



# VIDHIGYA

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# CLAT 2023

## CONCEPT

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## Concept Booster Series – Test - 1

**Directions for attempting questions:** 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. There are total 6 passages. The allotted time to solve is 35 (advanced) to 40 mins (intermediate).

### Passage – I

The process of returning the person convicted or accused for an offence to the nation he escaped from is called extradition. As Oppenheim defined, “extradition is the delivery of an accused or a convicted individual to the State on whose territory he is alleged to have committed or to have been convicted of, a crime by the state on whose territory he happens for the time to be”. There are two states involved in extradition- the territorial state and the requesting state. The “territorial state” is where the accused or convict flees to escape the trial or punishment and the “requesting state” is the one where the offence is or is allegedly committed. The principle of reciprocity is well-founded under various aspects of international law. It provides that every act of favour, respect, benefit or penalty that a country bestows on the citizens or legal entities of another country, should be returned (reciprocated) in the same manner. It provides for the mutual expression of international support. As far as extradition is concerned, the principle of reciprocity applies that the territorial state must extradite the accused persons or convicts in exchange for any diplomatic kindness shown by the requesting state. Such diplomatic kindness may be any act, ranging from tariff relaxations or enforcement of foreign judgments to military or economic aid. This principle may also operate for the mutual extradition of accused persons or convicts of the respective countries. The principle of double criminality provides that the act for which the accused person or convict is requested to be extradited by the requesting state, must be a crime in the territorial state as well. The principle of double jeopardy is also called ‘non-bis in-idem.’ It provides that a person who had already been tried and punished cannot be extradited if the request pertains to the same crime. No criminal tried and convicted once can be extradited for the same offence, except for the expired period of punishment. The principle of speciality provides that the requesting state is bound to try or punish the extradited offender only for the offence for which he is extradited. Countries refuse to extradite their own nationals allegedly committing a crime in the requesting State; such countries claim their right to exercise State sovereignty over their nationals, even though the offence was committed in another country. Countries refuse to extradite political offenders. Generally, except for the following categories of offences, most crimes specifically mentioned in the extradition treaty existing between both the states are extraditable. Religious offences including religious disrespect are not extraditable. Military offences like desertion, disobedience of higher officials’ orders, etc. are non-extraditable.

**Source: Extracted (with edits and revisions) An excerpt from article titled “Extradition in International Law”, authored by Rachit Garg.**

- Which of the following can be interpreted about the law of ‘Extradition’?
  - It is a compulsory general practice for each nation.
  - Refusal of extradition can be concluded as a declaration of war and is a reason for hostile relations.
  - If the offence of the person is proved, extradition is mandatory.
  - Extradition follows the principle that no one can be punished for a same offence twice.
- Vidhie is a Russian spy who has committed a crime in United States. Vidhie fled to India after the commission of the crime. Suppose the Indian intelligence takes Vidhie in confinement, following the principles of Extradition in letter, under which country’s court is she liable to be tried?
  - Russia as she is a Russian spy.
  - India as the Indian intelligence caught her.
  - United States as the place of execution of crime is US.
  - International court as there are three countries involved.
- In the above situation, which of the following will be the ‘requesting state’?
  - India as the US requested India for extraditing the offender.
  - Russia as the US requested the extradition of a Russian spy.
  - US as the request for extradition has been put forth by the US.
  - None of the above as in Extradition, only two states are involved.
- Which of the following statement is true about the law of ‘Extradition’ from the information provided in the passage?
  - Military aid by the requesting state cannot be considered as diplomatic kindness for the application of principle of reciprocity.
  - Following the concept of ‘non-bis in-idem’, no criminal tried or convicted once can be extradited for the same offence, barring for the expired period of punishment.
  - The state requesting the extradition can conduct trial or punish the extradited offender for the offence for which he is extradited and otherwise.
  - The right of state sovereignty is claimed by the territorial state in case they wish to deny extradition of their own national.



5. Vidhan is a religious leader who belong to Myanmar. He ordered the people of his community to execute to the people belonging to a certain other community. The orders resulted in five days of mass genocide and United Nations peace keeping forces had to be deployed to bring the situation back to normal. Vidhan fled to India to escape prosecution in Myanmar. Is India bound to extradite Vidhan?

- (a) No, as people accused of religious crimes are not to be extradited.
- (b) Yes, as Vidhan had committed a heinous crime of genocide.
- (c) Yes, as Vidhan is a religious leader.
- (d) No, as Vidhan fled from his country.

6. Under which of the following, an extradition can be denied?

- (a) The punishment for alleged offence is different in Territorial state than in requesting state.
- (b) The person holds the citizenship of the requesting state.
- (c) The offence has been committed against the established government of requesting state.
- (d) The alleged charges are not an offence in the requesting state.

7. Which of the following can be interpreted about the principles governing the Extradition?

1. Double jeopardy and rule of double criminality is substantially the same.
2. Extradition can be effected even if one of the above principle is satisfied.

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

8. Which of the following statement can be inferred about the law of 'Extradition' from the information provided in the passage?

- (a) The act for which the accused is requested to be extradited need to be a crime in the requesting state but not necessarily in the territorial state.
- (b) The principle of reciprocity is an antithesis to the mutual expression of international support.
- (c) Tariff relaxation by the requesting state can be considered as diplomatic kindness for the application of principle of reciprocity.
- (d) In lieu of diplomatic kindness shown by the territorial state the extradition can be done following the principle of reciprocity.

### Passage - II

The Hathras case significantly demonstrates and reaffirms the all-pervasive upper-caste hegemony in India. The conduct of the state apparatus in question is violative of domestic law as well as India's obligations under international law.

The International Convention on the Elimination of All Forms of Racial Discrimination, 1965, to which India is a signatory applies to matters of caste-based discrimination too, because the Committee on the Elimination of Racial Discrimination (CERD) – which ensures implementation of the Convention by state-parties – has emphasized in its Concluding Observations (2007), that “discrimination based on ‘descent’ includes discrimination against members of communities based on forms of social stratification such as caste”. Notably, the treaty states that discrimination based on descent falls within the ambit of ‘racial discrimination’ (Article 1).

To begin with, when the victim was taken to the Chandpa police station in a state of severe bodily pain, the police appeared to be reluctant to help and asked the family to take her away. In fact, the police took cognisance of her allegation of rape a full eight days after the incident, claim, falsely, that that is when she first spoke about sexual assault. The conduct of the authorities violates Article 5(a) (equal treatment before organs administering justice), and (b) (protection against violence), and Article 6 (effective protection and remedies by state institutions) of the Convention. Explaining these Articles in the context of caste discrimination, the CERD has also recommended India ensure that (i) such victims have access to effective remedies, (ii) legal, medical and psychological assistance is provided to them, and (iii) complaints are properly registered and investigated.

Similarly, the UP government hired a public relations firm to spread a message through the media that the victim was not raped. This is, first, despite the fact that the samples were collected 11 days after the incident, while forensic evidence can only be found up to 96 hours after the incident, according to the Aligarh CMO. Second, the definition of the offence of rape has been amended in the year 2013 widening its scope, whereby ‘manipulation of any part of the body of a woman so as to cause penetration’ also constitutes rape. Third, before the conclusion of a trial, one cannot say that rape was not committed. Fourth, in her statement before the magistrate, the victim spoke about the incident and named the culprits. Fifth, in criminal cases, the state represents the victim and strives to prove the guilt of the accused.

**Source: Extracted (with edits and revisions) An excerpt from article titled “UP’s Handling of Hathras Case in Violation of UN Convention on Racial Discrimination”, authored by Kailash Jeener, published at ‘The Wire’.**

9. Vidhie and Vidhushi, two girls participated in an extempore competition organized by Madhya Pradesh Government. The total time allotted for speech was 5 minutes. Vidhie spoke for 4 minutes and Vidhushi for 6 minutes. At the time of Competition, their names and identity were not disclosed but before declaring results, the judges came to know that Vidhushi belongs to Dalit community and is a member of scheduled caste. The results were declared Vidhie won and Vidhushi was disqualified on the ground of exceeding the time limit allotted to speak in the competition. Decide whether there has been racial discrimination according to Article 1 of The International Convention on the Elimination of All Forms of Racial Discrimination, 1965?

- (a) Yes, this was a clear case of discrimination based on “descent”.



- (b) Yes, the competition was organized by Madhya Pradesh Government and it is the duty of the state to protect and promote a girl belonging to Scheduled Caste
- (c) No, the competition had its own set of rules and Vidhi won on her performance and disqualification of Vidhushi was on valid grounds according to the rule book of the competition.
- (d) Both a and b are correct

10. Vidhiti, a 12-year-old girl lived in a village and was deaf and mute (dumb). One evening, two boys of her own village came and told her that she is being called by her father at a specific place near her village. Vidhiti went there and the two boys followed her and assaulted her sexually. After the incident, Vidhiti went to the police station to report the incident but the police officer did not bother to write her complain because of her inability to speak. According to the author of the passage, whether the provisions of the mentioned international convention are violated or not?

- (a) Yes, because Police authorities failed to perform their function in a way that it seems as a violation of the provisions of the mentioned international convention.
- (b) No, the convention does not have a binding effect on India.
- (c) The answer is not clear since there is no fact mentioned in the passage as to whether this convention has a binding effect or not.
- (d) Yes, because Vidhiti was deaf and mute (dumb).

11. Which of the following facts, if added would have most cogently constituted rape according to the 2013 amendment Act in the last-mentioned question?

- (a) The boys locked her in a vacant room and deprived her of food and water.
- (b) The boys tore her clothes.
- (c) The boys tried to penetrate a rod in her private parts.
- (d) The facts in the last-mentioned questions are enough to make the boys liable for rape charges, facts in the above three options will not add any cogency to the said offence.

12. Which of the following is untrue according to the author of the passage?

- (a) The International Convention on the Elimination of All Forms of Racial Discrimination, 1965 is applicable to India due to its ratification.
- (b) It is the duty of the State authorities to ensure effective access of remedies to the victims of cases like the Hathras Gang rape.
- (c) The incredulity cannot be casted upon the state organs for shielding upper caste perpetrators in cases like the Hathras Gang rape.
- (d) According to the passage in the view of author, the purpose of UP government hiring a public relations firm doesn't exemplify a pro- victim centric approach.

13. Which of the following statement is incorrect according to the views of the author of the passage?

- (a) The author finds the action of UP Government incongruous with law.
- (b) The author opines that the acts of the state authorities to provide all the adequate and effective facilities to the victim seemed futile in the Hathras case.
- (c) The author opines that the claims of the state government are in congruity with 2013 Amendment made in rape laws in the country.
- (d) The author opines that the conduct of the state machinery in the Hathras case is in dissonance with the provisions of municipal and international laws.

14. What is true in light of the 2013 Amendment according to the passage?

- (a) Non-Presence of semen in the forensic report is enough to establish that the victim is not raped.
- (b) Forensic evidence can only be found upto 96 hours of crime committed.
- (c) The ambit of definition of rape was widened by this amendment. so as to include a mere manipulation of any part of the body.
- (d) All of the above.

15. Suppose that in a rape case, the victim after rape was thrown to the forest in an unconscious state. It was with the help of local dwellers that after five days she was hospitalised. In the hospital, the evidences of rape were medically examined, collected and scrutinised. In such case what would be the strength of forensic evidence?

- (a) The forensic evidence is collected at a hospital; thus, it will be strong evidence against accused.
- (b) The forensic evidence in this case will be weak.
- (c) The forensic evidence in this case will be very strong as it is an outcome of medical scrutiny.
- (d) The forensic evidence in this case will be weak as the role of local dwellers seems suspicious.

16. According to the information provided in the passage, which of the following if true will strengthen the case of accused facing a rape trial?

- (a) The samples for medical examination being collected after six days for purposes of evidence.
- (b) In the statements of victim before the magistrate, the victim due to trauma could not mention the accused by name.
- (c) Both (a) and (b)
- (d) Neither (a) nor (b)

Add ons (No marks shall be awarded for these questions, don't mark these questions in your OMR)

Z1. The meaning of term 'pervasive' as referred in passage is:



(a) Widespread (b) Abominable (c) Dominating (d) Influential

Z2. The meaning of term 'hegemony' as referred in passage is:

(a) Criminality (b) Dependence (c) Dominance (d) Genocide

Z3. The meaning of term 'descent' as referred in passage closest relate to

(a) Acceptable (b) Caste or Clan (c) Lineage (d) Community

Z4. The meaning of term 'cognisance' as referred in passage closest relate to

(a) To Arrest (b) To be Sensitive (c) To Empathise (d) To Notice

### Passage - III

In a historic move, the Supreme Court has awarded Rs 1 crore as compensation to a software engineer who was permanently disabled due to medical negligence. The victim, Prashant Dhanaka, was earlier awarded Rs 15.5 lakh as damages by National Consumer Disputes Redressal Commission (NCDRC), but the apex court has upped the ante, handing out the country's biggest medical negligence reparation ever. It also recorded appreciation for the brilliance with which Dhanaka had argued his own case, and stipulated that his compensation should be awarded at the rate of 6% from March 1999 when the NCDRC had passed the original compensation award. But there are reasons why Dhanakas celebrations may yet be muted: his original claim of Rs 7 crore was deemed exaggerated and unreasonable; 19 years is a long time to wait for justice; and the defense counsel has already declared that he will be seeking a review. Still, this judgment marks a significant victory for a movement that took off in 1986, when The Consumer Protection Act, 1986 was enacted to enable the patients to file cases against doctors and hospital managements suspected of negligence. Except, of course, against those who do not charge any fee and, therefore, not liable in the same way as those considered to be providing a service.

As this is not an arena in which the most significant healthcare expansion is taking place in the country anyway, it won't be too bad even if the contract between patients and paid medical professionals can be enforced more stringently. The apex courts judgment certainly represents an important and much-needed step in this direction.

The Consumer Protection Bill, 2019 was passed by the Indian Parliament on Aug 06, 2019, and later on has received the assent of the President of India and was published in the official gazette on 9 August 2019, the effective date. This new Act will replace the old Consumer Protection Act, 1986 and shall be applicable from the effective date. The 2019 Act also changed the pecuniary jurisdiction for the District, State and National Commissions, respectively. The pecuniary limit for the District Forum has been increased to up to Rs.1 Crore from up to Rs. 20 Lakhs; for State Commission it has been increased to up to Rs.10 Crores from up to Rs.1 Crore; and for National Commission the pecuniary jurisdiction has been increased to over and above Rs.10 Crores as against Rs.1 Crore in the 1986 Act. National Commission (NCDRC) is located in New Delhi and it consists of a President who is or has been a Judge of the Supreme Court and not less than four other members, one of whom shall be a woman.

**Source: Extracted (with edits and revisions) An excerpt from article titled "FE Editorial: Medical Malpractice" published at "The Financial Express".**

17. Prashant Dhanaka, the victim of medical negligence as the author of the passage mentions has been awarded a compensation of Rupees 1 crore, which is the highest ever compensation to be awarded. But if the medical negligence had occurred in 1985, what do you think would have been the fate of his case?

(a) Prashant would have been given a lesser amount of compensation if he had filed the case in 1985 because the general prudence suggests that amount of compensation in 1999 could not be same compared to 1985 considering economic factors like inflation etc.

(b) Prashant would have been given same amount of compensation if he had filed the case in 1985 because the provision to file case petition against doctors for medical negligence existed way before that.

(c) Prashant wouldn't even be allowed to file a petition against medical negligence before 1986 at all.

(d) The statutory protection was availed in the subsequent years where being consumers, the patients can file cases against doctors for medical negligence. Hence in the said year, the Prashant's petition may not have had the same effect.

18. Vidhaan was suffering from asthma. Born in a merchant's family, he was always obsessed about the discounts. So he went to a doctor who claimed to cure asthma charging only 50 % of requisite fee. But while prescribing Vidhaan the medicine, the doctor failed to take into consideration the allergies Vidhaan had. Therefore, the medicines had a severe side effect and which led to permanent damage to a facial nerve. Vidhaan has filed a petition against the doctor for medical negligence. Is there any defense available to the doctor?

(a) No, as clearly the doctor has been negligent on his part. Therefore, he is guilty.

(b) No, as the doctor is liable for his actions as he has charged the requisite fees.

(c) Yes, he can take up the defense that he had not charged suitable fee; therefore the patient cannot file a complaint against him. It is an exception provided by the Consumer protection Act.

(d) Both (a) and (b).

19. Vidhaan was suffering from asthma. So, he went to a doctor who claimed to cure asthma within 6 months and use to charge a very heavy fee. He asked his patients to pay him Rs. Two lakhs for six month's assured treatment. Vidhaan while explaining about the disease turned out to be the son of doctor's school teacher. Doctor remembered his father's contribution to his life. He assured Vidhaan of the best treatment and also declined to accept fee as a token of respect. But while prescribing Vidhaan the medicine, despite all caution the doctor failed to take into consideration the allergies Vidhaan had. Therefore, the medicines had a severe side effect and which led to permanent damage to a facial nerve. Vidhaan has filed a petition against the doctor for medical negligence. Is there any defense available to the doctor?



- (a) No, as clearly the doctor has been negligent on his part. Therefore, he is guilty.  
 (b) No, as the doctor is liable for his actions as he assured of the best treatment.  
 (c) Yes, he can take up the defense that the patient being his teacher's son was exempted from payment of any fee and thus the doctor couldn't be held liable.  
 (d) Both (a) and (b).

20. On the very first day of New Year 2019, Vidhi a nationally renowned painter had an injury in her knee and she had to get a surgery done so that the issue in the muscle around the knee can be corrected. She went to one of the best hospitals in Indore. The doctor had given her morphine which exceeded the permissible limit. It had affected Vidhi in a way that her right arm (working hand) has stopped working. She filed a petition / complaint at the District Forum claiming compensation of Rs. 25 lakhs for the loss of her limb and livelihood. Decide

- (a) Vidhi can file a petition and this court shall allow her claim to seek compensation.  
 (b) Vidhi can file a petition but the amount of compensation is too excessive in this case so may not be granted.  
 (c) Vidhi's petition cannot be allowed by the court for the grant of compensation.  
 (d) Vidhi shall ask for reasonable and not excessive compensation.

21. On the Indian Independence Day of 2019, Vidhaan a proud Indian was hoisting flag on the top of the building from where he slipped and suffered an injury in his elbow. When rushed to the hospital, he was suggested to undergo a surgery of his elbow. The doctor had given him an overdose of sedative which caused him a cardiac arrest. This prima facie negligence of the hospital caused him a medical expense of Rs. 1 crore and other undue hardships. He filed a petition / complaint at the Madhya Pradesh State Consumer Commission claiming compensation of Rs. 1.1 crore for the medical expenses and loss of wages. Decide:

- (a) Vidhaan can file a petition and this court shall allow his claim to seek compensation.  
 (b) Vidhi can file a petition but the amount of compensation is too excessive in this case so may not be granted.  
 (c) Vidhaan's petition cannot be allowed by the court for the grant of compensation.  
 (d) Vidhaan's case is an unfortunate one and doctor / hospital shall not be so heavily penalised.

22. Ion Digital lab, Ujjain was chosen by CLAT for conducting its online centre-based exam on December 18, 2022. The required computers were 200 and they had 180. Thus, the Ion Digital labs purchased 20 more computers from Indorilal and Sons (vendor), a renowned shop for computers in the State. On the day of exam, the machine didn't function as required due to negligence in assembling the required configuration. To save money, the Vendor clandestinely used substandard hardware in order to increase profit margins. The students lost career and Ion Digital apart from reputational loss suffered a financial loss of Rs. 30 lakhs. Ion Digital filed a petition / complaint at the Madhya Pradesh State Consumer Commission claiming compensation of Rs. 30 lakhs for the losses sustained. Decide:

- (a) Ion Digital lab can file a petition and this court shall allow his claim to seek compensation.  
 (b) Ion Digital lab can file a petition but the amount of compensation is too excessive and beyond reasonable foreseeability.  
 (c) Ion Digital lab's such petition cannot be allowed by this court for the grant of compensation.  
 (d) The students may sue Ion Digital lab for the huge loss they suffered due to it.

23. Assume that Ms. Vidhigyan, a young graduate from NLS, is appearing before the National Commission (NCDRC) to defend the said case of Prashant Dhanaka. Which of the following statements are incorrect?

- (a) She would be in New Delhi while appearing before this forum for dispute adjudication.  
 (b) The President of the forum where she is appearing shall be a person who is or has been the of Chief Justice Supreme Court.  
 (c) The composition of the forum where she is appearing shall have a President and not less than four other members.  
 (d) One of the members of the National Commission shall be a woman.

24. Which of the following statement is incorrect according to the information provided in the passage?

- (a) The Supreme Court has decided against the status quo as settled by NCDRC.  
 (b) The author is unhappy about the fact that the amount of compensation as demanded by the Petitioner was not awarded for being excessive by the apex court.  
 (c) The author is happy and contented by Dhanaka's judgement of the apex court for it being justice delivered better late than never.  
 (d) The author believes that the declaration by defence counsel to seek review of the apex case judgement is an impediment in full-fledged celebration of Dhanaka's judgment.

#### Passage – IV

The Fundamental rights provided to the citizens of India are prestigious and their eminence is above any of law. The Fundamental rights in Part III of the Constitution of India provide certain civil liberties to the citizens of India. These rights if violated, punishments are prescribed for it in the Indian Penal Code. Article 13 of the Constitution of India provides that Laws inconsistent with or in derogation of the fundamental rights shall, to the extent of such inconsistency, be void. The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void. Doctrine of severability and eclipse are our Fundamental Rights, as it is mentioned in the clause 1 of the Article 13 of the Constitution that all laws enforce in India, before the commencement of Constitution, in so far as they are inconsistent with the provisions of fundamental rights shall to the extent of that inconsistency be void. But the whole law or Act (statute) would not be held invalid, but only the provisions of the law or Act which are not in consistency with the Fundamental rights. This is what the Doctrine of severability is. But it is only possible if the part which is inconsistent with the law can be separated from the whole law. If both the valid and invalid part are so closely mix up with each other that it cannot be separated then the whole law or Act will be held invalid. Eclipse occurs when one



object overshadows the other, so as the name suggests that Doctrine of Eclipse is applied when any law or Act violates the fundamental rights then the fundamental rights overshadows the other law or Act and make it unenforceable but not void ab initio. They can be enforced again if the restrictions posed by the fundamental rights are removed. The fundamental rights are paramount and article 13 which has the doctrine of severability and the doctrine of eclipse protect the supremacy of the fundamental rights.

**Source: Extracted (with edits and revisions) An excerpt from a web portal article titled “Doctrines of severability and eclipse” authored by Neeti Vaid.**

25. The Right to Religion under the Constitution prevents the state to interfere with the religious matters subject to the provisions under other Fundamental Rights. On the other hand, the Part III of the Constitution also provide for the removal of untouchability. In a certain state, the untouchability is still practiced as a part of its religion practices. However, there is an Act that criminalizes untouchability. Decide upon the validity of such law?

- (a) The Act is not valid as it criminalizes a religious practice.
- (b) The Act is valid as religious right is not an absolute Right.
- (c) The Act is not valid as it violates the religious rights of certain people.
- (d) The Act is valid as Untouchability is a social menace.

26. Which of the following statements is true about the laws covered under the doctrine of eclipse?

- (a) Law can be allowed to prevail even if they are contradictory to the Constitution.
- (b) The Constitution must be amended in case of conflict between a law covered under doctrine of eclipse and the Constitution.
- (c) Such law is enacted in accordance to the Constitution to avoid any inconsistency.
- (d) It is applicable only on laws made before the commencement of the Constitution.

27. Suppose a law was passed in 1935 that provided for separate classrooms in an institution for the children belonging to the upper caste and those belonging to the lower castes in its Section 1. In the same statute, the Section 5 also provided for the reservation for the lower caste children who seek admission to the said institution. Considering that the statute was enacted to encourage parents from all communities to send their students to the school, decide whether the doctrine of severability can be applied on the statute after the commencement of the Constitution?

- (a) No as the statute is inconsistent with the provisions laid in the Constitution.
- (b) Yes, as only certain part of the statute is inconsistent with the provisions laid in the Constitution.
- (c) No as the statute provided encouraged increased student intake in the educational institute.
- (d) Yes, as the entire law provides for the differential treatment to children belonging to lower and upper castes.

28. Which of the following is the result of doctrine of severability on a law?

- (a) It makes the statute void-ab-initio.
- (b) It makes only certain part of the legislature void-ab-initio.
- (c) It amends the inconsistent part of the legislation to make it consistent with the constitution.
- (d) It suspends the enforceable of the part of the legislation that is inconsistent with the constitution.

29. The Article 14 of the Constitution provides for the Equal treatment by law as a Fundamental Right of each citizen in India. However, the Article also allows for differential treatment to women and oppressed classes for the sake of providing them a level playing field. On the account of the same, the Government of India passes an Act to disallow the women from having pay equal to men for equal work. Can the Act pass the Judicial review by the Supreme Court?

- (a) Yes, because the Constitution itself allow differential treatment to the women.
- (b) No, because the provision does not provide for a level playing field for women.
- (c) Yes, because the women are not equally competent to the men in doing work.
- (d) No because the women the Act is passed after the commencement of the constitution.

30. Suppose a pre-constitutional law was inconsistent with the Constitution and hence, was dealt with under the doctrine of eclipse. However, recently the Constitution was amended and the law was no longer inconsistent with the Constitution. Which of the following will be true in this situation?

- (a) The law will be not enforceable as it was already inconsistent with the constitution at the time of its commencement.
- (b) Only the parts that was in accordance to the constitution will prevail.
- (c) The law will become enforceable when the inconsistency is removed.
- (d) The law will need to be enacted again to be legally enforceable.

### Passage – V

Whenever an Individual or a Non-Individual applies for a loan, the bank or the lender asks for any security for this purpose. Pledge, Hypothecation and Mortgage are different terms that are used to create a charge on the assets which is given by the borrower to the lender.

**Pledge:** As per Section 172 of the Indian Contract Act, 1872, Pledge is the bailment of goods as a security for the payment of a debt or performance of a promise. The bailor in the case of Pledge is known as Pawnor and the bailee is known as Pawnee. Borrower needs to provide the bank with any asset or good that is worth the same amount or more than the loan which he is taking from the bank. Pledge is used when the lender (Pledgee) takes actual possession of the assets transferred as a security. The Pledgee is bound to return pledged goods on the successful repayment of the loan and has no right to use the goods pledged but has the right to sell the goods pledged, on default after giving a notice to the Pledger. Sometimes the goods are allowed to remain in the custody of the pledger for a special purpose and that constitutes a pledge by hypothecation. Thus, in case of default by the pledger, the Pledgee will have to first take possession of the security and then sell the same.



Essentials of the Contract of Pledge: There must be a Lawful Purpose; The pledged goods must be long lasting; Delivery of Goods/ Security; and Return of Goods.

**Hypothecation:** As per Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, hypothecation is defined as "a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance, and includes floating charge and crystallization into fixed charge on movable property".

Hypothecation is used as a security of movable assets while taking a loan from the bank. Here the possession of the security remains with the borrower instead of the lender. When the borrower is not able to repay the loan and its interest, then the bank has the right to sell the hypothecated asset such as car, two-wheeler, etc. and recover the outstanding loan amount along with accrued interest. There may be some incidents wherein the borrowers may cheat the banker by either partly selling goods hypothecated to the bank or not keeping the required stock of goods. Here, if the bank finds that the borrower is trying to mischief, it can insist upon or can convert hypothecation to pledge and takes over possession of the goods and keeps the same under its own custody.

**Mortgage:** Mortgage is not a way of lending but rather the security interest in real property held by the borrower. These terms are often used for immovable property, such as real estate. A mortgage, in itself, is not a debt, but rather a security for a debt. When a person issues a mortgage, they sign over an interest of the property to the lender. However, the borrower still has full ownership of the property. In case the borrower is unable to repay the loan on the mortgage, he must forfeit the property to the lender and the lender will take the money which is owed to him and return any excess money to the borrower.

**Source: Extracted (with edits and revisions) An excerpt from a blog titled "Pledge Vs Hypothecation Vs Mortgage Vs Assignment" authored by Anupama Deshpande published at [codeforbanks.com](http://codeforbanks.com).**

31. According to the information provided in the passage, which of the following actions / transactions are correct with respect to the property kept as security?

- (a) Vidhaan hypothecated his diamond ring to Vidhi and Vidhi has taken the possession of such ring as security against loan.
- (b) Vidhaan provided his BMW car and its possession to Vidhi in order to secure a loan and during this time Vidhi used that car for general use.
- (c) Vidhaan mortgaged his land to Vidhi worth Rs. 80 lacs to seek a loan of Rs. 1 crore and due to default of payment Vidhi sold the land to Vihaan and received Rs.1 crore and kept all the amount.
- (d) Vidhaan pledged his wife's jewellery as security to start his business by seeking loan from Vidhi. Even after a week of repayment of sum and interest, Vidhi did not ensure the possession of said jewellery being transferred back to Vidhaan.

32. Vidhaan executed a sale in favour of Vidhi and on the same day Vidhi executed a deed in favour of Vidhaan agreeing to sell him the property for the same amount within 10 years if he wishes. The possession of property remained with Vidhaan and he was to pay Rs. Ten thousand as a monthly allowance to Vidhi. Decide whether such transaction amounts to mortgage?

- (a) The transaction by Vidhi is a conditional sale by her.
- (b) The transaction by Vidhi is a mortgage as the possession of property remained with Vidhaan.
- (c) The transaction by Vidhi is kind of transfer of possession with a condition of re-transfer at the wishes of Vidhaan.
- (d) The transaction by Vidhi is a conditional mortgage as the property was transferred as security for the loan.

33. In the below mentioned situations, decide the kind of transaction it amounts to?

I. Vidhaan executed a deed of his house in the favour of Vidhi for securing a debt but the full ownership of the property remained with Vidhaan.

II. Vidhaan executed a deed in favour of KTM Bank and provided his car as security for securing a car loan. The possession of the car remained with Vidhaan.

III. Vidhaan provided his antique collection of coins and articles and its possession worth Rs. Thirty lakhs to Indore Bank for securing a loan of Rs. Ten Lakhs.

- (a) I-Hypothecation, II-Pledge, III-Mortgage
- (b) I-Mortgage, II-Hypothecation, III-Pledge
- (c) I-Mortgage, II-Pledge, III- Hypothecation
- (d) I-Pledge, II-Hypothecation, III-Mortgage

34. Vidhaan hypothecated his mansion in favour of Vidhi and delivered the deeds to her for securing a loan of Rs. One crore in his favour but possession remained with Vidhaan. But in default of payment, the charge over the property was taken by Vidhi. She later sold the property hypothecated to her after duly giving notice to Vidhaan. Decide upon the legality of such deed and action based on it?

- (a) The action of Vidhi was valid as she duly provided a notice to Vidhaan.
- (b) The hypothecation was valid as possession remained with Vidhaan.
- (c) The hypothecation *per se* is not valid for this mansion.
- (d) The hypothecation was not valid as the excess amount was not returned to Vidhaan post sale.

35. Vidhaan pledged his Maruti car to AyeU bank for a loan of Rs one lakh but the possession remained with Vidhaan. When he failed to repay the loan in the stipulated time, the bank authorities took possession of the Car and sold it to recover the loan amount. Decide?

- (a) The bank will be liable for mischief as Vidhaan was the owner of the property.
- (b) The bank will not be liable as its action was legally tenable.
- (c) The bank will be liable as it cannot sell the property in such case.
- (d) The bank will not be liable as in case of pledge, the pledgee can sell the property anytime.



**Passage – VI**

Trespass to land means interference with the possession of land without lawful justification. In trespass, the interference with the possession is direct and through some tangible object. If the interference is not direct but consequential, the wrong may be a nuisance. To throw stones upon one's neighbour's premises is a wrong of trespass; to allow smoke from a ruinous chimney to fall upon those premises is the wrong of a nuisance. Trespass is possible not only on the surface of the land, it is equally possible by an intrusion on the subsoil.

Going beyond the purpose for which a person has entered certain premises or crossing the boundary where he has the authority to go, amounts to trespass. Thus, if a person, who is allowed to sit in a drawing-room, enters the bedroom without any justification, the entry into bedroom is a trespass. However, if the area to which a person is lawfully invited and one which is the prohibited area has not been properly marked, a person does not become a trespasser merely by his going beyond the area of invitation. When the occupier of land acquiesces in frequent acts of trespass, the visitors there may no more remain trespassers.

Trespass is a wrong against possession rather than ownership. Therefore, a person in actual possession can bring an action even though, against the true owner, his possession was wrongful. The trespasser is not allowed to take the defence of "jus tertii." In other words, the trespasser cannot plead that as between some third party and the person in possession, the title of the third party is better.

Trespass being a wrong against the possession, it has been seen above that a person in possession, even if he himself is not the owner, can bring an action. Converse of it is also true, which means that an owner of land, who neither has possession nor any immediate right to possess it, cannot bring an action for trespass.

Trespass is actionable per se and the plaintiff need not prove any damage for an action of trespass. "Every invasion of property, be it ever so minute, is a trespass." Neither use of force nor showing any unlawful intention on the part of the defendant are required. Even an honest mistake on the part of the defendant may be no excuse and a person may be liable for the trespass when he enters upon the land of another person honestly believing it to be his own.

**Source: Extracted (with edits and revisions) An excerpt from a blog titled "Trespass: Tortious Liability" authored by Pushkar Thakur.**

36. Vidhaan plants a tree in his house. After about 20 years, it became so huge that its branches were intruding even in the premises of Vidhi. The branches used to cause shadow in the vital area and obstructed light, thus causing a lot of annoyance to the Vidhi. Decide what wrong was committed by Vidhaan?

- (a) It will be trespass as intrusion is a direct act.
- (b) It will be nuisance as intrusion was just consequential.
- (c) It will be both nuisance and trespass.
- (d) It will not amount to any wrong.

37. Vidhaan is owner of property X situated in Indore. He has given the property on lease to Vidhi and Vidhi enjoys exclusive possession over the property. There were no such circumstances which allowed Vidhaan to evict Vidhi from the leased property. One day, Vidhaan was in need of the property and thus made a forceful entry into the premises. Decide whether Vidhaan can be held liable for trespass?

- (a) Vidhaan cannot be held liable for trespass as it cannot be committed by owner of the property.
- (b) Vidhaan cannot be held liable for trespass as he being the owner has absolute right to evict any person.
- (c) Vidhaan can be held liable for trespass as ownership is immaterial in trespass.
- (d) Vidhaan can be held liable for trespass as B has acquired absolute ownership over the property

38. Vidhaan is occupant of House No. 07 in Saket Nagar, Palasia - Indore. He returned to his native place after twenty years. When he came back, he has forgotten the house number. So, under a mistake, he entered into House No. 09 whose appearance was similar to that of his own house. Just upon entering the house, Vidhaan realized his mistake and thus affected his retreat immediately. The house was owned by his arch rival who could not tolerate his presence. Decide whether trespass was committed by Vidhaan ?

- (a) Yes, actual damage caused by trespass is immaterial.
- (b) Yes, mistake is no defence to wrong of trespass.
- (c) No, Vidhaan was acting under bonafide mistake and no damage was caused by actions of Vidhaan.
- (d) Both (a) and (b)

39. What is the material point of difference between trespass and nuisance?

- (a) Mode of interference in possession of other.
- (b) Quantum of damage inflicted by the interference
- (c) Trespass is an offence against ownership while nuisance is an offence against possession
- (d) Trespass is an offence against possession while nuisance is an offence against ownership

40. Choose the most appropriate reason.

Assertion: A person can sue for trespass even if he himself is not the owner:

- (a) The wrong of trespass is against the possession and question of title is immaterial.
- (b) The wrong of trespass is against the possession and question of title is material.
- (c) The wrong of trespass is against the ownership and question of title is material.
- (d) The wrong of trespass is against the ownership and question of title is immaterial.

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