time limit for assessing a child's capacity to commit serious offences. The court, composed of Justices C.T. Ravikumar and Rajesh Bindal, ruled that the three-month limit prescribed by the Act is not mandatory but rather directory in nature.

The bench reasoned that due to the involvement of various parties in the preliminary inquiry process, including investigating officers and experts, delays can occur for various reasons. Unlike in cases of inquiry into petty offences, the Act does not specify consequences for failing to meet the three-month deadline.

Section 14(3) mandates that a preliminary assessment for heinous offences must be completed within three months of the child's first appearance before the Board. This assessment aims to evaluate the child's mental and physical capacity, understanding of the offence's consequences, and the circumstances surrounding the alleged offence.

Instead of strictly interpreting the provision, the court suggested a more harmonious approach to give it practical significance. It endorsed the guidance provided in Section 14(4), allowing the extension of inquiry periods by the Chief Judicial Magistrate or Chief Metropolitan Magistrate for valid reasons, with expert opinion delays considered a relevant factor.

The court cited precedents from various High Courts, including Madhya Pradesh, Delhi, Punjab, Haryana, reaffirming that the prescribed time period for preliminary assessments is directory rather than mandatory. These decisions reflect a consistent interpretation across jurisdictions, maintaining the Act's spirit while ensuring procedural flexibility.

Witness Statements Admissible Without Accused Present

In the case of **Sukhpal Singh v. NCT of Delhi**, the Supreme Court delivered a significant ruling regarding the admissibility of prosecution witness statements recorded in the absence of the accused. Justices BR Gavai and Sandeep Mehta affirmed that such statements could be considered substantive evidence if the witness couldn't be traced or produced during trial after the accused's arrest.

The court referenced **Nirmal Singh v. State of Haryana**, where the conditions under which witness statements recorded under Section 299 of the Cr.P.C. become admissible under Section 33 of the Indian Evidence Act, 1872 were deliberated. Section 299 of the Cr.P.C. is treated as an exception to Section 33 of the Evidence Act, allowing for witness statements to be admissible even without the opportunity for cross-examination.

The bench emphasised that for such statements to be admissible, strict compliance with the conditions outlined in Section 299 of the Cr.P.C. is necessary. This includes establishing that the accused has absconded or that there is no immediate prospect of arresting them.

In the present case, the appellant challenged his conviction for murder under Section 302 of the IPC. Despite efforts by the investigating agency, the prosecution witness whose statements were recorded under Section 299 of the Cr.P.C. couldn't be located or brought to testify during the trial after the accused's arrest. Therefore, the trial court's decision to consider these statements as substantive evidence was upheld by the Supreme Court.

The court's decision reaffirms the principles set forth in **Nirmal Singh** and **Jayendra Vishnu Thakur**, ensuring that witness statements recorded under Section 299 of the Cr.P.C. are admissible under certain conditions, even without the opportunity for cross-examination. The appeal was dismissed accordingly, cementing the precedent established in this matter.

Then and Now: Information in Cognizable Case

CrPC Section 154 and BNSS Section 173

Under CrPC Section 154, any information about the commission of a cognizable offence must be recorded in writing by the officer in charge of a police station or under his direction. This information needs to be read back to the informant, signed by them, and entered into a book as prescribed by the State Government. Specific provisions are made for women reporting certain offenses like sexual assault, ensuring their statements are taken by a female officer.

Moreover, accommodations are made for individuals with disabilities, requiring the presence of an interpreter or a special educator, and the recording process must be videographed.

Additionally, if an officer refuses to record information, the informant can escalate the issue to the Superintendent of Police.

BNSS Section 173 maintains these fundamental principles but introduces modern enhancements. It allows information to be provided not just orally but also through electronic communication. This recognizes the increasing use of digital communication in legal processes.

Like CrPC, information given orally is reduced to writing, read over, and signed by the informant. For electronic communications, the information must be signed within three days. BNSS also keeps the specific provisions for recording statements from women and individuals with disabilities, ensuring sensitivity and inclusivity.

Additionally, it introduces a new procedure where officers can conduct a preliminary enquiry for offences punishable for three to seven years, which was not specified in the CrPC.

Past Exam Highlights

Prelims

1. The Arbitration and Conciliation Act, 1996 was enacted taking into consideration:

- a. International Chamber of Commerce Rules
- b. Model law and Conciliation rules adopted by the United Nations Commission on International Trade Law (UNCITRAL)
- c. LCIA India Arbitration Rules
- d. Indian Arbitration Act, 1940

Ans. (b)

Explanation: The Arbitration and Conciliation Act, 1996, in India, primarily aligns with the Model Law and Conciliation Rules adopted by the United Nations Commission on International Trade Law (UNCITRAL). This alignment ensures that India's arbitration framework is consistent with international standards, facilitating a more uniform and predictable resolution process for cross-border trade disputes.

2. An arbitration agreement entered into on 1st August 2019, provides for the arbitration

to be in accordance with the Arbitration Act 1940

- a. The arbitration would be governed by the provisions of Arbitration and Conciliation Act, 1996
- b. The arbitration would be governed by the provisions of Arbitration Act, 1940
- c. The arbitration clause is void
- d. The arbitration would be governed by the provisions of the Arbitration Act, 1940 as well as of the Arbitration and Conciliation Act, 1996

Ans. (a)

Explanation: Despite referencing the Arbitration Act of 1940 in the agreement, the 1996 Act supersedes the earlier legislation. Since the 1996 Act is the prevailing law governing all arbitration proceedings in India initiated after its enactment, it applies to agreements and proceedings irrespective of references to former laws.

3. Which of the statements is not in accordance with the provisions of the Arbitration and Conciliation Act, 1996?

De Facto IAS
Judiciary Exam: Current Affair

- a. An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal
- b. In the absence of an agreement between the parties, the arbitral award shall state the reasons upon which is based
- c. After the arbitral award is made, a signed copy shall be delivered to each party
- d. The arbitral tribunal shall not, during the arbitral proceeding, make an interim award

Ans. (d)

Explanation: The statement that the arbitral tribunal shall not, during the arbitral proceedings, make an interim award is not in accordance with the provisions of the Arbitration and Conciliation Act, 1996. In fact, the Act permits the arbitral tribunal to issue interim awards on any matter it deems necessary. This provision allows for temporary relief or measures to be granted before the final resolution, ensuring the protection of parties' rights and interests during the arbitration process.

4. According to Section 56 of Companies Act, 2013, the Shares of other interests of any member in a company shall be:—
- a. Movable property
 - b. Immovable property
 - c. Permanent Property
 - d. Tangible property

Ans. (a)

Explanation: According to Section 56 of the Companies Act, 2013, the shares or other interests of any member in a company are classified as movable property. This categorization reflects that shares can be transferred or sold without the need for the lengthy procedures typically associated with immovable property like land or buildings.

5. In which of the following cases, it was held that the company is not a citizen?
- a. State Trading Corporation of India v. Commercial Tax Officer
 - b. Tata Engineering Company v. State of Bihar
 - c. Bennett Coleman & Co. v. Union of India
 - d. All the above

Ans. (d)

Explanation: In all the listed cases—State Trading Corporation of India v. Commercial Tax Officer, Tata Engineering Company v. State of Bihar, and Bennett Coleman & Co. v. Union of India—it was established that a company is not a citizen. These judgments clarify that while companies have certain legal rights, they do not possess the status of citizenship.

6. Government Companies Audit and Report is required to be placed before the _____
- a. Parliament
 - b. State legislature
 - c. President
 - d. (a) and (b)

Ans. (d)

Explanation: The audit and report of Government Companies are required to be placed before both the Parliament and the State legislature, as indicated in option (d). This requirement ensures transparency and accountability in the operations of government-owned companies.

7. The juristic concept of contract consists of :
- a. free consent and capacity
 - b. offer and acceptance
 - c. consideration and undue influence
 - d. agreement and obligation

Ans. (b)

Explanation: This principle is foundational in contract law, signifying the mutual agreement

between parties to enter into a binding legal relationship. The offer represents a proposal by one party, and the acceptance by another creates a contract. This mutual assent is essential to establish the contractual obligations that both parties agree to fulfil.

8. Tender is :
- a. an offer
 - b. an invitation to offer
 - c. counter offer
 - d. a promise

Ans. (b)

Explanation: This means that when a company or government entity issues a tender, it is inviting potential suppliers or contractors to submit their bids or proposals. The tender itself is not a binding offer but a request for others to make offers, which the entity issuing the tender may then accept or reject.

9. In the following cases which case relates to general offers.

- a. Lalman Shukla v. Gauri Datt
- b. Carlill v. Carbolic Smoke Ball Comp.
- c. Both (a) and (b)
- d. None of the above

Ans. (c)

Explanation: In "Carlill v. Carbolic Smoke Ball Company," the court held that the

advertisement offering a reward for using the smoke ball and not contracting influenza was a general offer to the public, which could be accepted by anyone who performed the conditions stated in the advertisement. Similarly, in "Lalman Shukla v. Gauri Datt," the court dealt with a general offer where a reward was announced after the finder had already found the missing nephew, highlighting important principles about the knowledge of the offer at the time of acceptance.

10. Which one of the following statements about general offer is correct?

- a. The general offer should be made to the specified persons
- b. The general offer does not require any consideration
- c. The general offer prescribes some condition to be fulfilled
- d. The general offer does not work without support of public at large

Ans. (c)

Explanation: A general offer is made to the public at large and becomes a binding contract when someone fulfils the specified conditions. The offeror does not need to direct the offer to any specific person, but whoever meets the conditions of the offer effectively accepts the contract through their actions.

Mains

Q. What is meant by criminal conspiracy? Illustrate your answer with case law.

Ans: Criminal conspiracy is defined under Section 120A of the Indian Penal Code (IPC), 1860. This section states that when two or more persons agree to do or cause to be done:

1. An illegal act,
2. A legal act by illegal means,

such an agreement is designated as a criminal conspiracy. The essential component of a criminal conspiracy is the agreement to commit the crime, rather than the actual commission of the crime.

This distinguishes conspiracy from other forms of criminal conduct where the focus is on the act itself.

Essential Ingredients of Criminal Conspiracy

The Supreme Court of India has succinctly summarised the ingredients necessary to establish a criminal conspiracy in various landmark judgments. A comprehensive understanding of these elements can be found in the case *State through Superintendent of Police v. Nalini & Ors.* and further reiterated in cases like *Yakub Abdul Razak Memon v. State of Maharashtra* and *Ram Sharan Chaturvedi vs State of Madhya Pradesh*. These elements are as follows:

1. Agreement to Commit an Illegal Act

The core of a criminal conspiracy is the agreement between two or more individuals to undertake actions that are illegal or to perform legal acts through illegal means. This agreement is the fundamental requirement and must be proven for a conviction of conspiracy.

2. Joint Intent

Unlike general criminal law where mere intent does not constitute a crime, in conspiracy, it is the collective intention to commit a crime that forms the basis of the offence. All involved parties must share this joint intention, reflecting a unified desire to achieve the unlawful objective.

3. Secrecy of the Conspiracy

Conspiracies are typically planned in secrecy, making direct evidence hard to come by. Thus, the existence of a conspiracy and its objectives are often inferred from circumstantial evidence and the conduct of the accused. This aspect highlights the covert nature of conspiracies, where overt actions may not be evident.


4. Joint Liability for Acts Committed

A distinctive feature of criminal conspiracy is that all conspirators are held jointly responsible for the acts committed in furtherance of the conspiracy. This includes actions taken by individual conspirators that are connected to the overall objective of the conspiracy, regardless of whether every conspirator actively participated in each act.

Ram Sharan Chaturvedi vs State of Madhya Pradesh

Here, the Supreme Court highlighted that the principal ingredient of criminal conspiracy is the agreement to commit an offence. It stressed that such an agreement could be proven through direct or circumstantial evidence. The judgement clarified that while a clear and express agreement

is not mandatory, there must be some physical manifestation of the agreement, often inferred from circumstantial evidence.



The banner features a purple-to-blue gradient background. On the left is the De Facto IAS logo, a stylized 'f' inside a circle. To the right of the logo, the text 'Free Resources for Judiciary' is written in a large, bold, black font. Below this, the website address 'www.DeFactoJudiciary.in' is displayed in a smaller black font. The banner is divided into two columns of resource buttons. The left column contains four buttons: 'Mains(PYQ) Solution' (green), 'Legal Doctrines' (yellow), 'Subject Wise Notes' (light purple), and 'Weekly Current Affair' (orange). The right column contains four buttons: 'Concept Notes' (green), 'Prelims(MCQ) Solution' (yellow), 'Judgement Writing' (light purple), and 'Free Answer Writing Course' (orange).

Clear Concepts: Welfare of Minors in Guardianship Cases

In matters concerning guardianship under the law, the paramount consideration of the court is the welfare of the minor children. This principle is not only enshrined in Section 17 of the Act but is also affirmed by judicial precedents, such as **Nil Ratan Kundu v. Abhijit Kundu**, where the courts emphasised the importance of considering the welfare and well-being of the child above all else.

The court's role in guardianship cases extends beyond mere interpretation of legal provisions; it involves a human approach, focusing on the child's comfort, health, education, and overall development. Moral and ethical values are equally significant in determining the best interests of the child. Even if a minor is capable of expressing a preference, the court's ultimate decision must prioritise the child's welfare.

In various judgments, including **Rosy Jacob v. Jacob A. Chakramakkal** and **Gaurav Nagpal v. Sumedha Nagpal**, the Supreme Court reiterated that the welfare of the child is the primary concern, superseding the rights of the parents. Fitness of the parents for guardianship is judged based on its impact on the child's welfare, rather than solely on the absence of unfitness.

Moreover, the term "welfare" should be construed broadly, encompassing not only moral and ethical considerations but also the physical well-being of the child. Socio-economic opportunities, healthcare, and stability of surroundings are vital factors to be considered while determining guardianship.