

DELHI JUDICIAL SERVICE MAIN EXAMINATION

(WRITTEN) – 2018

GENERAL KNOWLEDGE AND LANGUAGE

Time Allowed: 3 Hours

Max Marks : 250

Instructions:

1. Please read the questions carefully and answer them as directed.
2. All questions are compulsory, unless specified.
3. You are allowed 15 minutes time before the examination begins, during which you should read the question paper and, if you wish, highlight and/or make notes on the question paper. However, you are not allowed, under any circumstances, to open the answer sheet and start writing during this time.
4. Criteria for evaluation will include but will not be limited to the range of vocabulary, the employment of vocabulary for precise expression, cohesive presentation of ideas and concise articulation of views.

PART A – GENERAL KNOWLEDGE

1. Write in about 200 words on any six of the following:
 - i. Privatization of higher education in India
 - ii. The Rohingya Crisis
 - iii. The effects of protectionism on global economy
 - iv. China's Belt and Road Initiative – development or debt trap?
 - v. Discuss the impact of Brexit on the issue of immigration.
 - vi. Discuss the relationship between social security and State surveillance.
 - vii. Discuss the relevance of justice in the age of post truth politics.
 - viii. Is the politicization of religion correct?
 - ix. Is historical revisionism an ideological apparatus in the hands of the State?
 - x. Social media and democracy

- xi. The moral crisis of the modern economy
- xii. Celebrity Culture

(10 marks x 6 = 60 marks)

2. Answer the following in a sentence:

- i. What is a GI tag?
- ii. Who is Kyllian Mbappe?
- iii. What is aurora borealis?
- iv. What is Je suis Charlie?
- v. What is # me too movement?
- vi. Who won the Women's US Open Tennis Championship 2018?
- vii. What is Hammurabi's Code?
- viii. In which city Kamakhya temple is located?
- ix. Which singer was awarded the Nobel Prize for literature in 2016?
- x. Name the person who is currently walking the migration route of humans out of Africa.
- xi. In which city is the "Wailing Wall" located?
- xii. Why is the film "Village Rockstars" in news?
- xiii. Which region of Ukraine has been occupied by Russia since 2014?
- xiv. What is Point Nemo?
- xv. Who was Iqbal Bano?
- xvi. Who wrote the book *Thinking, Fast and Slow*?
- xvii. Who composed the famous musical composition "Moonlight Sonata"?
- xviii. Which dance form is Pandit Birju Maharaj associated with?
- xix. Which Indian athlete won a gold medal in a track event at the IAAF World U 20 Championship 2018?
- xx. Whose novel is the film "Parineeta" based on?

- xxi. Name the mathematical sequence in which every number after the first two is the sum of the two preceding ones.
- xxii. What does *carte blanche* mean?
- xxiii. Which author wrote these famous lines: "We are such stuff as dreams are made on, and our little life is rounded with a sleep."
- xxiv. Who was Captain Lakshmi Sehgal?
- xxv. Who was the first woman judge of the Supreme Court of India?
- xxvi. Name the Indian musical instrument that consists of a set of water-filled cups that are struck with bamboo sticks.
- xxvii. Which famous lawyer titled his autobiography, "Before Memory Fades: An Autobiography"?
- xxviii. Which philosopher wrote, "Man is born free, and everywhere he is in chains".
- xxix. Who wrote the story "Toba Tek Singh"?
- xxx. Name the Russian double agent who was poisoned by a military grade nerve agent in UK in March 2018?
- xxxi. Who is the current prime minister of New Zealand?
- xxxii. Name two persons appointed by the Government as the Committee of Management/Board of M/s. Infrastructure Leasing & Financial Services Ltd.
- xxxiii. What is the name of former Chief Justice of Bangladesh Supreme Court who is living in United States of America and is said to have sought asylum?
- xxxiv. Who is the Chief Minister of Kerala?
- xxxv. Name the former Prime Minister of Malaysia, who was arrested and is out on bail?
- xxxvi. Name the Managing Director of Gitanjali Gems Ltd.
- xxxvii. In which city are the 2020 Olympics going to be held?
- xxxviii. Who is the recipient of the UN Champions of the Earth Award, the highest environmental honour of the UN?

xxxix. Who was the first Judge to have been appointed to the Supreme Court of India directly from the Bar?

xl. Why are 6th and 9th August, 1945, remembered?

(1 mark x 40 = 40 marks)

PART B – Language

1. Read the following passage about the contemporary issue relating to *Aadhaar*. The passage refers to reasons reflecting one point of view. Frame your counter arguments (without being judgmental) in about 250 words:

“*Aadhaar* perpetuates double standards in the way, *Aadhaar* is imposed on the poor and the privileged. The middle class is largely off the hook, except for the compulsory linkage with PAN cards. The poor, however, are left where they were – exposed to the ordeal of *Aadhaar* seeding and authentication for every social benefit, however tiny.

The tall claims of what might be called the coalition of *Aadhaar* champions (COACH) - - - - is largely an offshoot of the software industry, which has considerable power in India. Its open ambition is to use *Aadhaar* as a ‘platform’ to build wide-ranging applications. Most of these applications have nothing to do with welfare schemes. No doubt some COACH leaders believe in good faith that *Aadhaar* empowers the poor, but ultimately, the profit motive looms large. In this and other ways, the COACH is shot through with conflicts of interest. In fact, it is a startling example of corporate invasion of public policy, with business consultants packing government committees, drafting laws, harvesting lucrative contracts and orchestrating *Aadhaar*’s public relations.

Predictably, the COACH went into over-drive after the *Aadhaar* judgment, with instant editorials aimed at setting the framework of public debate. This propaganda technique has paid off, ever since *Aadhaar* was sold as a ‘voluntary facility’. More recently, the COACH managed to frame the *Aadhaar* debate as a trade-off between welfare and privacy, and then downplayed the privacy concerns. This framework hides the fact that the welfare gains from *Aadhaar* are not clear in the first place.”

(40 marks)

2. Prepare a precis of the following passage in about 150 words:

“It may be asked why a specifically sociological perspective on law is justified and what such a perspective implies. In one sense law and sociology as forms of professional practice are similar in scope yet wholly opposed in method and aims. Law as a scholarly professional practice is concerned with elaboration of the practical art of government through rules. Its concern is prescriptive and technical. Sociology is concerned with the scientific study of social phenomena. Its concern is explanatory and descriptive. The lawyer is essentially a person of affairs entrusted with part of the apparatus of regulation of social relations. The sociologist remains a relatively uncommitted observer.

Yet both law and sociology are concerned with the whole range of significant forms of social relationships. And in practice the criteria determining which relationships are significant are often similar, deriving from the same cultural assumptions or conceptions of policy relevance. Thus, law and sociology share a fundamentally similar subject matter. Law is a practical craft of systemic control of social relations and institutions. Sociology is the scientific enterprise that seeks systematic knowledge of them. Sociology is concerned with values, interaction patterns, and ideologies that underlie the basic structural arrangements in a society, many of which are embodied in law as substantive rules. Both sociology and law are concerned with norms, rules that prescribe the appropriate behaviour for people in a given situation. The study of conflict and conflict resolution are central in both disciplines. Both sociology and law are concerned with the nature of legitimate authority, the mechanisms of social control, issues of civil rights, power arrangements, and the relationships between public and private spheres.”

(30 marks)

3. Translate the given extract into Hindi :

“Rural life was portrayed in a variety of ways in the past. For example, Bimal Roy’s *Do Bigha Zameen*, a 1950s film, is a moving account of a poor peasant struggling as a rickshaw-puller in the harsh environs of a metropolis to enable his family in his village to survive. The film begins with a song in praise of the rain gods, but when the monsoon fails, the

protagonist of the film has no choice but to seek work in the city in order to pay off his debt to the money lender. If films such as *Mirch Masala* and *Nishant* vividly portray exploitation in rural India, other films such as Manoj Kumar's *Upkaar* glorify the village, the agriculturalists, and the rural way of life in general. In these visions of arcadia, the village is a homogenous community with a thriving moral economy.

The city is where the undesirables live with their crass and immoral ways; it is the home of the black marketer and the swindler. Villagers do not drink, smoke or play the fool in nightclubs as city people do. *Khottey Sikke* and *Adalat* are two other films that advanced a similar message. *Lagaan*, the mega hit of 2002, also depicted the village as a community, where everybody pulled as one against the extortionist demands of British administrators in colonial times. The departure from earlier 'rural' films was that it presented the upper crust with sympathy and did not criticize urban life. A clear signal of changing tastes!"

(40 marks)

4. Translate the given extract into English :

प्राथमिक शिक्षा के दौर में अपने जीवन की जब पहली परीक्षा देकर मेरा बेटा कुछ चिन्तित सा घर लौटा तो मैंने पूछ ही लिया था कि क्या बात है ऐसी। उत्तर था, पर्चा अच्छा नहीं हुआ। वह और आगे कुछ बताता, उससे पहले ही मैंने पूछा कि तुम्हारी कक्षा में और कितने साथी हैं। उत्तर था – चालीस। तब तो किसी-न-किसी को चालीसवां नम्बर पर भी आना पड़ेगा। वह तुम भी हो सकते हो। मुझे इससे कोई परेशानी नहीं होगी और तुम्हें भी नहीं होनी चाहिए। यह जो नम्बर गेम चल पड़ा है, इसका कोई अन्त नहीं है। कृष्ण कुमारजी ने बहुत पहले एक सुन्दर लेख लिखा था, शायद आज से कोई छह बरस पहले। शीर्षक था 'जीरो सम गेम'। इस खेल में किसी को कोई लाभ नहीं हो रहा, लेकिन हमारी एक-दो पीढ़ियों को तो इसमें झोंक ही दिया गया है।

घर का कचरा तो कभी-कभी दरि के नीचे भी डाल कर छिपा दिया जाता है। पर समाज में यदि यह भावना बढ़ती गयी कि 90 प्रतिशत से नीचे का कोई अर्थ नहीं तो हर वर्ष हमारी शिक्षण संस्थाओं से निकले इतने सारे, असफल बता दिए गए छात्र, कहां जाएंगे? कितनी बड़ी दरि चाहिए 90 प्रतिशत से कम वाले इस नए कचरे को छिपाने के लिए? मीटरों नहीं, किलोमीटरों लम्बी-चौड़ी दरि। लगभग पूरा देश ढक जाए इतनी बड़ी दरि बनानी पड़ेगी। फिर दरि के नीचे वाले भला कब तक शांत बैठेंगे? दरि में वे जगह-जगह छेद करेंगे, उसे फाड़ कर उपर झांकेंगे।

(40 marks)

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4. Support each of your answers with reasons, relevant legal provisions and legal principles. Length of the answer would not determine the marks.

CRIMINAL LAW

1. Answer any ten questions:

- i) Relevance and evidentiary value of extra judicial confession not made to a Police Officer.
- ii) Object and evidentiary value of inquest report.
- iii) Relevance and effect of absence of name of the accused in the First Information Report.
- iv) Importance, relevance and evidentiary value of police diaries in criminal trial.
- v) Legal effect and evidentiary value of simultaneous or joint disclosure statement made by two or more accused.
- vi) Relevance and legal effect of failure/absence of motive in murder cases.
- vii) Relevance and legal effect of failure to recover dead body (*corpus delicti*) in murder cases.

- viii) Theory of last seen in the company of the deceased.
- ix) Relevance and evidentiary value of good and bad character evidence.
- x) Discuss whether a criminal court can compel an accused to admit and deny documents even when the accused prefers to maintain silence and states that he would neither admit nor deny the documents.
- xi) Marking of a document as Exhibit, proof and evidentiary value of a document in a criminal trial.
- xii) Whether pre-trial Test Identification Parade conducted before a Metropolitan Magistrate is evidence and its relevance in a case triable before the Sessions Court.
- xiii) Whether court can discard and disbelieve post-mortem report and rely upon ocular statement of eye-witnesses? If yes, when and in which circumstances?
- xiv) Law of compensation to the victim who has suffered an injury at the hands of the convicted accused.

(10 marks x 10 = 100 marks)

2. In *Pulukuri Kottayya v. King Emperor* AIR 1947 PC 67, it was observed as under:

“S. 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be

safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of S. 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information, relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to S. 26, added by S. 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a

person in custody that “I will produce a knife concealed in the roof of my house” does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added “with which I stabbed A” these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.”

Elucidate and explain the legal effect of the aforesaid quotation with examples. In terms of your reasoning, please examine the following statement of the accused and indicate the portions which are admissible or not admissible under Section 27 of the Indian Evidence Act.

“Statement made by the accused Inala Sydayya on being arrested. About 14 days ago, I, Kotayya and people of my party lay in wait for Sivayya and others at about sunset time at the corner of Pulipad tank. We, all beat Boddupati Chinna Sivayya and Subbayya, to death. The remaining persons, Pullayya, Kotayya and Narayana ran away. Dondapati Ramayya who was in our party received blows on his hands. He had a spear in his hands. He gave it to me then. I hid it and my stick in the rick of Venkatanarasu in the village. I will show if you come. We did all this at the instigation of Pulukuri Kotayya.”

(20 marks)

3. ‘A’ living in a resettlement colony had put his bucket under the water tap in the *gali* for filling water. ‘B’, who resided nearby and was present there from before, felt aggrieved and so he threw the bucket of ‘A’. A fight ensued between ‘A’ and ‘B’. On hearing noise, many persons living in the neighbourhood assembled and tried to separate ‘A’ and ‘B’. ‘C’, the brother of ‘B’ arrived at the spot and picked up a stone lying nearby and threw it towards ‘A’. The stone hit ‘A’ on his arm and he fell down. While falling, ‘A’ hit his head against a concrete boundary wall and blood started oozing from his head. ‘A’ was taken to the hospital where he died after two days.

The post-mortem report attributes injury on the head of 'A' as the cause of death.

Decide whether accused 'C' is guilty of having committed an offence of murder under Section 302 of the Indian Penal Code or culpable homicide not amounting to murder under Section 304 of the Indian Penal Code or an offence under Section 307 of the Indian Penal Code or any other lesser offence under the Indian Penal Code.

(30 marks)

4. Distinguish between "common intention" and "common object". If a person is charged under Section 302/149 of the Indian Penal Code, can he be convicted under Section 302/34 of the Indian Penal Code?

(10 marks)

5. Explain and elucidate the difference between kidnapping and kidnaping for ransom? Is the difference justified?

(10 marks)

6. Explain the difference between criminal conspiracy and abetment?

(10 marks)

7. A dying declaration is a weak type of evidence as the accused does not get an opportunity to cross examine the witness. Critically examine.

(10 marks)

8. (i) What is the purpose of examination of an accused under Section 313 of the Code of Criminal Procedure?
- (ii) What is the effect of not putting an incriminating evidence in such examination? What are the remedies before an Appellate Court?

(10 marks)

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4. Support each of your answers with reasons, relevant legal provisions and legal principles.

CIVIL LAW - I

1. Answer any two questions:

- a. When and in which cases principle of vicarious liability can be invoked by the plaintiff suing under the Law of Torts?
- b. What are the principles applicable to determine negligence, if any, on the part of a professional (Doctor, Lawyer, Chartered Accountant) towards his client?
- c. "The King can do no wrong". Explain this principle in the Indian context of sovereign immunity and acts of the State.

(10 marks x 2 = 20 marks)

2. 'A' and 'B' entered into an oral contract as per which seller 'A' was to supply 5,000 tennis balls of yellow colour within 10 days for Rs. 10,000/- to buyer 'B'. 'A' supplied white colour tennis balls within the said period instead of yellow colour tennis balls, which delivery was made to the gatekeeper at the shop of 'B' as 'B' was out of station on the said date. 'B', on return inspects the balls after two weeks, and notices that balls were of white colour, though the contract was for supply of yellow colour balls. 'B'

does not inform or talk to 'A' but intimates his Bank not to honour the post dated cheque given by him. The post dated cheque issued by 'B' to 'A' gets dishonoured. In the meanwhile, another person 'C' approaches 'B' and the white balls supplied by 'A' are sold by 'B' to 'C' at a mutually agreed price of Rs. 15,000/-. 'A' files a suit for recovery against 'B' for the price as agreed i.e. Rs. 10,000/-. 'B' contests the said suit on the ground that the balls supplied were not as per the agreed contractual terms, and therefore, he is not liable. He also pleads and leads evidence to show that the market price of white colour balls was lower than the market price of yellow colour balls. 'A' submits that 'B' has sold the white balls and made profit of Rs. 5,000/-.

Examine with reference to the provisions of law applicable and decide.

(20 marks)

3. Elucidate with examples difference between 'damages', 'liquidated damages' and 'penalty' under the Indian Contract Act.

(15 marks)

4. A forfeiture clause in the employment contract provides that "if a person engages in a competing business/service within two years period after leaving the company, the outstanding incentive amount due to him can be forfeited".

Whether the clause is enforceable or is violative of Section 27 of the Indian Contract Act?

(10 marks)

5. 'A' enters into a contract with 'B', an interior decorator. 'B' has promised to execute a turnkey project which includes design and supply of furniture and furnishings for Rs. 20,00,000/-. 'A' pays 'B' Rs. 1,00,000/- in advance. 'B' dies within one week after he has received advance payment of Rs.1,00,000/-, without furnishing drawing, furniture etc.

What are the remedies available to 'A' under the Indian Contract Act and law of succession? Whether legal representatives of 'B' are liable to perform the promise made by 'B'?

(10 marks)

6. 'A' promises 'B' to drop a prosecution which he has instituted against 'B' for robbery and 'B' promises to restore the value of the things taken.

Whether the agreement is valid under the Indian Contract Act? What would happen if the settlement is arrived before the Mediation Centre/Lok Adalat?

(5 marks)

7. What are the principles governing grant of anti-suit injunction? Can an Indian Court grant anti-suit injunction for proceedings/suit pending in a foreign court?

(10 marks)

8. A tenant, on 01.01.2018 is forcibly without consent dispossessed by his landlord. On 01.08.2018, the tenant on coming to know that the landlord may induct a third person as a tenant files a suit for declaration that he is the lawful tenant and also prays for injunction restraining the landlord from inducting a fresh tenant.

Decide whether the suit can be decreed in terms of the prayers?

(7 marks)

9. Can 'A', a plaintiff, sue for specific performance of sale of shares of a public listed company? Examine with reference to provisions of the Specific Relief Act and decide whether you will decree this suit for specific performance?

(8 marks)

10. 'A', 'B' and 'C' are partners in the registered partnership firm 'B&B'. In the year 2000, partners 'B' and 'C' bring into the stock of the firm two immovable properties. In 2018, disputes arise amongst the partners. Partner 'A' files a suit for partition of the two immovable properties brought into the stock of the firm by partners 'B' and 'C'.

Decide whether you will grant the prayer for partition of immovable properties.

(5 marks)

11. 'X', 'Y' and 'Z' are partners in the firm, 'M/s. Best Tailors'. 'Y' goes to the Court and compromises the suit for recovery of damages filed by 'A' against the partnership firm, 'M/s. Best Tailors'.

Can 'Y' compromise the matter? Decide with reference to relevant provisions of law.

(5 marks)

12. 'A', 'B' and 'C' form a partnership firm for construction of a four-storeyed building on a plot of land. There is a stipulation in the partnership deed that profits will be distributed when the construction is complete and till then each partner will get Rs. 20,000/- per month. After laying roof of the first floor, disputes arise between the partners.

Whether 'A' can file a suit for dissolution of partnership claiming that the partnership is 'Partnership at Will'? Decide.

(10 marks)

13. 'A' a Hindu male by a Will grants life interest in his self acquired immovable property to his wife 'B', with restriction and bar on 'B's right to sell, transfer and mortgage the property. The Will further stipulates that on 'B's death, the property will be inherited by 'C', his nephew and not by his children. 'A' died in 1968. 'B', during her lifetime in 2017, sells the property for consideration to her children. 'C' files a suit challenging the said transfer by 'B' to her children and the sale deed.

Discuss the provisions under the law of succession applicable and decide the contesting claims.

(15 marks)

14. When and in which cases, on the death of a Hindu male on or after the enactment of the Hindu Succession Act, his immovable property or interest in immovable property will partly or wholly devolve by survivorship upon surviving members of the coparcenary.

(7 marks)

15. On death of her husband, widow 'A' and her daughter inherit the immovable property under the Hindu Succession Act. After death of her husband, widow 'A' by a registered adoption deed adopts 'B' as her son. She dies intestate. Decide whether the property of the deceased husband as inherited by the Hindu widow 'A' would be also inherited by 'B' being the adopted son.

(5 marks)

16. Write short notes on any two of the following:

- a. Triple Talaq
- b. Mutawalli
- c. Nikah Halala

(5 marks)

17. Write short notes on any one of the following:

- a. What is the difference between Valid (*Sahih*), Irregular (*Fasid*) and Void (*Batil*) marriage in Mohammadan Law?
- b. What are the essentials to the validity of *Hiba* or Gift in Mohammadan Law?

(5 marks)

18. 'W', a Hindu wife, files a divorce petition under Section 13(1)(i) of the Hindu Marriage Act against 'H' her husband. On 31.08.2009, the petition is allowed. In an appeal by 'H' to the High Court, the operation of the judgment and the decree dated 31.08.2009 is stayed on 20.11.2009. During the pendency of the appeal, the matter is referred to the Mediation Centre. 'W' and 'H' reach a settlement and 'H' opt to withdraw the appeal in terms of their settlement dated 15.10.2011. As per settlement dated 15.10.2011, 'H' files an application within 30 days to withdraw the appeal. On 20.12.2011, the High Court dismisses the appeal in terms of the settlement. In the meantime, on 06.12.2011, 'H' marries 'X'. Discord emerges between 'H' and 'X'. Within one year, i.e. on 06.11.2012, 'X' files a petition under Section 11 of the Hindu Marriage Act to declare the marriage null and void being violative of Section 5(i) of the Hindu Marriage Act. 'X' pleads ignorance about the settlement between 'W' and 'H'. Decide.

(15 marks)

19. Whether decree under Section 9 of the Hindu Marriage Act for Restitution of Conjugal Rights is useful and relevant for any of the parties to the marriage in the absence of effective provisions for its enforcement? Comment.

(8 marks)

20. What are the principles and law of inheritance of tenancy on death of a tenant under the Delhi Rent Control Act?

(7 marks)

21. Whether a co-owner can alone, without impleading other co-owners and without their consent, file an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act?

(8 marks)

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CIVIL LAW - II

1. Before you is a petition for review. The review petitioner 'A' was one of the defendants in a suit for partition filed by his brother 'B'. 'A' did not come to contest the suit. A preliminary decree defining the shares of the parties was passed on 31.12.2009. Thereafter, 'B' applied for a final decree for partition by metes & bounds. 'A' was pursuing a probate case setting up a Will from his father, the common ancestor of the parties. During the proceedings for the final decree, 'A' on 01.12.2010 files the review petition, now under consideration, on the following ground:

“Since the probate case was pending, 'A' was advised, there was no gain in contesting the suit for partition and hence he did not contest the suit. Now that he has obtained probate of the Will of his father on 01.09.2009, he has been advised to seek review of the preliminary decree as the shares of the parties as per the Will are quite different from the shares declared by the preliminary decree. The preliminary decree is an error and so the same be reviewed by exercise of the court's inherent power.”

Along with the review petition, 'A' also files an application for condoning the delay stating that during the period of December 2009 and December 2010, he remained sick for several months and could not seek legal advice at the appropriate time. He also pleads that apart from court's power for review, he has also invoked the inherent power of the court for which there is no limitation.

'B' on being served with a notice from the Court opposes the prayer for review as well as the prayer for condonation of delay.

Decide:-

- (i) What is the period of limitation for filing a review petition?
- (ii) Has 'A' made out sufficient ground for condoning the delay in filing the review petition?
- (iii) Can the Court consider the review petition in exercise of its inherent power?
- (iv) Assuming that you condone the delay, how will you decide the review petition and on what grounds?

[Note : Probate is a process for proving the validity of a Will]

(50 marks)

2. On 01.01.2018, the plaintiff files a suit for recovery of Rs. 20,00,000/- alleging that on 01.01.2014, he had paid the defendant a sum of Rs. 1,80,00,000/- against which the defendant till 01.06.2014 has supplied goods worth Rs. 1,60,00,000/- only. The plaintiff also alleges that the defendant acknowledged the dues by writing a letter on 01.01.2016, whereby a fresh period of limitation commenced with effect from 01.01.2016. The defendant admits having written the letter but disputes that it was an acknowledgement of debt. The letter is as under:

“On checking our accounts we find that you did pay us Rs. 1,80,00,000/- against which we have already delivered goods worth

Rs. 1,60,00,000/-. However, nothing is payable to you since you owe a sum of Rs. 30,00,000/- towards the rent of the godown used by you for storing the goods sold to you.”

State/Decide:-

- (i) The provisions which the plaintiff can rely upon for seeking extension of the period of limitation? What are the minimum primary mandatory conditions for application of those provisions?
- (ii) Whether the suit is within limitation?

(20 marks)

3. ‘X’ sues ‘Y’ for partition and possession of the suit property which was owned by their father ‘Z’. ‘Y’ disputes that ‘X’ was a son of ‘Z’ since ‘X’ was born five months after the dissolution of marriage of ‘Z’ and his wife, who was the mother of both the parties.

State/Decide:-

- (i) What is the law regarding presumption of legitimacy?
- (ii) On what grounds, the legitimacy of ‘X’ can be challenged?
- (iii) Will you allow an application filed by ‘Y’ for DNA test to prove that ‘X’ is not the real brother of ‘Y’?
- (iv) Distinguish between ‘may presume’, ‘shall presume’ and ‘conclusive proof’.

(40 marks)

4. The plaintiff has filed a suit for recovery of Rs. 50,000/- against the defendant alleging that the defendant had taken a loan from the plaintiff and the principal amount together with interest now comes to Rs. 50,000/-. While presenting the plaint the plaintiff makes an application praying that simultaneously with the summons, an order of attachment of the defendant’s

property, being an urban piece of land, be also issued. For the prayer for attachment, the plaintiff makes the following allegations:

- a. The defendant is not a man of means
- b. He owns a plot of land within the jurisdiction of the court.
- c. The plot of land owned by the defendant is the only property from which the amount of the decree, when passed, can be recovered and if the defendant sells away the plot, there will be no means of recovering the decretal amount.

Decide:

- (i) Will you allow the application for issuance of an order of attachment?
- (ii) Assuming that you decide to issue an order of attachment. Prepare a draft order.
- (iii) The Court has passed an order of attachment before judgment. Subsequently, the suit is decreed. Before the plaintiff/deeree-holder applies for execution, the defendant/judgment-debtor sells the attached property. What remedy does the plaintiff/deeree-holder have?

(30 marks)

5. Plaintiff 'K' sues the defendant 'M' for specific performance of an agreement to sell. 'K' produces and proves the agreement which is a registered document, saying that 'M' having received Rs. 40,000/- towards part payment of the suit property has failed and neglected to execute the actual sale deed when 'K' offered the balance price, being Rs. 10,000/- and requested 'M' to execute and register the sale deed. 'M' does not dispute his signature on the agreement produced by 'K'. However, 'M' pleads that the document was executed under undue influence as 'M' had borrowed money from 'K' for the treatment of his father requiring an open heart surgery and being unable to pay back the loan on repeated demands, on the direction of 'K', 'M' had executed the agreement on the understanding that the agreement would be cancelled when 'M' pays the dues under the loan which he is willing to pay now. Further 'M' pleads that the amount still due under the loan agreement was Rs.9,000/- only while the actual value of the suit

property was not less than Rs. 70,000/-. 'M' also produces documents of the loan transaction and the demand letters from 'K'. 'M' also pleads that 'K' committed fraud by giving him a false assurance that the document would never be acted upon and would be returned to 'M'.

Decide:

- (i) Is the plea of 'M' hit by Section 92 of the Indian Evidence Act?
- (ii) Suppose the court allows the defendant to prove the defence, how are the parties to share the burden of proof?
- (iii) (a) Does an agreement to sell under law require registration?
(b) What is the evidentiary value of an unregistered document which by law is required to be registered?

(30 marks)

6. Answer each question in about 150 words:-

- (i) Distinguish between order, judgment and decree. Does an appeal lie against an order of injunction passed under Order XXXIX Rule 1 CPC?
- (ii) What is meant by the terms 'interrogatories', 'discovery' and 'production'? How do these processes help in adjudication of disputes in civil cases?
- (iii) Distinguish between the concepts of *res judicata* and relinquishment of a part of a claim.

(30 marks)