



LEGAL SYSTEM OF PAKISTAN

MID TERM EXAMINATION

SPRING SEMESTER-2021

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Exam Date: 27-07-2021

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QUESTION NO. 1

SHORT NOTES

1. APPELLATE JURISDICTION

According to Article 185 of constitution of Pakistan 1973, the Supreme Court has a very wide appellate jurisdiction, the Supreme Court have the jurisdiction to hear and determine appeals from judgment, decree and orders passed by the High court. The Appeals in the Supreme Court are of two type:

1. Under Article 185 sub Article 2, it is the right of a person to file appeal against any judgment, decree and order passed by the high court against such person. The right of Appeal of a person before Supreme Court is on the following conditions.
 - i) An Appeal shall lie to the Supreme Court from any judgment, decree, and final order or sentence, if the high court has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to transportation for life or imprisonment for life, or on revision, has enhanced a sentence to a sentence as aforesaid.
if the high court has withdrawn for trial before it self any case from any court subordinate to it and has in such trial convicted the accused person and sentenced him to death or life time imprisonment, or if the high court has imposed any punishment on any person for contempt of the High Court.
 - ii) If the amount or value of the subject matter of the dispute in the court of first instance was and also in dispute in appeal is not less than fifty thousand rupees or such other sum as may be specified in that behalf by Act of parliament and the judgment, Decree, final order of the High Court.
 - iii) If the judgment, Decree and final order involves directly or indirectly some claim or question respecting property of like amount or value and the judgment, Decree and final order appealed from has varied or set aside the judgment, decree or final order of the High Court.
 - iv) If the high court certifies that the case involves a substantial interpretation of the Constitution.
2. Under Article 185 sub Article 3, leave of Appeal will be grant by the Supreme Court, if the Supreme Court allows it, then the Appeal could be file otherwise not.

2. ADVISORY JURISDICTION

According to Article 186 of the Constitution of Pakistan 1973, it is the power of the President to file any reference regarding public interest or public opinion on certain matter, if at any time the President considers that it is desirable to obtain the opinion of the Supreme Court on any matter of Law which he considers of public importance, he may refer the matter to the Supreme Court for consideration. The Supreme Court shall consider a matter so referred and report its opinion on the matter to the president, or the Supreme Court decide the matter by itself. However if the reference deals with the question of Law, then according to the Article 186 sub Article 2 it seems to be mandatory provision of law, as it provides that the Supreme Court shall consider a question so referred and report its opinion to the President. Therefore, in Pakistan, in 2005 the Supreme court of Pakistan in its full bench reference under its advisory jurisdiction has had the view that the President has the lawful authority being the custodian of the constitution and symbol of the head of federating units to seek the guidance of the court with no object except to avoid controversies and the ensure constitutional provisions. And it has also been held

therein that the court would be bound to express its opinion upon any such reference, otherwise, the provision of advisory jurisdictions will become redundant. And redundancy is a concept alien to law.

3. SEATS OF SUPREME COURT

According to the Article 183 of the Constitution of Pakistan 1973, the permanent seat of the Supreme Court shall, Subject to the clause 3, is at Islamabad. The Supreme Court may from time to time sit in such other places as the Chief Justice of Pakistan, with the approval of the President, may appointed. Until provision is made for establishing the Supreme Court at Islamabad, the seat of the Court shall be at such place as the President may appoint. The Supreme Court is incorporated of Chief Justice of Pakistan, sixteen Justices and two ad hoc who are confirmed to their appointment by the President upon their nominations from the prime Minister's selection based on their merited qualification. The permanent seat of the Supreme Court is at Islamabad, but it also runs circuits at Karachi, Lahore, Peshawar, Quetta and Islamabad.

4. TRANSFER OF CASES

Under Article 186 (A) of Constitution of Pakistan 1973, the Supreme Court has the power of transfer any case, appeal, revision or any other proceeding pending before one High Court to another high court in the interest of Justice. For example if a person is not satisfied with the proceedings of the High Court of Sindh and he thinks he could not get justice from this Court, than he can file a transfer Application before Supreme Court for transfer his matter to any other High Court, and the Supreme court if it deem think fit and proper, it will grant the Application and transfer the matter of such person to any other High Court for proper decision.

5. PRACTICE AND PROCEDURE

The practice and procedure of the Supreme Court is made by itself. All the executive and judicial authorities are bound to comply the orders of the Supreme Court and all lower courts are required to take aid from the Supreme Court, if any of the lower authority do not comply the order of the Supreme Court, it will be come into the contempt of Court. The decision of the Supreme court in any matter will consider as final decision, however the Supreme Court itself review its order under article 188, the review lies in two condition if there is any omission like typical error occurs in the order the supreme court can review it or second if there is any illegality in such order passed by the Supreme Court, the Supreme Court can review such order.

6. DECISION BINDING ON ALL COURTS

Under article 189 of the constitution of Pakistan 1973, the decisions of the Supreme Court is binding by all the lower Court as the Supreme court is the highest Court and all the lower courts are working under the Supreme Court, so any decision or order of the Supreme court is binding in all the lower courts and all the lower courts are bound to do compliance of the decision of the Supreme Court as the decision of the Supreme court is final, and cannot be recall.

QUESTION NO. 2 **COMMENCEMENT OF CIVIL PROCEEDINGS**

The civil proceeding in the courts are done according to the civil procedure code 1908 (C.P.C). These are the step of civil proceeding from filing a case till its disposal.

1. PLAINT (SUIT).

A civil suit is filed under the civil procedure code 1908, which is known as a plaint. A plaint contains the facts of the case. Supporting with the documents attached as Annexure with the plaint to prove the relevancy of the matter. The person who files the suit is called plaintiff. After admission of the suit, the summons are issued to the other party against whom the civil suit is being filed which is called defendant. There are three modes of summons or service to the defendant (1) belief of the court take summons to TCS, (2) summons pasted at the door of the defendant in the presence of two witnesses and (3) summons is published in the daily newspaper. If the defendant does not appear before the Court after receiving the summons from all modes the suit of the Plaintiff is decreed as Ex-party.

2. WRITTEN STATEMENT:

If after receiving the summons, the defendant appears before the court to defend himself, he receives the copy of the Plaint with annexures and then he will file his reply against the allegations level against him in the said suit or Plaint, the reply of the defendant is called written statement. The defendant like plaintiff also attached documents in support of his reply. After appearance of the defendant in the court, he has time of 30 days for filing his written statement, otherwise he will be debarred from filing his written statement. But if the court wants and defendant give the valid reason why he could not file his written statement on time, the court shall extend the time.

3. INTERIM RELIEF/ INTERIM ORDER:

After filing the written statement from defendant side, if the plaintiff has filed any application with his plaint for claim any interim relief, the defendant will file objection or counter Affidavit of the said Application along with his written statement and after hearing of the Application, the court shall grant any interim relief or passed any interim order on such application which the court may deem think fit and proper according to the matter. Not only the plaintiff but the defendant can also seek any interim remedy from the court in any stage. And after go through the arguments of both sides the court shall decide whether the parties are entitled to claim any interim relief or not.

4. FRAMING OF ISSUES:

After the decision of any application filed with the plaint, the issues are framed by the court whether the suit of the plaintiff is maintainable or not and other point which are required to be discussed in the case to decide the matter, both parties are also file proposed issues from their side.

5. LIST OF WITNESSES AND LIST OF DOCUMENTS:

After framing of issues, the court gives time of seven days to both the parties for filling their list of documents to prove their side and it is their documentary evidence, and also a list of witnesses who support their claim.

6. EVIDENCE AND CROSS EXAMINATION:

After filing the list of documents and list of witnesses, the parties appear before the court for their evidence, first the Plaintiff give his evidence and all documentary proves which he was filed along with his plaint and then after mentioned in his list of

documents. After his evidence the defendant himself or his counsel cross examine the plaintiff whether he is fair or fair, and then his witnesses and thereafter the side of the plaintiff close and defendant give his evidence and then cross examine by the plaintiff or his counsel and then his witnesses give their evidence and thereafter his side will be closed.

7. FINAL ARGUMENTS:

After the evidence / cross examination of both the parties, the day before judgment, both parties argue the case before the court, to support themselves, and also give citations of the relevant cases if they want, so that the matter could be decided on merits.

8. JUDGMENT/DECREE:

After go through the evidence and material available on record the court shall pass a judgment and decree in the case in any one's favor whether he dismiss the suit of the plaintiff or allow it according to the evidence.

9. AWARDING COST:

Court has the power to award any cost to the successful party, or not awarded. It this cost is nominal and beside the actual litigation amount.

10. EXECUTION:

If after the judgment and decree announced by the court and was not enforced and delayed by the parties, the successful party that is decree holder file the execution for the compliance of the judgment after 30 days of judgment and decree.

11. RIGHT OF APPEAL:

If the parties are not satisfied by the judgment and decree of the court, they have the right to file appeal against the said judgment and decree before the superior court, like if the judgment and decree passed by the civil judge and appeal will be file before District judge than 2nd Appeal before High court and then Supreme court and the Supreme court decision is final.

Beside appeal, revision can also be filed against any interim dismissal order and so also Civil Miscellaneous Appeal (CMA) could also be file before superior court.

QUESTION NO. 3

CRIMINAL JUDICIAL PROCESS

All criminal cases are proceed according to criminal procedure code, and the process of proceed a criminal case is as follows:

1. FIRST INFORMATION REPORT (FIR):

Under section 154 Cr.P.C, an incident or offence is reduced by the police in written. These offence could be cognizable or non-cognizable. If the offence is cognizable the police will start investigation under section 156 Cr.P.C and if the offence is Non-cognizable the FIR should be forwarded to the judicial magistrate of the concern police Station.

2. INVESTIGATION:

After F.I.R, the police start its investigation for conducting the necessary evidence regarding the offence and record the statement of the complainant and the witnesses having knowledge of the said offence, this statement is taken by the police under section 161 Cr.P.C and thereafter the statement is recorded by the magistrate under section 164 of Cr.P.C.

3. POLICE REPORT (CHALLAN):

After F.I.R, the police has to complete his investigation and submit police report (Challan) before the magistrate which is the final report within 14 days, after that the trail will be start. Police report is submitted under section 170 of Cr.P.C.

4. COMMENCEMENT OF PROCEEDINGS BEFORE COURT:

After go through the police report, if the sections against the accused are of session trial, the police report is send to the session judge for proceeding of the case, and if the section are magistrate trial than the magistrate will proceed matter.

5. CHARGE FRAME:

Criminal proceeding are start by farming charge against the accused. If the accused admitted the offence and asked for plead guilty, the judgment will be announce, but if the accused denied the offence and want to defend himself than the copy of police report along with the statement of witnesses will be provided to the accused.

6. PROSECUTION EVIDENCE:

In criminal cases, the burden of proof is on prosecution general to prove the case against the accused. For that he leads the evidence of its witness and call them for their examination in chief. The accused himself and through his counsel get the chance to cross examine the witnesses.

7. STATEMENT OF ACCUSED:

After completion of evidence of the witnesses, the accused is call for his statement and asked about his point of view regarding the evidence and what he want to say in his defense. And asked him to give opportunity to prosecution to cross examine the accused and also asked to the accused if he has any witnesses in his support which he want to produce it the court.

8. FINAL ARGUMENT:

Although there is no any provision of final arguments in the criminal cases. But as there is a practice both parties are allow to explain their point of view according to the evidence and the point which are necessary in the eye of law so that the matter could be decide on merits.

9. JUDGMENT:

Judgment is the final stage of the criminal case. Whether the accused will found guilty and punished or he will be acquitted by court.

10. APPEAL:

After judgment complainant and accused both have the right to file criminal appeal against the judgment under section 417 Cr.P.C.

11. BAIL APPLICATION:

Bail is a procedure where the accused person was release from the custody of the police till the decision of the matter after furnish any surety which court demands. Bails are of two type one pre-arrest bail which is grant before the arrest of the accused. This bail is granted under section 498 Cr.P.C and the second one is after arrest bail and it will be granted when the accused is in the custody of police, and this bail is filed under section 497 Cr.P.C.
