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Paper - DSS Mode 2 - paper 3.

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Suggestions

- Avoid using short words for action, order etc.
- You have not attempted Q. no 8, 12 and 15
- Please write only relevant case laws
- Good attempt!

(4) Law

Order 8

OS RIA of the Code of Civil procedure provides

that when the defendant bases his defence upon a document or relies upon any document in support of his defence he must file it with the filing the written statement.

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After the stage of mentioned above no document may be filed except with leave of court.



Further 2 exceptions have been provided for the above mentioned rule -

↳ where the document is produced for cross-examination of plaintiff's witness

↳ where handed over to witness to refresh his memory.

### Issue

In light of the above law and factual narrative in this case, the following issues are to be determined -

↳ Whether the document be allowed to prove when not filed along with written statement



To determine the above issue - the following case may be referred to

Moharraj Jain v Kewalchand Jain

which said that when a document is undisputably relevant and material for just an appropriate decision. It must be allowed by court.

However, it should not cause real prejudice to the other party.

In the present case, allowing the document will cause prejudice to party. Even though it was produced for cross-examination, the defendant wants to prove it as his own evidence.



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and therefore it cannot be said to be covered under the exception.

Therefore on both accounts, the doubt must be allowed to be produced.

(2) (i)

law - Section 20 of CPC, provides that suit may be instituted in the jurisdiction of court where -

↳ the defendant actually & voluntarily resides, or carries on business, or personally works for gain; or

↳ any of agencies

↳ the cause of action arises wholly or in part



In the case of ABC Laminant v AP  
Agency Salem,

- the term Cause of action was defined as bundle of ~~rights~~ ~~facts~~ facts that ~~give~~ right to obtain relief.
- Further, the case held that in case of breach of contract, cause of action arises when contract made, breach occurred, contract was to be performed and money was payable.

Similarly in case of

In the present case, taking into account the law & the factual matrix -



Suit can be instituted ~~at~~ by A at -

• Bangalore - where B resides as per  
sec 20 (a) of or 'C' Calcutta - where C  
resides with acquiescence of other  
party or leave of court.

• or at Kurukshetra - where  
the execution of pro-note took  
place giving rise to cause of  
action & covered under 20(c)

This has also been covered under  
Illustration (b) of sec 20 code of  
civil procedure.

Good answer



(ii) Law

Sec 16 of CPC provides the place for instituting suit in case of immovable prop.

16(b) say that a suit for partition of immovable may be instituted

at place where property is situated.

Sec 17 - further states that where immovable property is situated in diff jurisdiction

the suit may be instituted ~~at~~

in any of the courts where any

part of prop is situate



In the case of Srin Narayan v. Maniklal.  
 It was held that any portion does  
 not mean portion of the same  
 property but also means one of  
 many properties. Further, it based  
 its decision on the General Clauses  
 act which states that singular  
 included plural & ...

Therefore, in the ~~above~~ present  
 case - suit may be filed -

↳ At Gurgaon or

↳ at Delhi court or ~~Hisar~~

— Rohtak



Question No

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For practice only

(3)

Sec 11 of the CPC provides for the application of Res-judicata - The various element of the section as also discussed in Shoodan v Daryao Singh are -

- ↳ former suit has been decided
- ↳ subsequent suit has been filed which relates to -

↳ matter directly & substantially in issue in former suit

↳ to do between same parties or parties claiming through them.

↳ litigation under same title

↳ matter has been heard & finally



In the present case, A bought 2 suits against B -

↳ first as heir of deceased Mohan

↳ second as manager of Math.

6/12

Therefore, it is clear that the suit was filed in different capacities i.e. under different titles. → so that the doctrine of res-judicata cannot be invoked.

The plea of res-judicata is not allowed

Add Smt. Durga Devi v/s Shashtri Prakash



(4) Law

Sec 5 of Arbitration & Concil<sup>n</sup> Act states that when

↳ A party to arb agreement

↳ applies to the court

↳ before submitting first statement of dispute

↳ for reference to arbitration

the the court SHALL refer such parties to arb. agreements

In the case of Booz Allen Hamilton

v FBI Home finance - the court

discussed the 3 facets of arbitrability



in a case

↳ whether the dispute is capable  
of arbitration

↳ whether there is a valid agreement  
concerning the same.

↳ whether the dispute has been  
referred to arbitration.

Further this case held that rights in  
rem are generally non-arbitrable  
eg- matrimonial, criminal, insolvency  
matters

whereas

rights in personam are arbitrable  
eg- contractual matters



(1)

Further recent case of Vithya Drogia v Durga Trading also held that where the subject matter is related to action in rem - the dispute is non-arbitrable.

4/12

In the present case, it is true that there is an arbitration agreement admitted between the parties but the relief sought with respect to divorce ~~and~~ is non-arbitrable.

Therefore, it cannot be referred to.

Case laws - Missing



Question No

For Practical only

(5) Sec 11 of the CPC provides a restriction on trial of another suit ~~(same as before)~~ and says that when a matter has been decided in competent ~~court~~ subsequent suit is barred.

Expl. 8 - further states that ~~every~~ the comp an issue heard & decided by court of lrd jurs, competent to decide ~~such~~ issue shall operate as res-judicata in a subsequent suit notwithstanding if such court of limited jurs is not competent to try such sub.



In the present case, it has been provided that

↳ parties are same - A and B

↳ suit is for

(5) Essentials already discussed of res judicata

In the present case -

the matter is directly and substantially

in issue in former suit → the

house

the parties are same → A & B

matter was heard & decided



It has not been provided in which capacity the suit was filed - assuming it to be in same capacity. (4)

the subsequent suit is based by res-judicata - Add 3 maxims on which doctrine of res-judicata is based

(6) In the present case the following issue arise -

- (1) whether there is sufficient cause.  
(2) whether there can be condonation of suit (3)

(1) In Arvind Swamy v Chitra - it was held that when illness utterly disables a person ~~from~~ it is sufficient ground for condonation delay.



— no remedy is provided after the expiry of the period of limitation

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For  
Practise  
only

(2) Sec 5 - of lim<sup>n</sup> Act allows condon<sup>n</sup> of delay in case of appeal & execution ~~but~~ on showing sufficient cause but NOT in case of suit.

However,

the power has been granted to courts under Order 7 RG → which

states that court may permit the institution of suit even after expiry of law of limit<sup>n</sup>.

In the present case, since he was unconscious. It is ground for allowing the delay.



(7) Sec 11 of the Trade Marks Act, 1999 provides certain grounds for refusal of registration of trade mark.

(i) identity with earlier trade mark & similarity of goods & services.

(ii) similarity with earlier trade-mark & identity or similarity of goods & services covered by trade mark.

which gives rise to likelihood of association with earlier trade-mark.

An exception to this has been

provided in Sec 12 which says that

even when trademarks are

identical & similar in respect of  
same-similar goods - registration



may be given to two or more proprietors if it can be shown that there is honest concurrent use.

The doctrine was explained in Consolidated Food Corp v Brandon which states that priority of use is more important than priority of registration and person who used the goods prior is also entitled to protection.

Further, in Toshida & Appliances case, it was held that honesty must be considered from commercial point of view,



and it relates back to date of adoption.

(5) If honestly adopted  $\rightarrow$  subsequent use is also honest

If dishonestly adopted  $\rightarrow$  no length of use can legitimize

v. Add Case laws

Q.8 — Not attempted

(9) In the case of State of Assam v Narendra Chand it was held that ~~advocate~~ lawyer should not suffer for inadvertence of advocate.

So in this case, it should be allowed.  
— Read Section 5 of the Limitation Act in detail

(10) Copyright deals with 2 concepts

Author

Owner



Author is defined under 2(d) and means the person who creates the work.  
Eg - artist for an art, ~~writer~~ for author for literary work etc.

However, it is

The Rule is that the author is the first owner of work & all the copyrights subsist in him.

However, there are certain exceptions to this as provided in sec 17 of the Copyright Act, 1957.

(a) in literary dramatic, artistic work —

- ↳ in case of employ
- ↳ ~~two~~ contract & contracts



= proprietor = first owner with respect to reproduction & publishing

(b) ~~photographs~~ painting, engraving, *drawn painting*  
 cinematograph  
 ← *who has taken photographs*  
 = person on whose instance work made for copyright =

(c) in literary work in contract of

service = employer  
 — *Missing some points*

University London Press v University

tutorial - held that there is

difference b/w contract of service & contract for service.

of service = agent principle, master for service = independent contract



(cc) speech, performance  
= on whose behalf address  
is delivered

(a) gov't work, gov't It is related to derivative work  
In EBC v Modalk case - it was

held that supreme court cases  
are literary work & gov't owns  
the copyright - 4/2

(d) Published by or under the direct-  
or control of PU = PU

Please add relevant case laws



(11) Sec 23 of Registration Act states that no registration of document will be made after 4 months from date of execution.

Sec 25 - states that when delay is because of urgent need necessity or unavoidable accident - further extension of 4 months may be given.

In Ram Singh v Jasmir Singh - It was held that these provisions are mandatory - and no request is allowed after 4 months.



In this case, 4 months have elapsed,  
so it must be shown that there was  
an urgent necessity justifying the delay  
to be covered under Sec 25 - otherwise  
regist<sup>r</sup> cannot be allowed.  $3\frac{1}{2}$

12) - O 11 - R 20, 21 } Not written  
answer

13) O 22 - R(5) → Where plaintiff was ignorant of  
death & could not make appl<sup>n</sup> in time + +  
he applies ~~after~~ for setting aside of such

$3$  abatement - court will allow the

applic<sup>n</sup> under Sec 5 if fact of ignorance  
is proved. Order 22 Rule 4  
study and add.



Theypt in this case, the application will be allowed.

(4) Order 9 Rule 13. deals with setting aside of EA-pate order on 2 grounds.

↳ ~~order~~ summons not duly served

(5) prevented by other sufficient cause.

In Anjan Singh v Mahinder Kumar -

the diff b/w good cause & sufficient cause was discussed. Good cause is a reason attributable to non-appearance

whereas sufficient cause is greater

in degree and every ~~good~~ <sup>sufficient</sup> cause is

cause is good cause but not vice versa



In this case, the affidavit has been filed for showing that he was ill + advocate forgot to mention in diary. There's no requirement to file proof of medical affidavit in the section.

The writ must not suffer for fault of counsel. Therefore, writ has shown sufficient cause.

- Application should be allowed.

App Order of Rule 6  
Q. 15 Not attempted

(16)

Law of R9 says that while no suit will be defeated by reason of misjoinder

or non-joinder of any part, but

may be defeated by non-joinder of



Apply Rule 10 of  
Order I of CPC

necessary party ✓

In case of Alji Monajiv Lalji

Naaji the difference b/w proper  
party & necessary party was defined

as -

proper party = party in whose

presence is desirable for full

adjudic<sup>n</sup> ✓

✓  
necessary party in absence of who

no effective decree can be passed.

In this case, ~~the~~ H is the owner of

property, it is NOT necessary for

others to be joined. Not a case of non-tender.