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**SECTIONAL
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LEGAL REASONING

VMTC2262

VIDHIGYA

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Legal Reasoning

Directions for Legal Reasoning Section: Each set of questions in this section is based on the reasoning and arguments, or facts and principles set out in the preceding passage. Some of these principles may not be true in the real or legal sense, yet you must conclusively assume that they are true for the purposes of this Section. Please answer each question on the basis of what is stated or implied in the corresponding passage. Do not rely on any principle of law other than the ones supplied to you, and do not assume any facts other than those supplied to you when answering the questions. In some instances, more than one option may be the answer to the question; in such a case, please choose the option that most accurately and comprehensively answers the question.

Passage - 1

Everyone has a right of private defence. Right of self-defence is based upon the general maxim that “**necessity knows no law**” and “*it is the primary duty of man to first help himself*”. If a person does an act while exercising his right of private defence, his act would be no offence (Section 96). Right of private defence is based upon the instinct of self-preservation. This instinct is vested in every human being and has been recognised by the law in all the civilized countries. The need for self-preservation is rooted in the doctrine of necessity. Common law has always recognised the right of a person to protect himself from attack and to act in defence of others. In this process, he can inflict violence on another, if necessary. The person who is about to be attacked does not have to wait for the assailant to attack first. Chapter IV of the IPC, which includes Section 76 to Section 106, explains general defences which can be pleaded as an exception for any offence. The right of private defence explains that if something is done in private defence then it is no offence. A right to defend does not include a right to launch an offence, particularly when there is no more a need to defend. The right of private defence has to be exercised directly in proportion to the extent of aggression. There is no as such hardcore formula to test that the act of the person falls within the ambit of private defence or not. It depends upon the set of circumstances in which the person has acted. Whether in a particular circumstance, a person has legitimately acted to exercise his right of private defence is a question of fact. In determining this question of fact, the court must consider the surrounding facts and circumstances. If the circumstances show that the right of private defence has been legitimately exercised, the court is open to consider the plea. A person can also exercise the right of private defence against the property of other people along with his own property and body of others as well. The right of private defence against property can be exercised against offences in the category of theft, robbery, mischief or criminal trespass or house-trespass or where a person is under reasonable fear of probable death or grievous hurt.

Source: *Extracted (with edits and revisions) An excerpt from article titled “To what extent can you exercise your right to private defence”, published at ‘Blog IP leaders’.*

1. Villain and Vidane had been enemies for a long time due to some property dispute. Villain one day threatened to kill Vidane. Vidane started carrying a gun if ever he faces a life endangering situation. One day Villain saw Vidane in the market outside Indore Music Academy and ran towards him with a percussion mallet in hand saying ‘Will finish you off today’. Vidane who was at a distance saw Villain charging towards him. He saw the opportunity and pulled out his gun and fired at Villain. Villain died on the spot. During the hearing Vidane was accused of murder and so he pleaded the right to private-defence. Decide.

- (a) Vidane is liable for murder as he was carrying a gun with him all the time.
- (b) Vidane is not liable as he was acting in private-defence.
- (c) Vidane is not guilty as he knew Villain wouldn’t have killed him if he hadn’t acted in private-defence.
- (d) Vidane cannot plead private-defence as he used disproportionate force to confront the threat.

2. Which of the following would fall under right to private defence?

(A) X saw Y being harassed by 2 goons on the street. He interfered but one of the goons had a knife which he pulled out when he saw X. X was a trained martial arts master and he easily tacked both of them but one of the goons got heavily injured.

(B) M was a night security guard in a society. One night he saw 10 armed men entering the premises by jumping a wall. When they saw A had seen them they all attacked. A had to use his gun which resulted in death of one of the robbers.

- (a) Only in (A) as in (B) M acted out of proportion. (b) Only in (B) as in (A) X was not himself under threat.
(c) Allowed in both. (d) Not in any of them

3. C was driving on the road when saw some altercation taking place between D and E. When C saw D was slapping E, C charged his car on D as he knew D was an infamous criminal who had multiple pending cases of homicide against him, killing D immediately. Decide if C is guilty or can plead the Self-defence.

- (a) C is guilty and cannot plead self defence.
(b) C is not guilty as D was about to kill E
(c) C is not guilty as he knew D had killed people before and might kill E.
(d) C is guilty as it was not his fight to get into as his life was not endangered.

4. Rautam Raddani was a rich businessman. One day he saw 2 suspicious men following him. When Rautam was about to enter an empty street, he saw both of them taking out knife and moving swiftly towards him. Rautam fires his air pistol (pellet gun) from a distance of 150 meters towards them which injures one of the assailants. They sued Rautam for the injuries sustained by them. Decide.

- (a) Rautam is guilty as the threat was not imminent.
(b) Rautam is not guilty as he acted in private-defence.
(c) Rautam is guilty as fired gun without waiting for assailant's attack.
(d) Rautam is guilty because the force used is excessive.

5. Akshay Vimal saw 4 people coming towards his house late in the night with construction tools. He took out his gun and shot all four of them. Later it was found they were construction workers who were heading back home after all day work. Court found Akshay innocent. Was the court right?

- (a) Yes as every decision of the court is taken after careful deliberation.
(b) No as he just saw men carrying tools and killed them.
(c) No as he shot all four of them, if he had killed one he would have been.
(d) Yes as he acted in private defence.

Passage - 2

Prosecution means the institution and conducting of legal proceedings against someone in respect of a criminal charge. Malicious prosecution is the malicious institution of unsuccessful criminal or bankruptcy or liquidation proceedings against another without reasonable or probable cause. This tort balances competing principles, namely freedom that every person should have in bringing criminals to justice and the need for restraining false accusations against innocent persons. Malicious prosecution is an abuse of the process of the court by wrongfully setting the law in motion on a criminal charge. The foundation lies in the abuse of the court process of the court by wrongfully setting the law in motion and it is designed to encourage the perversion of the machinery of justice for a proper cause the tort of malicious position provides redress for those who are prosecuted without cause and with malice. In order to succeed the plaintiff must prove that there was a prosecution without reasonable and just cause, initiated by malice and the case was resolved in the plaintiff's favour. It is necessary to prove that damage was suffered as a result of the prosecution. In an action of malicious prosecution the plaintiff must prove:

- 1) That he was prosecuted by the defendant.
- 2) That the proceeding complained was terminated in favour of the present plaintiff
- 3) That the prosecution was instituted against without any just or reasonable cause.
- 4) That the prosecution was instituted with a malicious intention, that is, not with the mere intention of getting the law into effect, but with an intention, which was wrongful in fact.
- 5) That he suffered damage to his reputation or to the safety of person, or to security of his property. It can be said that the malicious proceedings are that proceedings which are initiated with malicious intent. The elements (i.e. prosecution by the

defendant, absence of reasonable and probable cause, defendant acted maliciously, termination of proceedings in the favour of the plaintiff and plaintiff suffered damage as a result of the prosecution) which are necessary to the plaintiff to prove in a suit for damages for malicious prosecution must be fulfilled. However, on the basis the facts and circumstances, the Court should decide whether the suit is filed maliciously or not.

Source: Extracted (with edits and revisions), an excerpt from article titled "*Malicious Prosecution under Law of Tort*", published at 'Legal Service India'.

6. Arboz and Moloika were married for 4 years. They both were famous actors. But things did not go well. Moloika lodged a FIR accusing Arboz of domestic violence. Moloika eventually filed for divorce stating that Arboz was an alcoholic and physically abused and tortured her. Due to this, Arboz lost major film contracts and had to face a lot of loss and lashing from the society too. Later in the criminal proceeding of domestic violence it was found that the claims of domestic violence made by Moloika were not true and it was an attempt to get rid of her husband, teach him a lesson for his lack of concern for wife and pave her way to marry the other man. But they still got divorced. Now Arboz has filed a case for malicious prosecution against Moloika. Will he win?

- (a) Yes, because they got divorced.
- (b) No, because they still went through with the divorce.
- (c) No, because it cannot be proved that due to case filed by Moloika, Arboz lost his work.
- (d) Yes, because the claims made by Moloika were found not to be true.

7. Which of the following is a fit case for successful remedy under the tort of the malicious prosecution.

- (1) A, candidate in an election lost and went out in the public and said that the winning candidate has tampered with the election result.
- (2) Z knew that he is going to lose the elections to Y so during campaigning Z got pamphlets distributed saying Y is a crook and cases of fraud are pending against him. As a result Y lost the elections.
- (a) In (1) there is malicious prosecution but not in (2)
- (b) In (2) there is malicious prosecution but not in (1)
- (c) In both (1) & (2)
- (d) In neither of the cases.

8. R and S were shop owners who had shops on the opposite side of the same street and the both sold edibles but S had more customers every day. R was frustrated by this so he filed a criminal complaint against S that S mixes some substances which made people buy his products more. During the investigation it was found that S mixed some adulterant in his products. This led to the closure of S's shop. When S found out it was R who had filed that complaint S sued R for malicious prosecution because R did not have any reason to believe that S mixed something in his products. Decide whether S would succeed?

- (a) Yes, as R was not aware and he just made a false allegation which however turned to be true.
- (b) No, as the allegations were found to be true
- (c) Yes, as R made profits from closure of S's shop and he had malicious intent.
- (d) No, as the allegation were found not to be true

9. In a case there was mere lodging of a FIR alleging that the plaintiff wrongfully took away the bullock cart belonging to the defendant and requested that something should be done. The plaintiff was neither arrested nor prosecuted. Decide whether the tort of malicious prosecution is made out or not?

- (a) No, as there was no initiation of prosecution and also there was acquittal as required.
- (b) Yes, as a case has been instituted against the plaintiff.
- (c) No, as the defendant was acquitted.
- (d) Yes, as there was malicious intent found to file the FIR

10. The plaintiff was a sarpanch of a village whereas defendant number 1 was working as a Gram Sewak under the Zila Parishad and defendant number 2 was a teacher in a government school. The plaintiff had made various complaints about the two regarding their bad behaviour, misconduct, dereliction of duty, etc. In order to teach him a lesson and take revenge on him, both plotted against him and defendant number 1 filed a FIR claiming that the plaintiff had assaulted him. A criminal proceeding started and he was arrested. Later he was acquitted on the grounds that the complaint was frivolous and with malicious intent. The plaintiff initiated a case of malicious prosecution wherein he claimed that being a politician and sarpanch, he had suffered a loss of prestige and reputation and also his status was marred. Will he succeed?

- (a) Yes as he was the sarpanch and has an image to maintain
- (b) No as the defendants also voted for the plaintiff which got him elected
- (c) Yes as the intent behind the prosecution was found to be malicious
- (d) No as he actually went and assaulted them after he was acquitted.

Passage - 3

According to section 151, it is the duty of a bailee to take care of goods bailed to him. Bailee should take care of these goods as an ordinary man will take care of his goods of the same value, quality, and quantity. Thus, if the bailee takes due care of goods then he will not be liable for any loss, deterioration of such goods. Also, the bailee needs to take the same degree of care of goods whether the bailment is for reward or gratuitous. However, the bailee is not liable for any loss due to the happening of any act by God or public enemies though he agrees to take special care of the goods.

As per section 153, the Bailee shall not make any unauthorized use of goods bailed. In case he makes any unauthorized use, then bailor can terminate the bailment. Bailor can also claim for damages caused to goods bailed due to unauthorized use as per Section 154.

The duty of the bailee is to return the goods without demand on the accomplishment of the purpose or the expiration of the time period. In case of his failure to do so, he shall be liable for the loss, destruction, deterioration, damages or destruction of goods even without negligence.

Source: Extracted (with edits and revisions), an excerpt from web journal article titled “*Duties of Bailee and Bailor*”.

11. Mr. X planned a holiday to Goa and decided to hand over the car to his neighbor Mr. Y for servicing and safe keeping. Mr. Y himself thought to take a road trip using Mr. X's car, where he meets with an accident and the car is heavily damaged. Can Mr. X claim damages for unauthorized use of the car?

- (a) Yes
- (b) No
- (c) Maybe
- (d) Data insufficient to answer the question.

12. Mr. X was going on a holiday and he asked his neighbor Mr. Y to take care of his car. Mr. Y got the car parked in front of Mr. his (Y's) house. The Contract was not for any money and was merely gratuitous. One day, Mr. X's car is stolen from outside Mr. Y's house while Mr. Y was in his garden trimming his plants. Mr. X has claimed damages for the breach of Bailment contract from Mr. Y. Will he win?

- (a) He will win because Mr. Y did not pay any attention on the car.
- (b) He will not win because the contract was merely gratuitous and hence not a contract for bailment.
- (c) He will win because as a bailee he should have taken care of these goods as an ordinary man will take care of his goods of the same value, quality, and quantity.
- (d) He will not win because bailee is merely in possession of goods and not the owner of the goods.

13. Which of the following is a valid contract of bailment:

1. Mr. A told Mr. B to keep his dog for a day while he is visiting out of the town.
 2. Mr. A told Mr. B that he has found a ring that belongs to the former and Mr. B tells him to hold it till he can take it back.
- (a) Only I
 - (b) Only II
 - (c) Both I and II
 - (d) Neither I nor II

14. A entered into contract of bailment with his security guard to take care of his bicycle meanwhile he is swimming. The Security guard didn't lock up the cycle and went away for a while to have tea. By the time he returned, the cycle was lost. Decide if A will succeed against the security guard?

- (a) Yes, as the bailee the guard was under the duty to take care of the goods.
- (b) No, the security guard cannot be sued.
- (c) Yes, as he should have taken care of it.
- (d) Yes, as the bailor the guard was under the duty to take care of the goods.

15. Mr. A is a farmer and has harvested lentils for the season. For a family emergency he needs to leave for 15 days and therefore, he asks his friend Mr. X to keep good care of the sacks of lentils till he is back. Mr X exercised care and caution well. However, one fateful night, due to a very heavy rainfall, which is unprecedented in the region, everything is destroyed and all the storage of lentils is washed away. Mr. A is challenging Mr. X for the breach of contract of bailment. Will he succeed?

- (a) Mr. A will succeed as Mr. X did not take care of the goods bailed as he an ordinary man.
- (b) Mr. A will not succeed as loss was due to the act of God, Mr. X exercised all care and caution.
- (c) Mr. A will succeed as there was a contract for bailment.
- (d) Mr. A will not succeed as the contract was gratuitous.

16. A and B agree to enter into a bailment contract where, A will park his car at B's house before leaving for his office and then B will drive it to A's home and hand over the keys to A's wife. B never delivered the Car. Has he violated the Contract of Bailment?

- (a) Yes, he has violated the basic law of Contract.
- (b) No, he has not violated the Contract.
- (c) Yes, since he did not dispose the car as per the directions of A.
- (d) No, since the bailment contract only requires safekeeping of the goods.

Passage - 4

In Constitution of India, Double Jeopardy is incorporated under Article 20(2) and it is one of fundamental right of the Indian Constitution. And the features of fundamental rights have been borrowed from U.S. Constitution and the concept of Double Jeopardy is also one of them. Principle of Double Jeopardy is incorporated into the U.S. Constitution in the Fifth Amendment, which says that "*no person shall be twice put in Jeopardy of life or limb.*"

Article 20 of the Indian Constitution provides protection in respect of conviction for offences, and article 20(2) contains the rule against double jeopardy which says that "No person shall be prosecuted and punished for the same offence more than once." The protection under clause (2) of Article 20 of Constitution of India is narrower than the American and British laws against Double Jeopardy.

Under the American and British Constitution, the protection against Double Jeopardy is given for the second prosecution for the same offence irrespective of whether an accused was acquitted or convicted in the first trial. But under Article 20(2) the protection against double punishment is given only when the accused has not only been 'prosecuted' but also 'punished', and is sought to be prosecuted second time for the same offence. The use of the word 'prosecution' thus limits the scope of the protection under clause (1) of Article 20. If there is no punishment for the offence as a result of the prosecution clause (2) of the article 20 has no application and an appeal against acquittal, if provided by the procedure is in substance a continuance of the prosecution. For the purpose of this Article the term prosecution does not cover the departmental proceedings.

Source: Extracted (with edits and revisions) An excerpt from article titled "Double Jeopardy in India ", published at 'Legal Services India '.

17. Mr. X is a convicted felon, in the case of theft. It was later discovered that Mr. X had also murdered the owner of the house wherein he committed theft. The prosecution wants to charge Mr. X with Murder. Will they succeed?

- (a) Yes, the prosecution will succeed as under Indian law, the protection under 20(2) is narrower than in US.
- (b) No, the prosecution not succeed as Mr. X is protected under Article 20(2) of the Constitution of India.
- (c) Yes, the prosecution will succeed Mr. X was only convicted for theft and therefore, Article 20(2) does not protect against another charge.
- (d) No, the prosecution will not succeed as Mr. X's life and limb cannot be put in danger twice.

18. Mr. X is a Police Officer who was caught in an act of absence from his duty without informing his superiors, and a disciplinary proceeding was formed against him. It was found that Mr. X regularly missed his duties and therefore, he was suspended from his post. Later on, it was also found that Mr. X was implicit in certain corruption cases and a case was filed against him under the Indian Penal Code & the Prevention of Corruption Act. Mr. X wants to take the defense of Article 20(2). Will he succeed?

- (a) Mr. X will succeed as he was already punished for his crime.
- (b) Mr. X will not succeed as public officials are not covered under Art. 20(2).

(c) Mr. X will succeed as the offence for he is charged is a continuing offence for which he is already punished.

(d) Mr. X will not succeed as the first proceed were merely departmental proceedings and not prosecution.

19. Which of the following can be inferred from the passage?

(a) Only a person who is charged with a criminal offence can take the protection of Article 20.

(b) The principle embodied under Article 20 are exactly the same as it is in the fifth amendment of the constitution of USA.

(c) The Constitution of India in essence a more liberal towards felons than USA or UK.

(d) The principle of double jeopardy is much wider in scope in USA than in India.

20. Which of the following cases can be granted protection under Article 20(2) of the Indian Constitution?

(a) Mr. X is charged with rape and then subsequently charged with murder.

(b) Mr. X is acquitted on the charge of rape and then charged with the offence of murder.

(c) Mr. X is convicted for the offence of rape and imprisoned for 4 years and a case is filed to increase his imprisonment for minimum of 7 years.

(d) Mr. X is charged with rape and murder in the same trial and he pleads to be tried only for one of the either offence.

21. Below given are two factual scenarios. Under which of the following cases, double jeopardy can be granted in USA?

1. Mr. A is acquitted for the murder of one Ms. X. Later on, addition evidence was found and Mr. A was again prosecuted for the same murder.

2. Mr. A is convicted for the murder of one Ms. X. Later on, addition evidence was found and Mr. A was again prosecuted for the same murder.

(a) Only I

(b) Only II

(c) Both I and II

(d) Neither I nor II

Passage - 5

An agreement is void if it restricts any person from enforcing his contractual rights through ordinary court proceedings or if it limits the time within which he may enforce his rights. The agreement is void if it extinguishes the right of any party to it, or releases any party thereof from liability, in respect to any contract on the expiry of a specified period so as to restrict any party from enforcing its rights, is void to that extent. Any agreement between the two parties that debar either or both of them from going to a court of law in case of non-compliance of the contract, is a void agreement. Section-28 of the Indian Contract Act says that any agreement that restricts an aggrieved party from enforcing his rights to approach a relevant court or tribunal in case of a breach of contract, or limits the time within which he may do so, is a void agreement. It further says, any agreement that extinguishes the rights of any party or discharges either of the parties from liability is a void agreement. Immunity from liability is not allowed by the law

In simple terms, all agreements are void, if:

1. They render it invalid, by agreement, for a party to approach a relevant court or tribunal if the parties' rights have been violated.

2. Limit the time within which the aggrieved party can approach such a court or tribunal.

3. Make a party immune from liability by agreement.

Exceptions

There are two exceptions to Section 28, as mentioned in the Act. Agreements in restraint of legal proceedings are valid, if:

1. A future dispute or a past dispute is referred to arbitration. That is if there is an arbitration clause in the said agreement.

2. Agreements stating the limit of time as per the Limitation Act, 1963. For instance, as per the Limitation Act, 1963, a suit for breach of contract may be brought within the period of three years from the date of the breach and not later.

3. If out of multiple jurisdiction available to institute proceedings, one place is agreed by the parties to institute proceedings, such clause is valid and other jurisdictions are excluded.

Source: Extracted (with edits and revisions) An excerpt from article titled "Agreements in restraint of Legal Proceedings", published at 'Blog IP Leaders'.

22. A and B signed a contract of employment. Under the terms agreed by them, one of them read as, in case an employee wants to quit he has to inform to the management for the notice period to start and if such an employee doesn't do so he can be refused to be paid the severance amount and no case shall be instituted against the company anywhere in the country for such regard. B wanted to quit and gave the notice in such regard. Next day he was fired by his boss A and he was refused his severance amount as well. B instituted a case against A and his company. A said no such case is valid according to the employment agreement. Decide on the basis of the principles.

- (a) B cannot sue the company as terms of a signed agreement are bounding on the parties.
- (b) B cannot sue as he was fired by his boss.
- (c) B can sue as barring from instituting a case when someone has been wronged is not allowed by the law.
- (d) B can sue as A was his boss and not the company itself and you can sue a person but not the company here.

23. Vidhaan and Vidyut were two contracting parties. They made an agreement for sale of mangoes. As the deal under which the mangoes were sold to Vidyut was entered in Indore, so in one of the terms, they agreed that in case of a dispute the court with jurisdiction will be that of Indore. Both of them lived far from Indore. Vidyut did not pay the agreed amount and Vidhaan filed a suit in his hometown Ujjain where Vidyut also lived. Vidyut said no such a case is valid according to their contract. Decide

- (a) Vidyut can file a suit against Vidhaan for breaching the terms of the contract.
- (b) Vidhaan can sue as he has the right to sue in case of breach of contract.
- (c) Vidhaan can sue even in Ujjain as the term to sue only in Indore jurisdiction is bad in the eyes of law under Sec 28.
- (d) Vidhaan cannot sue in Ujjain as its agreed that the courts in Indore shall have appropriate jurisdiction.

24. Hardik and Virat enter into an agreement for sale and supply of goods. In one of the terms of the agreement said in case of any dispute none of the parties shall approach any court of law or tribunal in the country. In such a case which of the following statements is true?

- (a) Agreed upon terms of an agreement are binding on both the parties.
- (b) Agreement can be held void if any of them goes to court to file a case.
- (c) Such an agreement in restraint of legal proceedings is violation of sec 28 of ICA hence void.
- (d) They can file a case only if both of them are at a fault.

25. In one of the terms in the agreement signed by Y and Z it is mentioned that in case of breach of contract the parties can file a case only within a time period of one year of the breach. Y approached the court after 3 and $\frac{1}{2}$ years of breach of the contract. Decide.

- (a) Y can successfully file the suit as defining a time period to sue is not allowed by the law.
- (b) Y can't successfully sue as the contract is void for making such a term.
- (c) Y can't successfully sue as he has not filed a suit within one year of the breach.
- (d) Y cannot successfully file the suit as period mentioned in the applicable law is of 3 years.

26. Ranil took some money from Rukesh, his brother to start his business. But the business failed and Ranil could not return the money. So Rukesh and Ranil signed a contract under which Ranil was employed by Rukesh so that he can repay his loan. Under one of the terms, it stated Ranil cannot sue Rukesh as he already owes him a good amount of money. After few months Rukesh stopped paying Ranil his salary saying he owes him a lot. Ranil filed a case against Rukesh. Decide.

- (a) Ranil cannot file a case as he already is in debt
- (b) Ranil cannot sue Rukesh because the agreed contract forbids him to do so.
- (c) Ranil can sue as he cannot be compelled to do begaar.
- (d) Ranil can sue as such condition of depriving right to sue is not allowed by the law.

Passage - 6

The Karnataka High Court's much-awaited judgment on hijab has upheld the state government's circular of February 5. The 129-page judgment is on the expected lines with the three-judge full bench headed by Chief Justice Ritu Raj Awasthi discussing at length the doctrine of essentiality and how hijab is not an essential religious practice of Islam, and, therefore, concluding that the petitioners' arguments against hijab are liable to rejection.

In the Shirur Mutt case (1954), it was held that the term "religion" will cover all rituals and practices "integral" to a religion. The SC took upon itself the responsibility of determining what is integral. The court said that the question of religion would be decided by taking into consideration what the religious denomination considered essential or crucial. This is called the "essentiality test". But this exercise produces obscure results and tends to lead the court into an area beyond its competence.

The essentiality test was crystallised in the temple entry case. After examining selective Hindu texts, the court came to the conclusion that untouchability was not an essential Hindu practice.

Strangely, the learned judges made no reference whatsoever to the acceptance of the review of the Sabarimala judgment (2018) and framing of seven questions by the seven-judge bench of the Supreme Court. The Sabarimala review (2020) clearly shows that the Supreme Court itself is in doubt about the correctness of the essentiality doctrine and whether courts should assume the role of clergy.

The court has rightly concluded that freedom of religion under Article 25 has been subordinated and made subservient to all other fundamental rights. But in this case, there was no question of conflict between competing fundamental rights. To say that freedom of religion is merely an individual right is equally controversial as freedom of religion under Article 26 is indeed a group right given to every religious denomination or any section thereof, and unlike Article 25, it has not been subjected to other fundamental rights. In fact, the essentiality doctrine originated in the context of the expression "in matters of religion" used in Article 26.

The Supreme Court in Shirur Mutt (1954) held that the term "religion" in Article 25 covers all rituals and practices that are "integral" to the religion. In this manner, the judiciary took it upon itself to determine what is integral — and what is not — to religion. In doing so, it implicitly rejected the "assertion test" of the United States, "whereby a [petitioner] could just assert that a particular practice was a religious practice" and courts would not probe it any further.

Source: Extracted (with edits and revisions) An excerpt from article titled "Agreements in restraint of Legal Proceedings", published at 'The Indian Express'

27. The Government of X state has passed a law against animal cruelty and one of the points is the imposition of penalty on person who catches live snakes from the jungle. JPG religion in India is one such religion, wherein every year the people belonging to the religion catch live snakes so that they can worship it. The JPG religion has filed a case against the Government for infringement of fundamental right to religion. During the case it is found that worshipping the statue of Snake is essential to the JPG religion. Will the practice of JPG religion pass the test of essentiality?

- (a) Yes, they will pass the test of essentiality as worshiping Snake is essential in the religion.
- (b) No, they will not pass the test as worship live snake is not essential.
- (c) Yes, they will pass the test as the test of essentiality only requires the assertion that something is a religion practice.
- (d) No, they will not pass the test as mere assertion is not enough, the people of JPG must understand that the practice is harming the Snakes.

28. The State of X has approved a new law establishing a standard dress code for all educational institutions. Any and all students are prohibited from wearing any type of head scarf into educational institutions under the rules. [A] and [B] are members of the ABC religious group, which requires all female members to wear a head scarf while in public. It is established that such practice is one of the religion's required behaviours, according to the ABC religion's holy writings. When [A] and [B] attempted to enter the school with the head scarf, they were denied entry since they were not dressed properly according to the new law. They filed a complaint with the court, will they succeed?

- (a) Yes, they will be allowed as it is a part of essential religious practice in the ABC religion.
- (b) No, they will not be allowed as it is not a part of essential religious practice in the ABC religion.
- (c) Yes, they will be allowed as they have fundamental right under article 26 to practice their religion.
- (d) No, they will not be allowed as the fundamental right to practice one's religion is not absolute but it has reasonable restrictions.

29. In addition to the above question, the new regulation states that no males will be allowed to keep facial hair in schools. Except for "students whose religion bans the cutting of hair or shaving of the face," it makes an exception for some pupils on religious grounds. Students from the XYZ religious community were removed from the classroom because they did not follow the New Law. They had lengthy beards and said that it was a vital religious practise because their faith forbade them from shaving their faces or cutting their hair. Many holy writings of the XYZ religion demonstrate that the practise is commonly followed, but not uniformly, and the norm has been interpreted differently in modern times. Students from the XYZ religion have filed a case in the Supreme Court of India. Will they be allowed to enter the school with lengthy beards?

(a) No, the State has released the New Law to bring uniformity among Students, such allowance will defeat the purpose of the Law.

(b) Yes, the State cannot interfere with the religion of the person as it is a Fundamental Right guaranteed by the Constitution of India.

(c) No, as the impugned practice is not an essential religion practice of the religion XYZ, therefore, the students will not be allowed in school without shaving their face.

(d) Yes, as the New Law itself has an exception based on religious ground, therefore, they shall be allowed to the school.

30. The Government of X state has passed a law against animal cruelty and one of the points is the imposition of penalty on person who catches live snakes from the jungle. JPG religion in India is one such religion, wherein every year the people belonging to the religion catch live snakes so that they can worship it. The JPG religion has filed a case against the Government for infringement of their fundamental right to religion. During the case it is found that worshipping the Snake is essential to the JPG religion as contented by the petitioners. Will the practice of JPG religion pass the assertion test of USA?

(a) Yes, it will pass the assertion test as the practice of worshipping snake is a religious practice.

(b) No, it will not pass the test because merely showing that it is a religious practice is not enough, it needs to be shown that it has been uniformly practiced.

(c) Yes, it will pass the assertion test as assertion is seen from the perspective of person making the claim.

(d) No, it will not pass the test of assertion as an assertion cannot defeat a law.

31. Which of the following inference can be drawn from the above passage?

(a) The fundamental right to religion is supreme and in the case of conflict with other rights, it is always superior.

(b) The essential religious practice test leads to the results which are best suited to the modern time.

(c) The essential religious practice test is still in question before the Supreme Court and not a settled principle.

(d) None of the above

Passage - 7

The Texas House approved a priority "heartbeat" bill passed by the Senate earlier this spring. Abortion rights advocates say the legislation is among the most "extreme" measures nationwide and does not exempt people pregnant because of rape or incest. Beyond the limitations on abortion access, the bill would let nearly anyone - including people with no connection to the doctor or the woman - sue abortion providers, and those who help others get an abortion in violation of the proposed law. People who support abortion funds and clinics could also be hit with lawsuits.

The bill bans abortions after a foetal heartbeat can be detected without specifying a specific timeframe. The "unprecedented," "extraordinary," and exceptionally broad" language in the bills means "family members, clergy, domestic violence and rape crisis counsellors, or referring physicians could be subject to tens of thousands of dollars in liability to total strangers,".

The bill's passage comes as conservative state houses across the country have tried to curtail abortion access, emboldened in part by the new conservative makeup of the Supreme Court. While "heartbeat" bills passed by other state houses have been blocked by the courts, Texas lawmakers believe legal language in their version makes it stronger. But the provisions are controversial, and the lawyers who sent the letter to House lawmakers said they "contravene the Texas Constitution and undermine long standing rules and tenets of our civil legal system."

North Dakota had become the first state in the USA to pass the Heartbeat Bill. Later several other states passed the law. This includes Ohio, Louisiana, Georgia, Alabama, Missouri, Kentucky. However, the federal courts of the states have blocked the law temporarily. These states are in the Bible Belt of the US. The Bible Belt is a region of the Southern United

States in which socially conservative Christianity plays a strong role in society and politics, and church attendance across the denominations is generally higher than the nation's average.

Source: Extracted (with edits) from a newspaper article (editorial) titled as 'Bill that would ban abortion at six weeks heads to governor's desk to become Texas law' authored by Shannon Najmabadi and published by The Texas Tribune.

32. What major legislative change does the Texas 'heartbeat law' propose?

- (a) The heartbeat law bans abortion after 12 weeks of pregnancy and allows almost anyone to file a suit against the abortion takers.
- (b) The heartbeat law bans abortions after a foetal heartbeat can be detected without specifying a specific timeframe and also allows almost anyone to file a suit against abortion providers.
- (c) The heartbeat law legalises medical termination of pregnancy and gives much needed freedom to women.
- (d) The heartbeat law allows any individual to file a suit against illegal abortion providers.

33. According to the information hereinabove provided in the passage, which of the following is not a problem in the said new Heartbeat Act?

- (a) It does not provide any specific time frame.
- (b) Family members, clergy, domestic violence and rape crisis counsellors, or referring physicians could be subject to lawsuit.
- (c) The proposed law would provide a person who has no connection with either doctor or the woman, a right to sue.
- (d) This law shall boost the market for contraceptives.

34. What do the abortion right advocates say regarding the new Texas heartbeat law?

- (a) The legislation is among the most "extreme" measures nationwide and does not exempt people pregnant because of rape or incest.
- (b) The bill shall champion an abortion revolution across the states of USA.
- (c) It shall set up a wrong precedent across the states of the bible belt.
- (d) The Supreme Court of the USA shall hold it unconstitutional.

35. Why do Texas lawmakers believe that the Act might not be blocked by court?

- (a) Because of the persuasive language used in the Act.
- (b) Because of the strong legal language used in their version.
- (c) Because of the goodwill courts hold towards Texas lawmakers.
- (d) Because they believe that the law that they have enacted is very different from the similar law enacted in the other states of US.

36. What might be the reason for the Heartbeat bill to be introduced in many states of the Bible belt?

- (a) The strong conservative mindset in social and political setup of this region.
- (b) The belief in religion and beauty of life by people in this region.
- (c) It is just a sheer coincidence.
- (d) The authority of religious leaders over the senate in this region

Passage - 8

A trademark in relation to goods conveys to the general public and specifically to the consumers about the origin and quality of those goods, thereby acquiring a reputation in the course of business and time. Therefore, the concept of a trademark is the foundation of one's business to distinguish from others.

Passing off action is based on common law principles. The damages claimed in an action for passing off are "un-liquidated damages" and the action against passing off is based on the principle that "a man may not sell his own goods under the pretence that they are the goods of another man".

In passing off, it is not essential that the plaintiff must establish fraud on the part of the defendant in a passing-off action. While granting an injunction against the defendants using the trademark "Horlicks", the Delhi High Court held that "the use of the offending mark by the defendants to imitate the plaintiff's trademark appears to be a flagrant and blatant attempt on the part of the defendants to imitate the plaintiff's trademark i.e., "Horlicks" with a view to deceive the unwary purchasers and exploit and encash on their goodwill in order to pass off their goods as that of the plaintiff's. The law does not permit anyone to carry on his business in such a way as would persuade the customers in believing that the goods belonging to

someone else are his or are associated therewith. Where there is the possibility of confusion in business, an injunction would be granted even though the defendant adopted the name innocently.”

The false representation made by the defendant, whether expressly or otherwise, must be proved as a matter of fact in each case. Absence of actual deception is not determinative. The ultimate question of whether the deception is likely to cause confusion remains a question of fact for the courts to decide in the light of available evidence.

Also, in passing off action, it is immaterial whether the plaintiff and the defendant trade in the same field or trade-in different products. Remedies in the form of the injunction were granted in favor of the plaintiff on the basis of an action of passing off even though the plaintiff and defendant were trading in altogether different products.

For inherently distinctive marks, ownership is governed by the priority of use of such marks. The first user in the sale of goods is the owner and senior user. In order to succeed, the plaintiff has to establish the user of the mark prior in time than the impugned user by the respondents.

Source: Extracted (with edits and revisions) An excerpt from article from web portal titled “*Passing Off and Infringement of Trademarks - India*”, authored by Manzoor Laskar.

37. Vidhaan and Nidhaan, two brothers, started a business with the goodwill inherited from the family under the same brand but at different locations. In a few days, Vidhaan started a new company with the same brand name in which goodwill was inherited by him. Vidhaan spent a significant time and money on branding and promotion of the brand. This benefitted him in creating and establishing a good name in the market. Later on, by seeing Vidhaan grow and prosper, Nidhaan threatened to sue Vidhaan. He demanded the transfer of the trademark of the company to Nidhaan. Vidhaan refused to do so and in return Nidhaan filed passing off suit against Vidhaan. Which of the following is true according to the information given in the passage?

- (a) Vidhaan will win the suit because he has spent a significant time and amount on branding and promoting the trademark.
- (b) Nidhaan would win the suit because he has inherited the trademark along with Vidhaan.
- (c) The suit can be enforced against either of them.
- (d) The suit of passing off is not a valid remedy available with Nidhaan against Vidhaan.

38. XYZ Pvt. Ltd., is a very reputed and noted global comic company, who is known for the immersive storytelling methods they employ in their publishing and movie business. Their products can be distinctly made out by their distinct designs, typical fonts and handcrafted images by the customers due to uniqueness and exclusivity. What if another magazine that is MNZ Ltd., a comic company from India, inducted XYZ Pvt. Ltd.'s identical font and pictures into their comics, movies, and merchandise without any bad intention, can an injunction be granted by the court against MNZ Ltd.?

- (a) Yes, because they have used similar font and pictures.
- (b) No, because XYZ Pvt. Ltd. and is a well-known company and the customers can identify a counterfeit font with ease.
- (c) No, because MNZ Ltd. had no bad intentions.
- (d) Yes, because they both were competitors in the same market.

39. What will be true in the last-mentioned question and facts, there is another company that is ABC Ltd. trading in Chocolates and have used similar and identical fonts and pictures in good faith as to that of XYZ Ltd. Which of the following would likely be the result of the case?

- (a) XYZ Ltd. will have a legal recourse of filing suit of passing off against ABC Ltd. also.
- (b) XYZ Ltd. will not have a legal recourse of filing suit of passing off against ABC Ltd.
- (c) Both the companies are trading into different products and thus no suit of passing off will lie.
- (d) None of the above

40. Vidhaan was an owner of a brand named "Calmpose" which is a very famous online outlet of clothes since last 7 years. Vidhi recently started another online outlet named "Calmprose". Vidhaan sued Vidhi for passing off, which of the following is correct according to the information given above?

- (a) Both the trademarks are phonetically similar and Vidhaan is a prior user of the trademark so passing off action can lie.
- (b) Both the trademarks are used in online market and will not affect each other, therefore no action can lie.
- (c) Both the trademarks are similar only in spellings, therefore no action can lie.
- (d) Both the trademarks belong to Vidhaan since he is the prior user of the same.

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