NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination November- 2024

Semester: UG I Semester

Subject: Legal Methods

Marks: 100

Time: Three Hours

Instructions:

1. **Attempt any five out of the six questions**
2. **All questions carry equal marks**
3. **Students are prohibited from using any electronic device.**

Q.1) Discuss the role of legislation as a source of law. How does a legislation operate differently in comparison to a judicial decision? (Marks 20)

Q.2) Explain the concept of precedents. What are the exception to the concept of precedent? (Marks 20)

Q.3) Explain the structures of courts in India. What is the difference between question of law and question of fact? (Marks 20)

Q.4) Following is the preamble of the Indian Contract Act, 1872-

Whereas it is expedient to define and amend certain parts relating to contracts

The saving clause states-" Nothing herein contained shall affect the provisions of any statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of contract not inconsistent with the provisions of this Act."

Explain the import of the preamble and saving clause in the context of contract act. Explain the relevance of the term of "*usage or custom*" in the context of a written legislation in the form of contract Act. (Marks 20)

Q.5) Explain the role of Administrative law in French Legal system. Explain the role of tribunals in India. (Marks 20)

Q.6) Refer to the judgment attached and provide for the ratio as well as the obiter.

(Marks20)

Carlil vs Smokeball

I will begin by referring to two points which were raised in the Court below. I refer to them simply for the purpose of dismissing them .First, it is said no action will lie upon this contract because it is a policy. You have only to look at the advertisement to dismiss that suggestion. Then it was said that it is a bet.Hawkins, J., came to the conclusion that nobody ever dreamt of abet and that the transaction had nothing whatever in common with a bet. I so entirely agree with him that I pass over this contention also as not worth serious attention.

Then, what is left? The first observation I will make is that we are not dealing with any inference of fact. We are dealing with an express promise to pay £100 in certain events. Read the advertisement how you will and twist it about as you will, here is a distinct promise expressed in language which is perfectly unmistakable -

£100 reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the iufluenza after having used the ball three times daily for two weeks according to the printed directions supplied with each ball.

We must first consider whether this was intended to be a promise at all, or whether it was a mere puff which meant nothing.Was it a mere puff? My answer to that question is No and I base my answer upon this passage: £1000 is deposited with the Alliance Bank, shewing our sincerity in the matter. Now, for what was that money deposited or that statement made except to negative the suggestion that this was a mere puff and meant nothing at all? The deposit is called in aid by the advertiser as proof of his sincerity in the matter - that is, the sincerity of his promise to pay this £100 in the event which he has specified.I say this for the purpose of giving point to the observation that we are not inferring a promise; there is the promise, as plain as words can make it. Then it is contended that it is not binding. In the first place, it is said that it is not made with anybody in particular.Now that point is common to the words of this advertisement and to the words of all other advertisements offering rewards. They are offers to anybody who performs the conditions named in the advertisement and anybody who does perform the condition accepts the offer. In point of law this advertisement is an offer to pay£100 to anybody who will perform these conditions and the performance of the conditions is the acceptance of the offer.That rests upon a string of authorities, the earliest of which is Williams v. Carwardine 4 B. Ad. 621, which has been followed by many other decisions upon advertisements offering rewards.

But then it is said, Supposing that the performance of the conditions is an acceptance of the offer, that acceptance ought to have been notified. Unquestionably, as a general proposition, when an offer is made, it is necessary in order to make a binding contract, not only that it should be accepted, but that the acceptance should be notified. But is that so in cases of this kind? I apprehend that they are an exception to that rule,or, if not an exception, they are open to the observation that the notification of the acceptance need not precede the performance. This offer is a continuing offer. It was never revoked and if notice of acceptance is required - which I doubt very much, for I rather think the true view is that which was expressed and explained by Lord Blackburn in the case of Brogdenv. Metropolitan Ry. Co. 2 App. Cas. 666, 691 - if notice of acceptance is required, the person who makes the offer gets the notice of acceptance contemporaneously with his notice of the performance of the condition. If he gets notice of the acceptance before his offer is revoked, that in principle is all you want. I,however, think that the true view, in a case of this kind, is that the person who makes the over shews by his language and from the nature of the transaction that he does not expect and does not require notice of the acceptance apart from notice of the performance. We, therefore, find here all the elements which are necessary to form a binding contract enforceable in point of law, subject to two observations. First of all it is said that this advertisement is so vague that you cannot really construe it as a promise - that the vagueness of the language shews that a legal promise was never intended or contemplated. The language is vague and uncertain in some respects and particularly in this, that the £100 is to be paid to any person who contracts the increasing epidemic after having used the balls three times daily for two weeks. It is said, When are they to be used? According to the language of the advertisement no time is fixed, and,construing the offer most strongly against the person who has made it, one might infer that any time was meant. I do not think that was meant and to hold the contrary would be pushing too far the doctrine of taking language most strongly against the persor using it. I do not think that business people or reasonable people would understand the words as meaning that if you took a smoke ball and used it three times daily for two weeks you were to be guaranteed against influenza for the rest of your life and I think it would be pushing the language of the advertisement too far to construe it as meaning that. It is for the defendants to show what it does mean.