

CLAT 2021 (UG)

Legal Reasoning

Legal Reasoning

Harm suffered voluntarily does not constitute a legal injury and is not actionable. This principle is embodied in the maxim *volenti non fit injuria*. A person cannot complain of harm to the chances of which he has exposed himself with his free consent and free will. The maxim *volenti non fit injuria* is founded on good sense and justice. A person who has invited or assented to an act being done towards him cannot, when he suffers from it, complain of it as a wrong. The maxim presupposes a tortious act by the defendant. The maxim applies, in the first place, to intentional acts which would otherwise be tortious. There are certain limitations to the application of this maxim:

- (i) It is no answer to a claim made by a workman against his employer for injury caused through a breach by the employer of a duty imposed upon him by a statute. But where the negligence or breach of statutory duty is on the part of an employee of the plaintiff who knowingly accepts the risk flowing from such breach and the employer-defendant is not guilty of negligence or breach of statutory duty, the defence of *volenti non fit injuria* is available to the defendant.
- (ii) Under an exigency caused by the defendant's wrongful misconduct, consciously and deliberately faced a risk, even of death, whether the person endangered is one to whom he owes a duty of protection, as a member of his family, or is a mere stranger to whom he owes no such special duty. The rescuer will not be deprived of his remedy merely because the risk which he

runs is not the same as that run by the person whom he rescues. But where there is no need to take any risk, the person suffering harm in doing so cannot recover.

(iii) To cover a case of negligence the defence on the basis of the maxim must be based on implied agreement whether amounting to contract or not. The defence is available only when the plaintiff freely and voluntarily, with full knowledge of the nature and extent of the risk impliedly agreed to incur it and to waive any claim for injury. But when the plaintiff has no choice or when the notice is given at a stage when it is beyond the ability of the plaintiff to make a choice there can be no implied agreement and the defence on the basis of the maxim must fail.

(iv) The maxim will also not apply when the act relied upon is done because of the psychological condition which the defendant's breach of duty had induced.

66. Mr. A was the owner of a car and he had a driver- Mr. D. On January 19, 2021, Mr. A and Mr. D were travelling in their car wherein Mr. A got down at a restaurant and told Mr. D to take the car back to Mr. A's bungalow. Mr. D was filling the petrol tank of the car, and two strangers- Mr. B and Mr. C took a lift from Mr. D in his car. The car went ahead and the right-side front wheel of the car flew away, the car toppled and Mr. D and Mr. C were thrown out. Mr. C sustained severe injuries and ultimately died due to those injuries on January 20, 2021. Mr. B and legal representatives of Mr. C claimed compensation from Mr. A and Mr. D.

(A) Mr. D will be liable to pay the compensation.

(B) *Volenti non fit injuria* will be applicable and no compensation can be claimed.

(C) *Volenti non fit injuria* will not be applicable and compensation can be claimed.

(D) Mr. A and Mr. D both will be liable to pay the compensation.

CORRECT OPTION: B

67. Rama was a spectator at a motor car race being held on a track owned by the defendant company. During the race, there was a collision between two cars, one of the cars was thrown among the spectators, thereby injuring Rama severely. Which of the following statements is correct?

(A) Rama impliedly took the risk of such injury, the danger being inherent in the sport which any spectator could foresee, the defendant was not liable.

(B) It was a negligence on the part of defendant and *volenti non fit injuria* will be applicable.

(C) Rama did not take the risk of such injury, and she only consented to watching the race and hence the defendant was liable.

(D) Rama was negligent and hence she suffered injuries.

CORRECT OPTION: A

68. Which of the following is correct about consent in *volenti non fit injuria*?

(A) Knowledge of the risk does not always amount to consent.

(B) Knowledge of a risk does not precede consent.

(C) Knowledge of the risk always amounts to consent.

(D) Mere perception of the existence of danger amounts to consent.

CORRECT OPTION: A

69. Lily had placed spring guns in a wood on her ground for the protection of the garden. Karan, with full knowledge that there were spring guns somewhere in the wood, trespassed on the land of Lily and was injured. Which of the following statements is correct?
- (A) Lily will be liable to pay compensation to Karan.
 - (B) Lily has not committed a tort against Karan by exceeding her right of private defence.
 - (C) Karan's case does not fall within *volenti non fit injuria*.
 - (D) Karan had knowledge of the spring guns and wilfully courted the danger himself.

CORRECT OPTION: D

70. Which of the following is not an element to claim the defence of *volenti non fit Injuria*?
- (A) Prior knowledge of the plaintiff about the risk involved.
 - (B) Free consent.
 - (C) Plaintiff is compelled to agree to a risk by the defendant.
 - (D) Voluntary acceptance of the risk by the plaintiff.

CORRECT OPTION: C

It is essential to the creation of a contract that both parties should agree to the same thing in the same sense. Mutual consent, which should also be a free consent, is the *sine qua non* of a valid agreement and one of its essential elements is that a thing is understood in the same sense by a party as is understood by the other. Not only consent, but free consent is provided in Section 10 of the Indian Contract Act, 1872 to be necessary to the complete validity of a contract. Consent is free when it works without obstacles to impede its exercise. Where there is no consent or no real and certain object of consent, there can be no contract at all. Where there is consent, but not free consent, there is generally a contract voidable at the option of the party whose consent was not free. A general averment that consent was not freely obtained is not enough, and it is necessary to set up one of the vitiating elements such as fraud which includes, false assertion, active concealment, promise without intention of performing it, any other deceptive act, or any act declared as fraudulent. In order to constitute fraud, the act should have been done by the party to the contract, or by any other person with his connivance, or by his agent and with intent to deceive the other party thereto or his agent, or to induce him to enter into the contract. There is no duty upon parties to speak about facts likely to affect the other party's consent to the contract and mere silence does not amount to fraud, unless the circumstances of the case show that there is duty to speak, or silence is, in itself equivalent to speech. On the other hand, misrepresentation falls into three categories: (i) a statement of fact, which if false, would be misrepresentation if the maker believes it to be true, but which is not justified by the information he possesses; (ii) any breach of duty which gains an advantage to the person committing it by misleading another to his prejudice, there being no intention to deceive; and (iii) causing a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement, even though done innocently.

71. Which of the following statements correctly depicts the essentials of misrepresentation?
- (A) A misrepresentation is a positive statement of fact, which is made or adopted by a party to a contract and is untrue.
 - (B) Misrepresentation and false representation do not mean the same.
 - (C) If one party has induced the other to enter into a contract by misrepresenting, though innocently, any material fact especially within his own knowledge, the party misled cannot avoid the contract.
 - (D) A misrepresentation is a negative statement of fact, which is made or adopted by a party to a contract and is true.

CORRECT OPTION: A

72. Consider the statements given below and answer which one correctly describes a fraudulent act.

- (I) The expression fraud means an intention to deceive, whether it is from any expectation of advantage to the party himself or from ill will towards the other is immaterial.
 - (II) A fraud is an act of deliberate deception with the design of securing something by taking an unfair advantage of another. It is a deception to gain from another's loss.
 - (III) Fraud arises out of deliberate active role of representator about a fact.
- (A) (I), (II) are correct.
 - (B) (I) correct.
 - (C) (I), (II), (III) are correct.
 - (D) (I) and (II) are correct but (III) is incorrect.

CORRECT OPTION: C

73. Which of the following statements is correct?

- (A) Fraud is an innocent wrong whereas misrepresentation is an intentional wrong.
- (B) The principal difference between fraud and misrepresentation is that in the former, the person making the suggestion does not believe it to be true and, in the latter, he believes it to be true.
- (C) In fraud and misrepresentation both, it is not a misstatement of fact which misleads the promisee.
- (D) Fraud and misrepresentation both are innocent wrongs.

CORRECT OPTION: B

74. Mr. A sells a car to Mr. Y, his childhood friend with a knowledge that the car is defective. Before buying the car, Mr. Y says to Mr. A, "If you do not deny it, I shall assume that the car is perfect". Mr. A says nothing. In light of the statement, decide the liability of Mr. A.

- (A) A's silence is equivalent to speech and hence a misrepresentation.
- (B) A is not liable for fraud, but liable for misrepresentation.
- (C) A is liable for fraud and misrepresentation both.
- (D) A's silence is equivalent to speech and hence a fraud.

CORRECT OPTION: D

75. In which of the following statements will a contract not be voidable at the option of a party?

- (A) When a party takes consent by fraud.
- (B) When a party takes consent by misrepresentation.
- (C) A contract entered by fraud and misrepresentation is neither void nor voidable.
- (D) When silence amounts to fraud, but the other party whose consent was taken had discovered the truth or had the means of discovering the truth with ordinary diligence.

CORRECT OPTION: D

Section 4 of the Indian Contract Act, 1872 reads as follows:

Communication when complete - The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete, - as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge of the proposer.

Thus, the provision makes no difference in the position of the offeror. The offeror becomes bound when a properly addressed and adequately stamped letter of acceptance is posted. The acceptor does not become bound by merely posting his acceptance. He becomes bound only when his acceptance comes to the knowledge of the proposer. The contract is concluded at the place from where the proposal is accepted and communication of acceptance is dispatched, i.e., the address at which the proposal was sent. The court at that place would have jurisdiction to entertain a cause of action under the contract. This rule, that the communication of an acceptance is complete as against the proposer when the letter is posted, is probably intended to apply only when the parties are at a distance and they communicate by post. "Where, however, the parties are in each other's presence or, though separated in space", they are in direct communication, as, for example, by telephone, no contract will arise until the offeror receives the notification of acceptance.

76. 'S' wanted to purchase shares of a company and communicated his offer to buy shares on March 1, 2021. A letter of allotment of shares addressed to 'S', which is an acceptance of the offer to purchase shares, was posted by the company on March 10, 2021, but the letter never reached 'S' and was lost in transit. In the given situation, which of the following statements is true?

- (A) Communication of acceptance is not complete as against 'S' and hence, there is no valid contract between 'S' and the company.
- (B) Communication of acceptance is complete as against 'S' however not complete as against the company.
- (C) Communication of acceptance is complete as against the company however not complete as against 'S'.
- (D) Communication of acceptance is complete against both 'S' as well as the company.

CORRECT OPTION: B

77. 'A', who is in Mumbai, makes an offer for supply of goods to 'B', who is in Delhi, *via* a mobile phone call. During the same call, A's offer is absolutely and unconditionally accepted by 'B'. According to the terms agreed between 'A' and 'B', goods are to be supplied at Pune and payment is to be made electronically. In the given situation, where is the contract concluded?

- (A) Neither Mumbai, Delhi nor Pune as it is a telephonic contract
- (B) Pune
- (C) Delhi
- (D) Mumbai

CORRECT OPTION: D

78. 'X', who is in Gandhinagar, makes an offer for sale of second-hand luxury car to 'Y', who is Jammu, *via* an e-mail sent on January 15, 2021 at 2:03 pm. X's offer is absolutely and unconditionally accepted by 'Y' *via* an e-mail sent on January 15, 2021 at 4:04 pm. The e-mail communicating acceptance is read by 'X' on January 15, 2021 at 7:05 pm. In the given situation, when is the contract concluded?

- (A) As against 'X', on January 15, 2021 at 4:04 pm and as against 'Y', on January 15, 2021 at 7:05 p.m.
- (B) As against 'Y', on January 15, 2021 at 4:04 pm and as against 'X', on January 15, 2021 at 7:05 p.m.
- (C) January 15, 2021 at 4:04 p.m.
- (D) January 15, 2021 at 7:05 p.m.

CORRECT OPTION: A

79. 'X', who is in Agra, makes an offer for sale of second-hand luxury car to 'Y', who is Jammu, *via* an e-mail sent on January 15, 2021 at 2:03 pm. However, the e-mail did not reach 'Y' due to some technical error at the server which is located in Delhi. Thereafter, 'X' makes a mobile phone call to 'Y' on January 15, 2021 at 4:04 pm and makes him the same offer as was made in the e-mail. In the same mobile phone call, the offer is absolutely and unconditionally accepted by 'Y' at 4:10 pm. In the given situation, where is the contract concluded?
- (A) Delhi
 - (B) Jammu
 - (C) Agra
 - (D) Neither Delhi, Jammu nor Agra as it is an electronic contract.

CORRECT OPTION: C

80. "When the words of acceptance are spoken into the telephone, they are put into the course of transmission to the offerer so as to be beyond the power of the acceptor. The acceptor cannot recall them." In light of the given proposition, which of the following statements is/are true?
- I. The communication being instantaneous, the contract immediately arises.
 - II. The communication being instantaneous, the communication of acceptance is immediately complete as against the proposer as well as the acceptor.
 - III. The communication being non-instantaneous, the communication of acceptance is complete as against the acceptor when the words of acceptance are spoken into the telephone.
 - IV. The communication being non-instantaneous, the communication of acceptance is complete as against the proposer when the words of acceptance are spoken into the telephone.
- (A) Only I
 - (B) I and II
 - (C) III and IV
 - (D) Only II

CORRECT OPTION: B

It is a well settled principle of contract law that parties cannot by contract exclude the jurisdiction of all courts. Such a contract would constitute an agreement in restraint of legal proceedings and contravene Section 28 of the Indian Contract Act, 1872. However, where parties to a contract confer jurisdiction on one amongst multiple courts having proper jurisdiction, to the exclusion of all other courts, the parties cannot be said to have ousted the jurisdiction of all courts. Such a contract is valid and will bind the parties to a civil action.

Section 28. Agreements in restraint of legal proceedings, void-Every agreement, -

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent.

Parties cannot by agreement confer jurisdiction on a court which lacks the jurisdiction to adjudicate. But where several courts would have jurisdiction to try the subject matter of the dispute, they can stipulate that a suit be brought exclusively before one of the several courts, to the exclusion of the others.

81. 'A', a resident of Mumbai, and 'B', a resident of Delhi, enter into an agreement for sale and supply of goods. The transaction takes place partly in Mumbai and partly in Delhi. There is a clause in the agreement which stipulates that in the event of a dispute between 'A' and 'B', the courts in Kolkata would have exclusive jurisdiction to decide the dispute. 'A' and 'B' agreed to the said clause in order to avoid dispute over choice between the two proper places of jurisdiction- Mumbai and Delhi. In the given situation, which of the following statements is true?
- (A) The clause relating to jurisdiction is in restraint of legal proceedings.
 - (B) The clause relating to jurisdiction is not in restraint of legal proceedings.
 - (C) The clause relating to jurisdiction is valid as 'A' and 'B' have mutually agreed to the same.
 - (D) The clause relating to jurisdiction is valid as its object is lawful.

CORRECT OPTION: A

82. 'A', a resident of Chennai, and 'B', a resident of Bengaluru, enter into an agreement for sale and supply of goods. The transaction takes place partly in Chennai and partly in Bengaluru. There is a clause in the agreement which stipulates that in the event of a dispute between 'A' and 'B', the courts in Chennai would have exclusive jurisdiction to decide the dispute. 'A' and 'B' agreed to the said clause in order to avoid dispute over choice between the two proper places of jurisdiction- Chennai and Bengaluru. In the given situation, which of the following statements is true?
- (A) The clause relating to jurisdiction is in restraint of legal proceedings.
 - (B) The clause relating to jurisdiction is void.
 - (C) The clause relating to jurisdiction is valid as 'A' and 'B' have mutually agreed to the same.
 - (D) The clause relating to jurisdiction is valid as courts in Chennai have jurisdiction to decide the dispute.

CORRECT OPTION: D

83. 'A', a resident of Agra, and 'B', a resident of Bhubaneswar, enter into an agreement for sale and supply of goods. The transaction takes place partly in Agra and partly in Bhubaneswar. There is a clause in the agreement which stipulates that in the event of a dispute between 'A' and 'B', neither of them can approach the court of law or take recourse to any alternative dispute resolution mechanism to settle the dispute. In the given situation, which of the following statements is true?
- (A) The clause relating to jurisdiction is not valid as it is in restraint of legal proceedings.
 - (B) The clause relating to jurisdiction is not valid as the clause is vague and ambiguous.
 - (C) The clause relating to jurisdiction is valid as they have not restricted the choice of either party regarding choice of jurisdiction.
 - (D) The clause relating to jurisdiction is valid as no court's has been ousted by the clause.

CORRECT OPTION: A

84. 'A', a resident of Ahmedabad, and 'B', a resident of Ranchi, enter into an agreement for sale and supply of goods. The transaction takes place partly in Ahmedabad and partly in Ranchi. Clause 6 of the agreement stipulates that in the event of a dispute arising between 'A' and 'B' within six months of the entering into contract, they can approach a court in either Ahmedabad or Ranchi (as both are proper places of jurisdiction), or take recourse to any alternative dispute resolution mechanism to settle the dispute. Clause 7 of the agreement stipulates that in the event of a dispute arising between 'A' and 'B' after the expiry of six months of entering into contract, the courts in Chennai would have exclusive

jurisdiction to decide the dispute. In the given situation, which of the following statements is true?

- (A) Clause 6 is void and Clause 7 is valid.
- (B) Clause 6 is valid and Clause 7 is void.
- (C) Both Clause 6 and Clause 7 are valid.
- (D) Both Clause 6 and Clause 7 are void.

CORRECT OPTION: D

85. According to the given passage, which of the following statements is true?

- (A) Parties cannot by contract make a choice of jurisdiction.
- (B) Parties cannot by contract exclude the jurisdiction of all courts.
- (C) Parties can by contract confer jurisdiction on any court.
- (D) Parties can by contract extinguish their rights under any contract.

CORRECT OPTION: B

The doctrine of *res judicata* requires that a party should not be allowed to file same matter repeatedly against the other party either in the same court or in other competent court and that the decision given by one court should be accepted as final subject to any appeal, revision or review. The doctrine is founded on the principle that it is in the interest of the public at large that a finality should be attached to the binding decisions pronounced by courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. This apart, the object of the doctrine is to ensure that ultimately there should be an end to litigation. Doctrine of *res judicata* is embodied in Section 11 of the Code of Civil Procedure, 1908 which governs the procedure to be followed in civil matters. Section 11 is inapplicable to writ jurisdictions. The Supreme Court has observed that though the rule is technical in nature yet the general doctrine of *res judicata* is based on public policy and therefore, it cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article 32 of the Constitution of India. The court observed that if a writ petition filed by a party under Article 226 of the Constitution of India is considered on merits as a contested matter and is dismissed, the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed in appeal or other appropriate proceedings permissible under the Constitution of India. It would not be open to a party to ignore the judgment of the High Court and move Supreme Court under Article 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs. If the petition filed in the High Court under Article 226 is dismissed but not on the merits, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Article 32, however if the petition is dismissed without passing a speaking order, then such dismissal cannot be treated as creating a bar of *res judicata*.

86. Which of the following is *res judicata* applicable to?

- (A) Civil suits
- (B) Writ petitions
- (C) None of the above.
- (D) Both (A) and (B).

CORRECT OPTION: D

87. Doctrine of *res judicata* is applicable to writs if

- (A) The decision is on merits.
- (B) Order is a speaking order.
- (C) Both (A) and (B).
- (D) Neither (A) nor (B).

CORRECT OPTION: C

88. On which of the following is the doctrine of *res judicata* based?

- (A) No one should be vexed twice for the same cause more than once.
- (B) It is in the interest of public that finality should be attached to the decisions of courts.
- (C) There should be an end to litigation.
- (D) All of these.

CORRECT OPTION: D

89. Which of the following is correct?

- (A) If a writ petition is filed under Article 226 of the Constitution of India and the same is rejected on merits by a speaking order, another petition under Article 32 of the Constitution of India is not maintainable being barred by *res judicata*.
- (B) The doctrine of *res judicata* is founded on the principle that it is in the interest of the public at large that a finality should be attached to the binding decisions pronounced by courts of competent jurisdiction.
- (C) Technical rule of *res judicata* only prevents multiple filing of petitions under Article 226 of the Constitution of India between same parties over the same matter and is not applicable to petition under Article 32 of the Constitution of India.
- (D) Both (A) and (B).

CORRECT OPTION: D

90. Mr. X was dismissed from service by his employer after a proper enquiry. Mr. X challenged his dismissal in High Court by a petition under Article 226 of the Constitution of India. However, the High Court dismissed the petition citing that Mr. X has an alternative remedy available. Mr. X took recourse to the alternative remedy before the appropriate forum, but Mr. X's legal action is opposed by the employer on the basis of *res judicata*. Based on these facts, which of the following is the most appropriate?

- (A) *Res judicata* is applicable.
- (B) *Res judicata* is not applicable.
- (C) Since the matter relates to livelihood and life of the person, technical rule of *res judicata* should not be applied.
- (D) Both (B) and (C).

CORRECT OPTION: B

Compassionate appointment is an exception to the general rule of appointment which is a way of providing employment to the family of the deceased employee on compassionate grounds. The objective is only to provide solace and succour to the family in difficult times and, thus, its relevancy is at that stage of time when the employee passes away. The mere death of an employee in harness does not entitle his family to such source of livelihood. The authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied that, but for the provision of employment, the family will not be able to meet the crisis that the job is offered to the eligible member of the family. It was further asseverated in the said judgment that compassionate employment cannot be granted after a lapse of reasonable period as the consideration of such employment is not a vested right which can be

exercised at any time in the future. It was further held that the object of compassionate appointment is to enable the family to get over the financial crisis that it faces at the time of the death of sole breadwinner. Thus, compassionate appointment cannot be claimed or offered after a significant lapse of time and after the crisis is over.

91. Which of the following correctly states the intent behind the application of compassionate appointment?
- (A) The norms, at the time of death of the government employee will be applicable and not the norms at the time of making an application.
 - (B) A dependent of a government employee cannot demand consideration of his/her application.
 - (C) The norms of the governmental or public authorities are not considered while applying for compassionate appointment.
 - (D) The norms prevailing on the date of consideration of the application should be the basis for consideration of claim for compassionate appointment.

CORRECT OPTION: D

92. Which of the following is not correct about the rule of compassionate appointment?
- (A) Compassionate appointment is given to the family members of the deceased irrespective of their financial status.
 - (B) It is to mitigate the hardship caused to the family members after the death of earning member of the family.
 - (C) Compassionate appointment cannot be granted as a matter of vested right.
 - (D) Compassionate appointment cannot be made in the absence of rules and regulations issued by the government or a public authority.

CORRECT OPTION: A

93. Mr. Y, son of Mr. X, made a representation before ABC government company on January 4, 2018 that he should be given appointment on compassionate grounds as his father died during his employment in the company in 2000. Consider the given facts and decide whether Mr. Y is entitled to get compassionate appointment.
- (A) Mr. Y is entitled to get compassionate appointment.
 - (B) Mr. Y is not entitled for compassionate appointment as a long period has elapsed since the death of his father.
 - (C) Mr. Y is entitled to get compassionate appointment depending on policy of the company in which his father was working.
 - (D) Mr. Y is not entitled to get compassionate appointment as it is the discretion of the company to refuse the said appointment.

CORRECT OPTION: B

94. The Government of 'N' formulated a scheme for providing compassionate appointment to the dependants of government servants who retired on medical invalidation. By a further notification, the benefit of the scheme was restricted to cases where the government servants retired on medical invalidation, at least five years before attaining the age of superannuation. Consider the given facts, and decide which of the following is correct in relation to the validity of this rule of compassionate appointment?
- (A) The scheme is valid subject to the approval of the dependents.

- (B) The scheme is not valid as the offer of compassionate appointment to the dependent of a government servant who is medically invalidated is not an exception to the general rule.
- (C) The scheme is not valid as it is unconstitutional.
- (D) The scheme is valid as it is not arbitrary and the government has the right to formulate such rules.

CORRECT OPTION: D

95. Which of the following is not correct regarding the nature of appointment on compassionate grounds?

- (A) A request for compassionate appointment by the dependent relatives of the deceased must be preferred without any undue delay.
- (B) The general rule of appointment may not be always applicable to compassionate appointments.
- (C) The immediacy of the need is not the basis for the state to allow the benefit of compassionate appointment.
- (D) It is a benefit given to the family members at the time of distress.

CORRECT OPTION: C

Marriage is necessarily the basis of social organisation and the foundation of important legal rights and obligations. The importance and imperative character of the institution of marriage needs no comment. In Hindu law, marriage is treated as a *Samskara* or a sacrament. The Hindu Marriage Act, 1955 introduced monogamy as a law of marriage among Hindus by virtue of Section 5 clause (i) which is essentially the voluntary union for life of one man with one woman to the exclusion of all others. It enacts, “neither party must have a spouse living at the time of marriage”. The expression ‘spouse’ here used, means a lawfully married husband or wife. Before a valid marriage can be solemnised, both parties to such marriage must be either single or divorced or a widow or a widower and only then they are competent to enter into a valid marriage. If at the time of performance of the marriage rites and ceremonies, one or other of the parties had a spouse living and the earlier marriage had not already been set aside, the later marriage is no marriage at all. The Supreme Court in *Bhaurao Shankar Lokhande v. State of Maharashtra*, [AIR 1965 SC 1564] held, “*Prima facie*, the expression ‘whoever marries’ in Section 494 of the Indian Penal Code, 1860 (which defines the offence of bigamy) must mean ‘whoever marries validly’ or ‘whoever marries and whose marriage is a valid one’. If marriage is not valid according to the law applicable to the parties, no question arises of its being void by reason of its taking place during the life of the husband or wife of the person marrying. One of the conditions of a valid marriage under the Hindu Marriage Act, 1955 is that it must be ‘solemnised’. Further, Section 13 (2) of the Act provides for grounds of divorce to wife and states, “A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground that in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner: Provided that in either case the other wife is alive at the time of the presentation of the petition”.

96. Mr. A, a 40-year old male Hindu, was married to Ms. B, a 36-year old female Hindu. Mr. A fell in love with his colleague- Ms. C, a 22-year old female Christian. On April 8, 2020, Mr. A declared Ms. C as his wife in front of all his colleagues, family members and relatives. Based on the given facts, decide the liability of Mr. A as per Hindu law.

- (A) Mr. A is not liable for the offence of bigamy as Ms. C is a Christian.

- (B) Mr. A is liable for the offence of bigamy as mere declaration also amounts to solemnisation.
- (C) Mr. A is not liable for the offence of bigamy as he has not solemnised his marriage with Ms. C.
- (D) Mr. A is liable for the offence of bigamy as there was no intention to marry.

CORRECT OPTION: C

97. Which of the following statements correctly expresses the interpretation of the word 'solemnise' under Hindu law?

- (A) Solemnisation means celebrating the marriage with proper customary rites and ceremonies of either party to a marriage.
- (B) Solemnisation includes and means promising each other a lifetime of happiness.
- (C) Solemnisation is not necessary in modern marriages when registration of marriage is complete.
- (D) Solemnisation is a mere formal practice and not a mandate.

CORRECT OPTION: A

98. Which of the following is not correct regarding the law of monogamy among Hindus?

- (A) Monogamy is a union of a man and woman which provides their relation a social and legal recognition.
- (B) Monogamy as a law was abolished after 1955.
- (C) The second marriage during the subsistence of a first valid marriage is void.
- (D) If a husband solemnises a second marriage during the subsistence of first marriage, it is not an offence, however, it is an offence if a wife commits the same act.

CORRECT OPTION: B

99. On the basis of Section 13 of the Hindu Marriage Act, 1955, which of the following statements does not relate to the remedy?

- (A) The object of the Section was to provide an opportunity to the wife in the form of remedy of divorce.
- (B) The introduction of this ground of divorce is unnecessary as it disturbs the sanctity of marital institution.
- (C) A remedy is only available under this Section if the husband has the other wife living.
- (D) The living status of either spouse is immaterial to claim the remedy.

CORRECT OPTION: B

100. Mr. P, a 28-year old male Hindu was legally married to Ms. Q, a 26-year old female Hindu. Mr. P converts to Islam to marry Ms. N, a 30-year old Sunni female Muslim. Consider the statement and decide whether Ms. Q has the remedy to file a complaint for the offence of bigamy against Mr. P?

- (A) Yes, Ms. Q can file a complaint subject to the approval by Ms. N.
- (B) No, Ms. Q cannot file a complaint as it defeats the very purpose of her marriage with Mr. P.
- (C) No, Ms. Q cannot file a complaint as Mr. P converted to another religion and the offence of bigamy will only be attracted when the parties are Hindus.
- (D) Yes, Ms. Q has the remedy of filing a complaint for the offence of bigamy.

CORRECT OPTION: D

The Indian Penal Code, 1860 does not define ‘consent’ in positive terms, but what cannot be regarded as ‘consent’ under the Code is explained by Section 90. Section 90 reads as follows: “90. *Consent known to be given under fear or misconception* - A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception;...” Consent given firstly under fear of injury and secondly under a misconception of fact is not ‘consent’ at all. That is what is enjoined by the first part of Section 90. These two grounds specified in Section 90 are analogous to coercion and mistake of fact which are the familiar grounds that can vitiate a transaction under the jurisprudence of our country as well as other countries. The factors set out in the first part of Section 90 are from the point of view of the victim. The second part of Section 90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused too has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the court has to see whether the person giving the consent had given it under fear of injury or misconception of fact and the court should also be satisfied that the person doing the act i.e. the alleged offender, is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of Section 90 which is couched in negative terminology. Section 90 cannot, however, be construed as an exhaustive definition of consent for the purposes of the Indian Penal Code, 1860. The normal connotation and concept of ‘consent’ is not intended to be excluded. Various decisions of the High Court and of Supreme Court have not merely gone by the language of Section 90, but travelled a wider field, guided by the etymology of the word ‘consent’.

101. ‘A’, a man, promises ‘B’, a woman that he will marry her if she has sexual intercourse with him. ‘B’ agrees, but after having sexual intercourse, ‘A’ flees and never contacts ‘B’ again. In the given situation, which statement is true?
- (A) Consent for sexual intercourse was given under misconception of fact.
 - (B) Consent for sexual intercourse was given under fear of injury.
 - (C) Consent for sexual intercourse was given under undue influence.
 - (D) Consent for sexual intercourse was given without any misconception or fear of injury.

CORRECT OPTION: A

102. According to the given passage, a person is said to ‘consent’ to the doing of an act if
- (A) A person agrees to do an act without misconception of fact or fear of injury.
 - (B) The person to whom agreement is signified has no reason to believe that the agreement is being given under misconception of fact or fear of injury.
 - (C) A person agrees to do an act without misconception of fact or fear of injury and the person to whom agreement is signified has no reason to believe that the agreement is being given under misconception of fact or fear of injury.
 - (D) A person agrees to do an act without having regard to the consequences of fear of injury or misconception of fact.

CORRECT OPTION: C

103. According to your understanding of the given passage, why is negative terminology used to explain the meaning of consent under Section 90?
- (A) To emphasise on the factors that vitiate consent.
 - (B) To emphasise on the point of view of victim or the person who gives consent.

(C) To emphasise on the point of view of the person who receives consent.

(D) To emphasise on the non-exhaustive scope of definition of consent.

CORRECT OPTION: D

104. 'X', a man, promises 'Y', a woman that he will marry her if she has sexual intercourse with him. 'Y' agrees and they have sexual intercourse. Thereafter, 'X' assures 'Y' that they will get married, but X's family is opposed to the marriage even after X's attempts to convince them. Therefore, 'X' refuses to marry 'Y'. In the given situation, which statement is true?

(A) Consent for sexual intercourse was received knowing that the consent is given under misconception of fact.

(B) Consent for sexual intercourse was given without any misconception of fact or fear of injury.

(C) Consent for sexual intercourse was received knowing that the consent is given under fear of injury.

(D) Consent for sexual intercourse was given under misconception of fact and received misconception of fact.

CORRECT OPTION: B

105. According to the given passage, which of the following statements is not true?

(A) Misconception of fact vitiates consent.

(B) Fear of injury vitiates consent.

(C) Misconception of fact obviates the necessity of consent.

(D) Fear of injury is analogous to coercion.

CORRECT OPTION: C