



**MAIN WRITTEN EXAMINATION
PAPER-II (CIVIL) – PART – A**

SD-10%-2025 Total Marks: 50 Date: 25/01/2026 Time: 09:30 a.m. to 11:30 a.m.

Note:

1. Answer to the questions must be given in English only.
2. Please answer the questions bearing in mind the weightage of marks allotted to them.
3. Do not write or put any Sign/Mark on the question paper or on the Answer Booklet. Disclosure of identity in the Answer Booklet in any manner whatsoever, shall result in disqualification.

Q1. Attempt the following:

[10 Marks]

Facts: In January 2001, T, a public limited company, announced the issuance of fresh share capital. Interested applicants applied for shares of T. The issue was oversubscribed. In the meanwhile, T had employed B, a scheduled bank, to deal with the refund order. For the said purpose, T had remitted to B funds to the tune of Rs. 10 crores. The refund orders were valid only for 3 months. B, however, honoured refund orders beyond 3 months. From time to time, B despatched details of the refunds made in the form of a statement of account. T, as a matter of fact, gave additional funds to B even after the validity of the refund orders had expired. The last refund was made by B on 31st December, 2002. Four years after the share issue, i.e., in 2005, T instituted a suit seeking rendition of accounts and thereupon recovery of money of the amount found due.

Stand Taken:

B defended the suit. In its defence, it was contended that the suit was barred by limitation; it had submitted accounts to T from time to time; it had no surplus funds available with it; and lastly, the money of which recovery was sought did not belong to T, and T had not shown that any applicant had come forth asking for a refund. B had proved in support of its stand the statement of account by filing a certified copy by relying upon the Bankers Books Evidence Act, 1891. In the cross-examination, the counsel for T had not confronted the witness of B, who sought to prove the statement of account on this aspect. The counsel for T, however, contended that if the statement of account filed by B is accepted in its totality, even then it would not add up to more than Rs. 9 crores. In support of its stand that there were unclaimed refund orders normally to the extent of 10% of the total value of the refund, it relied upon the testimony of several transfer agents.

Is T entitled to a judgement and decree for rendition of accounts and recovery of the amount as prayed? Decide with reasons citing legal provisions.

Q2. Attempt the following:

[5x5 = 25 Marks]

- a) Whether a categorical admission made in the pleadings can be permitted to be withdrawn by way of amendment of pleadings? Explain, giving reasons and in light of judicial pronouncements.
- b) Whether a co-owner in possession can render his possession adverse to that of another co-owner not in possession merely by any secret hostile animus on his part in derogation of the other co-owner's title? Explain with reasons in light of the applicable law.

- c) C married S in March 1969. Three children were born to them from this wedlock. C underwent a vasectomy operation in January 1976. Thereafter, C and S lived together as wife and husband. In August 1978, S gave birth to another child. C seeks divorce from S on the ground of adultery. Decide, giving reasons.
- d) 'A', a Hindu, is going to get married to 'B' another Hindu, on 01/10/2017. 'P', a Christian lady, files suit for permanent injunction to restrain 'A' & 'B' from getting married on the plea that 'A' had married 'P' on 01.12.2016 in a temple according to the Hindu rites and ceremonies, and she was his legally wedded wife, and he had no right to marry again.

- Whether 'P' would be entitled to injunction, as prayed? Decide, giving reasons.
- e) Narain Patel owned a lot of self-acquired properties. He had two sons, Niral and Harshil, and two daughters, Tanusha and Monal. Several years back, when Niral and Tanusha were travelling in a plane, the plane crashed and they died in the accident. Niral had two sons, Keshav and Viral, and a daughter, Avanti. Of them, Keshav was the eldest one who died of heart disease a few years after his marriage and before the death of Niral. Keshav is now survived by his widow, Aarti, and two children-a son (Anant) and a daughter (Prerna). Viral and Avanti are unmarried. Niral's widow is also alive. On the other hand, Tanusha is survived by a son (Rushabh) and a daughter (Riddhi). Harshil and Monal are alive and unmarried. Narain Patel died intestate a few months back and is survived by people, as can be inferred from above, in addition to his widow and mother.
- Keeping the aforesaid configuration in mind, determine the shares of each of the surviving members in Narain Patel's property as per the Hindu Succession Act, 1956.

Q3. Attempt Any Five from the following:

[3x5 = 15 Marks]

- a) 'A' purchased a car from 'B', which turned out to be stolen property. 'A' filed a suit for recovery of price against 'B'. 'B' took the plea that he himself was a bona fide purchaser from 'C' - a third party - and never knew that the car was stolen property belonging to 'D', and therefore, he is not liable to return the price. Decide in light of Section 27 of the Sale of Goods Act, 1930. Emiston.
Beware
401
- b) 'A' purchased rice from 'B', being the whole content of a godown. 'A' had paid earnest money and had taken delivery of a part of rice. Before the rest could be taken away, it was destroyed by fire. Discuss who shall bear the loss. 407
A document
of sale
- c) 'A' sold 60 bales of cotton on credit and kept them in his godown on rent charged to the buyer 'B'. Before the period of credit expired, 'B' sold off 20 bales and became insolvent. 'A' seeks to exercise his lien on the remaining bales lying in his godown for the price of 60 bales and the rent in arrears. Advise 'A' regarding his right as an unpaid seller under the provisions of the Sale of Goods Act, 1930.
- d) 'A' borrowed a sum of money from 'B'. The last date for filing the suit fell on Sunday. On Monday, the next day, 'A' gives a written acknowledgement to 'B'. Advise 'B' whether he should file the suit immediately on Monday or he can do so after some time. Give reasons? Limit
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Acknowledged
- e) A sum of Rs. 50,000/- was payable to X on 01.08.1992 against a paid-up life insurance policy. X took two loans from LIC against the security of this policy. On 01.08.1992, LIC paid the amount of Rs. 22,000/- after deducting the amount of the first loan but did not deduct the amount of second loan. The said mistake was discovered on 20.05.1996, and a suit for its realisation was filed on 08.07.1997. LIC relies on section 17 of the Limitation Act, 1963, pleading that the mistake could not be discovered in time on account of voluminous records and a large number of



business transactions and that the LIC should not be allowed to suffer for the inadvertent lapse on the part of its staff. X argued that the mistake could have been easily discovered, as the accounts of the LIC are audited periodically and there was mention of the second loan in the ledger.

Decide whether the suit is within limitation.

- f) 'A' filed a suit for possession of a vacant site on the basis of his title. The defence set up is that the plaintiff has never been in possession of the said site within 12 years of the suit, and as such, the suit is barred by limitation. Is the plaintiff required to prove that he was in possession within twelve years of the filing of the suit? Decide in light of legal provisions in this regard.

- g) What questions are to be determined by the courts executing the decree? — ✓

- h) 'A' filed a suit against 'B' seeking declaration and possession of the property 'X'. After the arguments were concluded on 08.09.2022, the matter was posted for judgement on 12.09.2022. However, on 11.09.2022, 'A' expired, and judgement was passed in 'A's favour on 12.09.2022. 'B' challenged the judgement and decree dated 12.09.2022 on the ground that the legal heirs of 'A' were not impleaded before passing the judgement, and as such, the same is liable to be set aside. Decide, giving reasons. ✓



**MAIN WRITTEN EXAMINATION
PAPER-II (CIVIL) – PART – B**

SD-10%-2025 Total Marks: 50 Date: 25/01/2026 Time: 12:30 p.m. to 02:30 p.m.

- Note:** 1. Judgements must be written in English only.
2. Do not write or put any Sign/Mark on the question paper or the Answer Booklet. Disclosure of identity in the Answer Booklet in any manner whatsoever, shall result in disqualification.

**Write well reasoned judgements on the basis of the facts, evidence and details given hereunder.
Attempt Any Two of the following: [2x25 = 50 Marks]**

Q.1. The plaintiff has filed a suit for redemption of mortgage land, stating that defendant No. 1 was the owner of the land comprising Survey No. 5/3, Village Mahal, Taluka Kamrej, Surat (hereinafter referred to as the mortgaged land). The said defendant mortgaged the land in favour of defendant No. 2 on 30.01.1960 to secure a sum of Rs. 5000/-. Defendant No. 1 further sold the mortgaged land to the plaintiff vide registered sale-deed dated 05.03.1970 for a consideration of Rs. 7000/-.

The defendant No. 2 filed a suit for recovery of the mortgage amount of Rs. 5000/- along with interest accrued against the defendant No. 1 in 1971. Plaintiff was not impleaded as a party in the said suit, though the sale in his favour was before the filing of the suit. A preliminary decree was drawn based on a compromise whereby the defendant no. 1 agreed to pay the mortgage amount on or before 15.01.1973. However, as the defendant No. 1 failed to pay the said amount, the preliminary decree was converted into a final decree, leading to the foreclosure of the rights of the mortgagor to redeem the property. Thereafter, in execution of the decree, the mortgagee had taken possession of the mortgaged land from the plaintiff on 03.09.1986. Plaintiff thereafter filed a civil suit against the original mortgagor and the mortgagee on 27.10.1989.

The defendant No. 1 denied the plaintiff's right to redeem the property, stating that the right to redeem the mortgage was not granted to the plaintiff. However, it was admitted that, he borrowed the amount of Rs. 7,000/- from the plaintiff, and as the plaintiff enjoyed the mortgaged property for 10 (ten) years, he was supposed to resell the said property to the defendant No. 1. However, defendant No. 1 has not supported the said plea in evidence.

The defendant No. 2 has stated that, the plaintiff despite being aware of the mortgage, did not inform the defendant No. 2 of the execution of the purported sale deed of the mortgaged property in his favour. It was further pleaded that even at the time of mutation, the plaintiff did not inform the defendant No. 2 regarding the change of title, despite knowing the fact of the mortgage of property in favour of the defendant No. 2. As the plaintiff did not inform the defendant regarding the change of title in his favour, he cannot challenge his non-impleadment in the suit for recovery of mortgaged money. Plaintiff has no better right than that of the original mortgagor.

It was further submitted that the suit of the plaintiff for redemption of mortgage of land is not maintainable, as a final decree was passed in a suit filed by the mortgagee for foreclosure. Since the said decree was not challenged, the same became final. Thus, the plaintiff has no equity of redemption in his favour. It was further stated that the plaintiff filed an application for stay of execution proceedings, which was dismissed, and further possession of the mortgaged land was



taken by the mortgagee from the plaintiff; as such, the dismissal of the application in the execution proceedings would operate as res judicata. It was submitted that the plaintiff has lost his right of redemption, which is co-extensive with the right of foreclosure.

Arguments/stand of the Plaintiff/purchaser before the Court:

1. All the plaintiff and the defendants are the residents of the same village, and as such, the defendant No. 2 had 'constructive notice' and was fully aware of the purchase of the mortgaged land by the plaintiff. The plaintiff being the registered owner of the mortgaged land even prior to the filing of the suit by the defendant No. 2, he was required to be impleaded as the party in the suit for foreclosure, in view of the provisions of the Code of Civil Procedure and the Transfer of Property Act. By virtue of the purchase of the mortgaged land by the plaintiff, he stepped into the shoes of the original mortgagor i.e. the defendant No. 1, and any compromise entered into between the defendant No. 1 and 2 is illegal, as the defendant No. 1 has no interest or title left in the mortgaged property so as to enter into a compromise with defendant No. 2. The said compromise has been entered by the defendants in connivance with each other, with the sole purpose of defeating the legitimate rights of the plaintiff. In the absence of him impleading as a party in the suit for foreclosure of the mortgaged land, the decree of foreclosure is non-est and void.
2. The suit filed by the plaintiff for redemption of mortgage has been filed within the statutory period of limitation, and the right to redemption of mortgaged land was subsisting in favour of the plaintiff, irrespective of the final decree of foreclosure passed in favour of the defendant No. 2, as the decree should be a valid decree and not the one against the mortgagor who has lost his title in the suit property after conveyance of the same to the plaintiff before even filing of the suit.

Q.2. The plaintiff and the defendant entered into a registered agreement to sell dated 31.07.2002 under which the defendant agreed to sell his land of 2 bighas situated at Sanand, District Ahmedabad, to the plaintiff for a total consideration of Rs.22,50,000/-. An advance amount of Rs.15,00,000/- was paid by the plaintiff to the defendant on the said date. Thereafter, possession was stated to have been given in the year 2003 by the defendant to the plaintiff. On 10.01.2003, the plaintiff paid an additional consideration of Rs. 7,00,000/-, and thus, out of a total consideration of Rs. 22,50,000/-, an amount of Rs. 22,00,000/- was paid. Since the defendant did not perform his part of the contract to execute the sale deed, the plaintiff filed a Special Civil Suit no. 117 of 2005 on 30.11.2005 before the concerned trial Court seeking the decree for specific performance of the agreement to sell and, in the alternative, for refund of the advance sale consideration / earnest money of Rs. 22,00,000/- along with interest @ 9% p.a.

In response to the suit summons and notice issued by the trial Court, the defendant appeared and denied the case of the plaintiff by filing his written statement. In the written statement, the specific defence was taken by the defendant that, he being a tribal and the plaintiff a non-tribal, the transaction is being hit by section 73AA of the Gujarat Land Revenue Code, 1879, as there is a bar to such transfer and the plaintiff was aware of his tribal status. It was stated that as the sale agreement was in violation of Section 73AA of the Land Revenue Code, the transaction itself was void since there was no prior sanction obtained, and hence, the decree for specific performance could not have been granted. It was further pleaded that, even otherwise, the plaintiff has not paid the entire consideration amount as agreed upon between them, and as such, he has not been able to show that he was ready and willing to perform his part of contract. It was further submitted that the suit is barred by limitation, as it has been filed 3 years after the date of the agreement to sell. It was further submitted that in case of decree of suit of plaintiff for specific performance of the contract, the defendant will suffer hardship.

Learned counsel for the plaintiff has submitted that merely because Section 73AA stipulates a



precondition for the sale of land by a tribal to a non-tribal, it would not imply that there is a bar on seeking relief for specific performance of an agreement to sell entered into by a tribal in favour of a non-tribal. The said section clearly stipulates that if a tribal is to alienate land to a non-tribal by way of sale, gift, exchange, or mortgage, lease or deal otherwise then such a non-tribal has to make an application, and with the previous sanction, a tribal can alienate or convey the land to a non-tribal. He submitted that in the absence of the defendant coming forward to execute the sale deed, there was no occasion for the plaintiff to seek such a sanction of the State Government; that only if the decree for specific performance is passed in favour of the plaintiff, he would be in a position to seek such a sanction; and ultimately, the decree would be executed only if the sanction is given by the State Government in terms of Section 73AA of the Land Revenue Code. It is further submitted that the plaintiff has paid almost the entire consideration amount, and only a very small amount of Rs. 50,000/- is left to be paid. Had the defendant taken steps to come forward to execute the sale deed, the said amount would also have been paid. He further submitted that the suit is within limitation.

Q.3. Plaintiffs have filed a suit for mandatory injunction stating that the plaintiffs, partners in Kothari Builders, had purchased a parcel of land measuring 15 bighas in Khasra No. 516, situated in Kamrej, District Surat, through a registered sale deed dated 06.03.2012 from the previous owner, Dhrumit Mandaviya. After the purchase, the plaintiffs' firm name was duly mutated in the revenue records, and they have remained in ownership and possession of the lands since then.

The disputed land was depicted as ABCD in the site map attached to the plaint. As per the map, it was bounded on the north, south, and west by lands belonging to the defendant and others, while a pucca road lay on the eastern side. Plaintiffs claimed access to this road has been essential for the plaintiffs use and enjoyment of their land.

The dispute arose when the defendant constructed a boundary wall along the pucca road, specifically between points C and D, which allegedly blocked the plaintiffs access. The plaintiffs had repeatedly requested the defendant to remove the obstruction, but the defendant refused, thereby giving rise to the cause of action. According to the plaintiffs, the defendant did not have the right to construct such a wall in a manner that obstructed their approach to the road. Consequently, the plaintiffs filed a suit before the competent court at Surat seeking a decree of mandatory injunction directing the defendant to remove the boundary wall between points C and D, or for the court to arrange for its removal if the defendant failed to comply.

The defendant stated that its boundary wall had existed for about thirty years and meets the road on the west. It was asserted that the plaintiffs have no cause of action and that the plaintiffs have neither possession nor any right over the disputed land, which has allegedly been within the defendant company's territory for decades. The defendant contended that the wall complained of has existed for around thirty years and that the plaintiffs suit for simplicitor injunction is not maintainable. It was further argued that the plaintiffs partnership firm is unregistered, attracting the bar of Section 69 of the Partnership Act.

The defendant also disputed the plaintiffs title, contending that Dhrumit Mandaviya was neither the owner nor cultivator of the land marked ABCD, and the alleged sale deed dated 06.03.2012 is false. According to the defendant, the disputed land was acquired by the State Government for its establishment and possession was officially handed over to the company, therefore, neither the plaintiffs nor their alleged predecessors ever had ownership or possession over the same. The defendant alleged that the map filed with the plaint is incorrect and argued that an injunction suit is barred under Section 41(h) of the Specific Relief Act because an alternative remedy is available.
