

Law Paper-I I.A.S

Model Answers & Guidelines

Q 1 Short Notes (West Bengal Estate Acquisition Act, 1953).

- (a) Incumbrance :- Section 2(h) of this act define that incumbrance in relation to estates and rights of intermediaries therein does not include the rights of a raiyat or of a n under-raiyat or of a non-agricultural tenant but shall except in the case of land allowed to be retained by an intermediary under the provisions of Section-6, include all rights or interest of whatever nature, belonging to intermediaries or other persons, which relate to lands comprised in estates or to the produce thereof;
- (b) Collector :- Sec. 2 (d) of the act envisage that Collector means collector of a district or any other officer appointed by the State Government to discharge any of the functions of the collector under this Act.
- (c) Homestead : - Sec 2(g) define Homestead which means a dwelling house together with any courtyard, compound, garden, out house, place of worship, family graveyard, library, office, guest-house, tanks, wells, privies, latrines, drains, and boundary annexed to or appertaining to such dwelling house;

N.B. Answering Short Notes in the form of definition follow the language of this act and quote the section. Follow the same in case of Short Notes/ definition under W.B.L.R. Act, 1955.

Q. Discuss the right of purchase by a co-sharer or contiguous tenant as provided under Section 8 of the W.B.L.R. Act 1955.

Ans. The right of pre-emption is simply a right of substitution entitling the pre-emptor by means as a legal incident to which the sale itself is the subject matter.

Section 2(6) of the W.B.L.R. act define that co-sharer of a raiyat in a plot of land means a person, other than the raiyat, who has an undermarketed interest in the plot of land.

Section 8 of the W.B.L.R. Act 1955 speaks of the right of purchase by co-sharer or contiguous tenant in respect of a portion or share of a plot of land.

If a portion or a share of a plot of land of a raiyat is transferred to any person other than a co-sharer of a raiyat in the plot of land, the bargadar in the plot of land may, within three months of the date of such transfer or any co-sharer as the plot of land may within three months of the service of notice given under the provision of sub section (5) of section 5 of this Act or any raiyat possessing land adjoining such plot of land may, within four months of the date of such transfer apply to the Munsif having territorial jurisdiction for the puspose of such transfer of the said portion or the

Such transfer shall be subject to the limit stated in section 14M of this Act on deposit of the consideration money together with a further sum of ten percent of that amount.

It is provided that if the bargadar in the plot of land, a co-sharer raiyat in a plot of land and a raiyat possessing land adjoining such plot of land apply for such transfer, the bargadar shall have the prior right to have such portion or share of the plot of land.

It is further provided where the bargadar does not apply for such transfer and a co-sharer of a raiyat in a plot of land and a raiyat possessing land adjoining such plot of land, both apply for such transfer, the former shall have the prior right to have a portion or share of the plot of land.

It is also provided that as amongst the raiyat, possessing such adjoining land, the preference shall be given to the raiyat having the longest common boundary with the land transferred.

Nothing in this section shall apply to

- (i) A transfer by exchange or partition
- (ii) A transfer by bequest or gift or heba-bil
- (iii) A mortgage under section 7 of this act
- (iv) A transfer for charitable or religious purposes, without any reservation for any pecuniary benefit.
- (v) A transfer of land in favour of a bargadar in respect of such land, if after such transfer the transferee holds as a raiyat land not exceeding

Q. State the ceiling area provided under section 14M of the W.B.L.R. Act, 1955.

Ans. Under Section 14M the ceiling area shall be :-

- (a) 2.50 standard hectre for adult unmarried person.
- (b) In case of raiyat, who is the sole surviving member of a family 2.50 standard hectre
- (c) 5.00 standard hectre for family of a raiyat having two or more family members but not more than five members.
- (d) In the case of a raiyat having family members of more than five, 5 standard hectre plus 0.50 standard hectre for each of the member in excess of five but the aggregate shall not exceed 7.00 standard hectre.
- (e) In the case of any other raiyat 7 standard hectre.
Where in the family of a raiyat, there are more raiyats than one, the ceiling area of all other raiyats in the family shall exceed.
- (a) 5 standard hectre where family members does not exceed five.
- (b) If the family members exceed five 5 standard hectre plus 0.50 S.H. for each member in excess of five but the total ceiling shall not exceed 7 S.H.
In determining the extent of land all the lands owned by the members of the family shall be deemed to be owned by the raiyat.

Lands held in private trust/ endowment shall be deemed to be owned by the authors of the trust/endowment.

In case of trust of a public nature, ceiling is 7 S.H.

Q. If a Bargadar dies, at the time when cultivation of the land by Bargadar is continuing, then by whom the cultivation of such land may be continued as per Section-15A of the W.B.L.R. Act, 1955 ?

Ans :- Section 15A of the W.B.L.R. Act makes provisions about the continuation of right of cultivation of land on Bargadar's death.

Sub. Section 1 of Section 15A of the Act provides that cultivation may be continued by the lawful heir of the Bargadar.

Where a Bargadar cultivating any land dies at the time when cultivation of such land by the Bargadar was continuing, the cultivation of such land may be continued by the lawful heir of the Bargadar, or where there are more than one lawful heir, by such lawful heir of the Bargadar as all the lawful heirs of the Bargadar may determine within the prescribed period.

It is further provided that where the lawful heirs of the Bargadar omit or fail to make a determination as required by the above provisions, the Officer or Authority appointed by the State Government under Section 18(1) of this Act may nominate one of the lawful heirs of the Bargadar who is in a position to cultivate the land personally to continue the cultivation of such land.

Section 15A (2) of the Act directs that the lawful heir shall cultivate the land subject to prescribed terms and conditions. The Lawful heir of the Bargadar who is determined or nominated for the cultivation shall cultivate the land subject to such terms and conditions as prescribed.

Section 15A(3) provides that who will be eligible for cultivation of land if there is no lawful heir of the Bargadar or absence of determination of the lawful heirs of such Bargadar.

Where :-

- (a) No lawful heir of the Bargadar is in a position to cultivate the land personally or;
- (b) The lawful heir of the Bargadar fail to determine within the prescribed period, the heir by whom the cultivation of the land will be continued or the Officer or Authority appointed by the State Government under Section 18(1) of this Act also omits or fails to nominate any lawful heir of the deceased for the continuation of the cultivation of the land; or
- (c) The person determined or nominated under Section 15A(1) of this Act omits or fails to take any steps within the prescribed period for the continuation of the cultivation of the land, the cultivation of such land may be continued by such person, whether an heir of the deceased Bargadar or not, as may be nominated by the person whose land was cultivated by the deceased Bargadar.

Clause-C of Sub. Section. 3 of Section 15A of the Act empowers the land owners to nominate either the heir of the deceased Bargadar or the outsider to continue the cultivation.

Q.(a) : State briefly :- The safeguards for the plots of land cultivated by a Bargadar ?

Ans :- Section 15 provides certain safe guards for plots of land cultivated by the Bargadar.

Section 15(1) provides that the provisions of clauses (b) and (c) of sub. Section. 4 of Section. 4 shall not apply to the plot of land of a raiyat or any part of it which is cultivated by a Bargadar so long as cultivation by a Bargadar continues.

Section 15(2) provides that the right of cultivation of land by a Bargadar shall, subject to the provisions of this Chapter-3, be heritable and shall not be transferrable.

Section 15(3) provides that chapter-3 shall not apply to any person not belonging to a Schedule Tribe claiming to be a Bargadar under a Raiyat who is also a Schedule Tribe.

A.(b) (i) – What would be the proportion of share between owner and Bargadar of a land where Bargadar is supplied with plough, cattle, manure etc.

Ans :- Section. 16 of the Act deals with share of produce payable by a Bargadar. The produce of any land cultivated by a Bargadar shall be divided as between the Bargadar and the person whose land he cultivates in the following manner :-

In the above situation the proportion would be 50:50 where Bargadar is supplied with plough, cattle, manure, seeds by the Owner of the Land.

Q.(b)(ii) :- Are the Owner or Bargadar liable under the law to grant receipts for the share of produce accepted or tendered ?

Ans :- Section 16(3) speaks that where any share of produce tendered under Sec. 16(2) is accepted by the person whose land is cultivated by the Bargadar, each party shall give to the other a receipt, in such form as may be prescribed, for the quantity of produce received by him.

Q. 7(a) What do you mean by the Record of Rights ?

Ans :- Record of Rights has not been defined in this Act. It means and connote, recording of quantum of land after physical verification, measurement and survey of a plot of land in accordance with a plot of land under the provisions of Bengal Survey Act 1875 together with a description as to whom the land belongs and under what capacity.

Q.7(b) What is the evidentiary value of it ?

Ans- The presumption of a finally published record of rights is correct until and unless rebutted. Therefore the presumption is rebuttable.

Q.7(c) Does it create or extinguish title ?

Ans. – The record of rights is nothing but a document of possession. It does neither create or extinguish title to the land.

Q.7(d). In between C.S.R.O.R and R.S.R.O.R which one shall prevail ?

Ans :- The Record of Rights has a forward presumption and in case of any dispute the latest in point of time shall prevail. Any party relying on an entry in the settlement record is not required to establish the foundation for the same.

Q. Define :-

(a) Proof and testimony :- Proof is the persuasive operation of the total mass of evidentiary facts. The foundation of proof is the recognition of resemblance. It must be strict. Proof is the quantity of appropriate evidence (Ref Sec-3)

Testimony to facts is regulated u/w 159 and 160 of the Act. A witness may also justify to facts mentioned in any such document as is mentioned in section 159 of the act, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

(b) Primary and Secondary evidence :-

Ans :- Section 62 of the I.E. Act. Speaks about Primary Evidence which means the documents itself produced for the inspection of the court.

Explanation-1 : Where a document is executed in several parts, each part is Primary Evidence of the document.

Where a document is executed in Counter part, each counter part being executed by one or some of the parties only, each counter part is primary evidence as against the parties executing it.

Where a number of document are all made by one uniform process i.e. printing, lithography or photography each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Secondary Evidence :- It is defined in Section-63 of the I.E. Act. It means the evidence which can be given in the absence of best evidence. It pre-supposes the existence of better evidence. It is permissible where the original is lost or misplaced or beyond a reach of the party. Notice to produce the document is necessary if the original document is in the possession or power of the opposite party. Contents of the document cannot be proved by secondary evidence unless there are some lawful explanation or excuse for non-production of the Original Document.

Q.(a) Ram makes a confession before the Deputy Commissioner of Police (DD) a senior Police Officer of the State. Is the confession made by Ram relevant ?

Ans :- No, the confession is not relevant under Section 25. It is not relevant in view of Section-25. Section-25 has no exception, qualification or limitation and lay down an absolute bar for a confession made to a Police Officer. It is immaterial that confession is made to a Senior Police Officer. The only test for declaring a confession irrelevant under Section 25 is that whether it was made to a Police Officer or not. If the confession is made to a Police Officer then it is not relevant.

Q(b). Is a oral confession made by an accused is oral evidence within the meaning of Section 3 of the Evidence Act ?

Ans :- No. It is not an evidence within the meaning of Section-3 of the I.E. Act. Evidence means and includes any statement which the court permits or require to be made before it (court) by a witness regarding the matter of fact under inquiry. Such a statement is called oral evidence. If the statement is by a witness, it will be an oral evidence otherwise it is not an oral evidence within the meaning of Section 3 of the Act.

Q.(C). Is the tape-record of a speech of a document under Section. 3 of the I.E. Act ?

Ans :- Tape-recorded conversation can be admitted as evidence provided the conversation is relevant to the matter in use, the voice can be properly identified and the possibility of erasing parts of the tape is eliminated. Tape Recordings can be used as evidence in a Court to corroborate the statement of a person who deposes that he had carried on a conversation with a particular person. The statement must be relevant according to the Rules of the I.E. Act. The recorded cassette must be carefully sealed and kept in safe custody or official custody. The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbance. It is a document provided the above conditions are fulfilled, under Section. 3.

Q(d). What is the procedure of arrest and what are the duties of the Arresting Officer under Section 41B of Cr.P.C. as amended in 2000 A.D.?

State whether a Police Office can arrest the person who complies with the terms of the notice under Section 41A of Cr. P.C.?

Ans :- The amended provision of Section 41B lays down the procedure of arrest and duties of the officer making arrest. The section provides that every Police Officer while making an arrest shall (a) bear an accurate visible and clear identification of his name which will facilitate easy identification; (b) Prepare a memorandum of arrest which shall be attested by at least one witness who is a member of the family of the person arrested or a respected member of the locality where the arrest is made; counter-signed by the person arrested; (c) inform arrested person unless the memorandum is attested by a member of his family that he has a right to have a relative or a friend named by him to be informed of his arrest.

41A (1) of Cr. P.C. provide that the Police Officer may, in all cases where the arrest of a person is not required Under Section 41(1) issue a notice directing the person against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence to appear before him or at such other place as may be specified in the notice.

Section 41A(2) provides that where such notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

Section 41A(3) then provides that where the person to whom a notice is issued under Section 41A(1) complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

But, as per Section 41A(4), if such person, at any time, fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent court.

Q. :- Is there any question of discretion in the matter of granting of bail in case of bailable offence?

Ans :- Section 436 of the Cr. P.C. deals with the provisions of bail in a bailable offence. According to Section 436(1) an accused is entitled to be released on bail as a matter of right in a bailable offence. Therefore as a general rule Court has no discretion in matters of granting bail in a bailable offence. The general rule is subject to following exception (1) when a person who is already on bail in a bailable

offence fails to comply with the conditions of the bail bond regarding the time and place of attendance, the court may refuse to release him on bail if he comes or is brought before the court after cancellation of bail already granted. (ii) The other exception to the general rule is that bail under Section 389(1), after conviction is not a matter of right even if the accused is convicted for a bailable offence.

Q. :- A Session Judge rejects an application for Bail under section 438 Cr. P.C. Can the applicant file a fresh application for Anticipatory Bail before the Hon'ble High Court ?

Ans :- Yes. The application can be filed as a fresh application before the High Court. In the case of Mohanlal, A.I.R. 1980 H.P. 36(FB), the Hon'ble Court held that in the above circumstances the applicant can file a fresh Anticipatory Bail before the High Court even if the same has been rejected by the Sessions Judge.

Q. Explain the following terms as used in Indian Penal Code.

Ans :- (a) Counterfeit : - Section 48 of the I.P.C. 1860 defines that a person is said to counterfeit who causes one thing to resemble another thing, intending by means of that resemblance to practice deception, of knowing it to be likely that deception will thereby be practiced.

Explanation.1 :- It is not essential to counterfeiting that the imitation should be exact.

Explanation. 2. : When a person causes one thing to resemble another thing and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practice deception or knew it to be likely that deception would thereby be practiced.

(b) Document :- Section. 29 of the I.P.C. 1860 defines document which denotes any matter expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, intended to be used or which may be used, as evidence of that matter.

Explanation. 1. :- It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a court of Justice, or not.

Explanation.2.:- Whatever is expressed by means of letters, figures or marks as explained by Mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this Section although the same may not be actually expressed.

(C) Valuable Security :- Section 30 of the I.P.C :- The word valuable security denotes a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released or whereby any person acknowledges that he lies under a legal liability, or has not a certain legal right.

(d) Offence :- Section. 40 of the I.P.C defines offence except in the chapters and sections mentioned in clause 2 and 3 of this Section, the word Offence denotes a thing made punishable by this Court.

In chapter IV and in the following sections namely 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 118, 119, 120, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 347, 348, 388, 389 and 445, the word offence denotes a thing punishable under this code or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202,, 212, 216, 441 the word offence has the same meaning when the thing punishable under the special and local law is punishable under such law with imprisonment for a term of six months or upwards whether with or without fine.

(e) Person :- Section. 11 :- The word person includes any company or association or body of persons, whether incorporated or not.

(f) Oath Section. 51 :- The word oath includes a solemn affirmation substituted by law for an Oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether any court of justice or not.

Q. Solve with reasons the following cases :-

(a) Jack, a passerby sees B beating his wife mercilessly. Jack gives a blow to B who dies on spot. What offence jack has committed ?

Ans :- Jack has committed no offence, as the death of 'B' took place in exercise of right of private defence. Section 97 is related to this offence which state that every person has right to defend his own body as well as body of another person, against any offence affecting human body. Thus Jack has right to defend the body of 'B' s' wife.

Here the wife of 'B' as well as jack has right of private defence according to section. 100 if Jack has caused the death of 'B' for defending the wife of 'B', he commits no offence, as there was reasonable apprehension of grievous hurt to the wife of 'B'.

(b) 'A' instigates 'B' to kill 'D'. 'B' in pursuance to the instigation stabs 'D'. 'D' recovers from the wound. What offence if any, has been committed by 'A' and 'B'?

Ans :- 'A' has committed the offence of abetment for murder whereas 'B' has committed the offence of attempt to murder.

Explanation. 2 of Section 108 consists of two parts :-

- (i) Two constitute the offence of abetment, it is not necessary act abetted should be committed.
- (ii) The effect requisite to constitute the offence should be caused in the present case 'A' would be guilty of offence of abetment for murder in view of 2nd part of Explanation. 2 of Section. 108, though 'D' recovered from wound and did not die, as section. 108 lays down that it is not necessary that the effect requisite to constitute the offence should be caused.

It is notable that 'A' would have been guilty of abetment for murder even if 'B' had refused to kill 'D' or not acted upon instigation of 'A', as according to first part of Explanation. 2 of Section 108, a person become guilty of abetment for an offence even if the offence abetted is not committed.

Q. What is the punishment prescribed for cruelty to a women by her husband or his relative ?

Ans :- Husband or relative of husband of a woman subjecting her to cruelty falls within the ambit of Section. 498A I.P.C. The Section runs as follows :-

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

- (a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

The expression cruelty means such a treatment as to cause reasonable apprehension in the mind of the wife that her living with the husband and his relatives will be harmful and injurious to her life. The offence under Section 498A is a continuing offence and on each occasion if the wife is subjected to cruelty, would have a new starting point of cause of action.