

Roll No. _____

DELHI HIGHER JUDICIAL SERVICE MAINS EXAMINATION (WRITTEN) 2024

Duration: 2 Hours

Maximum Marks: 150

GENERAL KNOWLEDGE & LANGUAGE

Important Instructions

- (i) *Please read the questions carefully and answer them as directed.*
- (ii) *All questions are compulsory, unless specified.*
- (iii) *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.*
- (iv) *The answer to each question should begin on a fresh page.*
- (v) *This paper is to test the candidate's awareness of current affairs, general knowledge and English language. Credit will be given for substance, cohesive and concise presentation, articulation of views and ideas, and employment of appropriate vocabulary and expression.*
- (vi) *Before you start writing the answers, please write your Roll Number at the top of this Question Paper.*

1. Write in about 250 words on **any four** of the following:

- (i) The impact of Production Linked Incentive (PLI) Scheme on India's Industry.
- (ii) "In a culture that valorizes perfection, all deviations from the perfect body signify abnormality, defect and distortion." Comment on the given statement.
- (iii) Is Patrimonialism returning as a form of governance?
- (iv) Is Artificial Intelligence generative?
- (v) Drones and the Modern Battlefield
- (vi) Comment on the popular phrase, "My culture is not your costume".
- (vii) Digital Colonialism

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(viii) Representation of Alternative Gender Identities in Popular Cinema

(20 marks x 4 = 80 marks)

2. Prepare a precis of the following passage in about 250 words:

‘The colonisers claimed to give to the gender question enormous weightage, inscribing themselves as the great emancipators of Indian womanhood. The Woman Question, which was generating such passionate debates in the mother country was either ignored completely or met with hostility in the Anglo-Indian press, during this period. In 1870, *The Englishman’s Saturday Evening Journal*, in keeping with its generally conservative stand, ridiculed masculine women who were “wild for woman’s rights,” inscribing them as “bold in habits or without modesty in mind”. Twenty years later, the same newspaper went on to question the contemporary British “eulogies in praise of the mental capacity of women,” asserting that men’s intellectual superiority and women’s inferiority would increasingly become clearer. In its turn, *The Madras Mail* – an otherwise fairly liberal paper – opposed medical professions for women in the 1860s for fear that its “coarse and immodest associations” would destroy “a woman’s modesty”. The overall discursive writings on the subject seem to have been conservative, leading Maud Diver to despair about “the extreme backwardness of Anglo-Indian society in recognizing the modern advance in the intellectual and social position of women”.

Where then did the ‘native’ woman’s uplift fit into this debate on the Woman Question? What were the contradictions, ambivalences or collusions in the interfaces between the colonisers’ concept of the emancipation of ‘native’ women and their position on the liberation of their own women back home? Recent research has focused on the perceptions of Victorian feminists on the emancipation of the Indian woman and their entanglements with imperialism; however, similar work on how *Anglo-India* perceived both the British feminist movement at home and its interfaces with the ‘native’ female social uplift programme has not been sufficiently done. A scrutiny of Anglo-Indian discursive writings reveals their negative representation of the Woman Question at home and their fear of its influence in the colony. Indeed, they often cited the women’s emancipation movement in England as a great danger to be avoided in their own programme of ‘native’ women’s social amelioration. The suffragette-memsahib, Flora Annie Steel, for instance, sought to contain contemporary

western interrogation of the institution of marriage by inscribing the Indian female paradigm as “the highest that the world has ever known,” with the Indian woman regarding marriage as a “solemn religious duty” and as an occasion for self-denial rather than self-assertion. Thus, Steel valorised the ‘native’ female as a prescriptive model of female ‘modesty’ and self-abnegation (meant to contain the self-assertiveness of western women) and pronounced that “the Western woman has as much to learn from the Eastern woman as the Eastern has from the Western”.

Sometimes, in fact, Anglo-Indians went so far as to do a virtual volte face and valorise certain ‘native’ social practices that they had all along condemned as oppressive and had sought to eradicate. Thus in 1861 *The Calcutta Review*, while discussing the purdah and other social evils and urging their removal, went on to actually construct the purdah as “attended with less evil, than if women were advanced towards the English idea of their rights and privileges”. And nearly two decades later, in 1880, *The Friend of India* and *Statesman*, while sharply criticising the zenana systems referred to an individual Anglo-Indian opinion that the zenana “would be a desirable institution in some sections of the European community”. The fact that the newspapers presented these arguments half in jest in no way attenuates the anxieties they reveal about the growing women’s movement in the West. In other words, Anglo-Indian anxieties took the form of contradictions and ambiguities towards certain ‘native’ patriarchal practices (such as purdah), which they now re-inscribed in their discursive writings as exemplary.

When it came to the Indian woman, the colonisers represented themselves as paternalist saviours fighting Indian patriarchy. But as we have seen, in effect, they militated against any real female emancipation, furthering at best a ‘Victorianisation’ of the Indian woman. On the other hand, admired models of a perceived Eastern female docility were often selectively drawn upon, in a process constituting what we may call an ‘Indianisation’ of the Anglo-Indian female paradigm. Clearly suggesting the porous nature of colonial interactions, British India’s discursive writings occasionally drew upon specific ‘native’ patriarchal practices in redefining female role models for its *own* women. Noticeably, many of these disapproving voices were that of middle-class white women in colonial India (women like Steel) who often themselves participated in this strategy of gender-containment – thereby indicating the complex and even contradictory nature of patriarchal ideologies and their hegemonic

hold over the colony. Clearly, colonial interactions could only lead to a reification of the hierarchies of race, class and also of gender, contributing in the long run to an overall hardening of masculinist biases in the colony. So that even while the British in India were busy attacking structures which they associated with the 'native' oppression of women, they were also simultaneously reifying their own patriarchal tendencies.'

(40 marks)

3. Write on **any three** of the following in about 100 words each:

- (i) Carbon Credits
- (ii) Pink Tax
- (iii) Sustainable Architecture
- (iv) Matrimony and the Market
- (v) Coke Studio as a Cultural Force
- (vi) Hustle Culture

(10 marks x 3 = 30 marks)

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Roll No. _____

DELHI HIGHER JUDICIAL SERVICE MAINS EXAMINATION (WRITTEN) 2024

Duration: 3 Hours

Maximum Marks: 200

LAW-I

Important Instructions

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PART-I

Answer **any two** out of the following three questions:

1. The plaintiff filed a suit for injunction restraining the defendant from using the mark "ZARA", "ZARA TAPAS BAR" and from using the mark "ZARA" as a trade mark, trade name or in any other manner which may cause infringement of plaintiff's registered well known trade mark "ZARA". The plaintiff alleged that it is the owner and in use of the internationally renowned trade mark "ZARA" since 1975 initially in Spain and then in rest of the countries and now with stores in over 86 countries. Though, it did not have physical stores in India before 2010 but the mark ZARA (word) was registered as proposed to be used for goods under Class 25 since 1993. The plaintiff claimed that it was engaged in manufacturing of clothes with the mark "ZARA" through third-party Indian exporters since 1986-87. The defendant's use of "ZARA TAPAS BAR" infringes on the plaintiff's trade mark and creates confusion among consumers. The plaintiff's mark "ZARA" is a well-known mark within the meaning of Section 2(1)(zg) of the Trade Marks Act, 1999. The plaintiff claimed that there

is deceptive similarity between the plaintiff's mark "ZARA" and the defendant's use of "ZARA TAPAS BAR" as the word "ZARA" is prominently displayed by the defendant in its branding and promotions, sometimes minimizing the term "TAPAS BAR". Along with the suit, the plaintiff also filed an application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 seeking *ad-interim* injunction against the defendant.

The defendant contested the suit and the application pleading that "ZARA" is not an invented or coined word by the plaintiff but has meanings in various languages such as Italian, Portuguese, Spanish, Hindi, Urdu and Arabic. The defendant stated that it is not using the mark "ZARA" per se, but using the mark "ZARA TAPAS BAR" or "ZARA, the Tapas Bar and Restaurant" in relation to food business. The defendants state that the name "ZARA" in their restaurant was inspired by Spanish and Arabic influences, and not to imitate the plaintiff's brand. The defendant also took up the plea that there was delay in filing of the suit and thus, there is acquiescence on the part of the plaintiff. The defendant also asserted that the word "ZARA" was being used by various businesses suggesting that it has become *publici juris*; and the plaintiff has not been able to demonstrate substantial goodwill or reputation in India before 2010.

The plaintiff pleaded that the trade mark registration application filed by the defendant was seriously and actively opposed immediately on public notice since 2005. Thus, it was claimed that mere delay, without prejudice, does not amount to acquiescence. The plaintiff urged that in the circumstances the delay was not sufficient to deny the injunction especially when the defendant's adoption of the mark "ZARA" was fraudulent. It was stated that the plaintiff's turnover rose from over 3 billion Euros in 2003 to over 11 billion euros in the year 2012. In India, the total sales of ZARA products in the very first year of operation was INR 120 crore which rose to over INR 384 crore (annually) within two years i.e., in 2012. Further, the plaintiff was able to show that the word "ZARA" as alleged by the defendant was not being used as the prominent word but would fall in the composite name such as HAZARA, ZARASA, GUZARA, ZARAL, etc. Decide the application for interim injunction.

2. XiXi Inc., a multinational pharmaceutical company, obtains a patent in a foreign jurisdiction for a formulation derived from the bark of the Neem tree, claiming its efficacy in wound healing and antifungal treatment. A similar patent is also granted to another multinational company, NutraGen, for the medicinal use of Turmeric in promoting wound healing.

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Indian researchers and public interest groups challenge these patents, arguing that both Neem and Turmeric have been traditionally used in Indian medicine for centuries for the same purposes. They contend that these patents fail the tests of novelty and inventive step, as the claimed properties were already known in traditional knowledge systems. The challenges result in the revocation of both patents on the grounds that they do not constitute true inventions but are mere discoveries of pre-existing knowledge.

A few years later, HerboLife Inc. applies for a patent in India for an improved extract of Neem with enhanced bioavailability. The Controller, Indian Patent Office rejects the application, citing that the invention is a mere new form of a known substance without a demonstrable enhancement in therapeutic efficacy. The company appeals to the High Court arguing that its formulation represents an inventive step and that India's patent standards unfairly restrict pharmaceutical innovations. Decide the appeal.

In light of the legal principles governing patentability, particularly concerning traditional knowledge and the prohibition of "evergreening" of patents, examine:

- a. Whether the grant of patents on traditional knowledge-based products violates the legal requirement of novelty and inventive step?
- b. The applicability of the enhanced efficacy test in determining the patentability of modified forms of known substances.
- c. Analyse the balance between incentivizing pharmaceutical innovation and preventing "evergreening" of patents.

3. In the year 1987, Laxmi Prasad pledges valuable jewellery with Ramdayal, a money lender, in exchange for a loan without formal documentation. Laxmi Prasad repays the loan in the year 1997, yet Ramdayal refuses to return the pledged jewellery and demands an additional 5% interest. Consequently, on the premise that Ramdayal has violated the provisions of the Madhya Pradesh Money Lenders Act, 1934, Laxmi Prasad files a criminal complaint against Ramdayal. In the criminal proceedings, Ramdayal admits the guilt of demanding additional 5% interest and resultantly, a fine of INR 2,000/- is imposed on Ramdayal.

Subsequently, in the year 1998, Laxmi Prasad issues a formal notice to Ramdayal demanding the return of the pledged jewellery. Ramdayal neither responds nor returns the jewellery. Resultantly Laxmi Prasad files a civil suit seeking recovery of the jewellery or its monetary value.

Based on the above scenario,

- a. Determine, what would be the applicable period of limitation for filing a suit for recovery under the Limitation Act, 1963 and which Article would be applicable?
- b. Can Ramdayal's admission of guilt in the prior criminal case be considered as admissible evidence under Section 43 of the Indian Evidence Act, 1872? If so, to what extent can such an admission influence the outcome of civil suit, particularly in establishing the fact that a pledge transaction existed?
- c. If Ramdayal contends that his admission of guilt was made on incorrect legal advice, what burden of proof lies on him to demonstrate that the admission was involuntary or erroneous?

(40 marks × 2 = 80 marks)

PART-II

Answer *any four* out of the following six questions:

4. In the year 2017, the plaintiff filed a suit seeking cancellation of a sale deed dated 04.12.2004 claiming that it was fraudulently executed. It was further averred that the plaintiff never signed the alleged sale deed and that his signatures on the sale deed were forged. The defendant contested the suit by filing a written statement and took up the plea *inter alia* that the sale deed being a registered document, the plaintiff ought to have known about the execution of the sale deed. The plaintiff reiterates that mere registration of the sale deed cannot be a ground to infer the knowledge and that he came to know about the execution of the sale deed only on 17.04.2017. He took steps to check with the record of the Sub-Registrar where the sale deed was registered.

The defendant moves an application for framing of the issue of limitation as a preliminary issue and decide the said issue first before going into the trial of the suit.

Decide whether in the circumstances, the issue of limitation can be framed as a preliminary issue. Referring to the relevant provisions of law, decide on whom will be the onus to prove that the signatures on the sale deed are of the plaintiff?
5. The petitioner filed an eviction petition under Section 14(1)(a) of the Delhi Rent Control Act, 1958. The petitioner failed to produce any evidence despite grant of two opportunities by the Rent Controller. The Rent Controller noted that the petitioner has neither summoned nor produced any witness and thus, the

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petitioner's evidence was closed. The eviction petition was dismissed for want of any evidence to prove the relationship of landlord and tenant.

Successor-in-interest of the petitioner filed a fresh eviction petition under Section 14(1)(a) of the Delhi Rent Control Act, 1958 after serving a fresh notice upon the tenant as per law. The respondent filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC"), seeking rejection of the petition on the ground that the petition was barred by *res judicata*. The Rent Controller dismissed the application holding that the fresh petition was based on a separate cause of action and that there was no finding on merits as regards the relationship of landlord and tenant between the parties.

The High Court however reversed the findings of the Rent Controller and rejected the eviction petition. The petitioner (landlord) approached the Supreme Court. Discuss.

6. An entertainment company filed a suit against a music company seeking permanent injunction to restrain the defendant from infringing its copyright over sound recordings incorporated in multiple cinematography films. During trial, the plaintiff attempted to introduce secondary evidence in the form of photocopies of assignment agreements asserting that the originals were lost or were in possession of third parties. However, the plaintiff had been aware of the absence of the originals for several years but failed to take timely steps to either locate them or establish the necessary foundation for leading secondary evidence.

The defendant objected to the leading of secondary evidence arguing that the plaintiff had not fulfilled the statutory requirements under Section 65 and 66 of the Indian Evidence Act, 1872. On record it was found that while filing the suit in 2017, the plaintiff, in the index of documents had claimed himself to be in power, possession and custody of copies of the documents. During evidence, the documents were initially exhibited in 2018 and were de-exhibited at defendant's request in 2019. The defendants also argued that the plaintiff has produced self-serving letters written only in the year 2022 and 2023, claiming to have made efforts to locate the original documents but these are not sufficient to meet the legal threshold under the Commercial Courts Act, 2015. Analyze the admissibility of secondary evidence with reference to the provisions of the Indian Evidence Act, 1872 and the Commercial Courts Act, 2015.

7. Explain the principle of estoppels! Distinguish between estoppel, waiver and acquiescence. Can estoppel override law?

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8. Court fee has to be calculated according to the relief sought in the suit! How would you value a suit where alternative reliefs are claimed?
9. A group of employees of a government-owned entity filed a writ petition before the High Court in the year 2011, challenging the service and pay rules. In 2019, the government sold 100 percent of its share in the entity to a private company. In 2021, the writ petition came up for final disposal. The successor private company argued that since the entity was no longer a government entity, it was not amenable to writ jurisdiction under Article 226 of the Constitution of India and the petition should be dismissed. On the other hand, the petitioners contended that their legal rights had crystallized at the time of filing the writ petition and subsequent privatisation cannot deprive them of the relief under writ jurisdiction.

Discuss maintainability of the writ petition.

(20 marks × 4 = 80 marks)

PART-III

Answer *any four* out of the following six questions:

10. Explain the process of filing a suit as an indigent person. Whether the applicant can get an interim relief of injunction before the indigency application is admitted and the applicant is permitted to sue as an indigent person.
11. Amrit Lal executed an agreement to sell in favour of Shyam Lal in respect of a plot of land situated in Hauz Khas, New Delhi on 10.12.2022. As per the terms of the agreement to sell, the sale transaction was to be completed by 09.12.2023. In pursuance of agreement to sell, Amrit Lal executed a sale deed in favour of Shyam Lal on 01.10.2023 for a total sale consideration of INR 10 crore. Thereafter, on 01.01.2024, Amrit Lal executed a sale deed in favour of Ram Kishan in respect of the same land for a sum of INR 12 crore. This sale deed is duly registered in the office of Sub-Registrar on 02.01.2024. Decide about the validity of the two sale deeds.
12. What are the grounds on which an auction sale conducted in execution of a decree can be set aside? What would be the rights of a bonafide purchaser? Whether the provisions of setting aside an auction sale as contained in the Code

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of Civil Procedure, 1908 would be applicable in respect of an auction sale conducted under the order of a Revenue Court?

13. "Evidence is to be weighed and not counted." Comment.
14. How much value is to be attached to the evidence of an expert witness? Can a party produce an expert witness in the field of law.
15. The Trial Court, after closing the evidence, fixes the matter for arguments but the defendant did not appear. Accordingly, the court proceeded under Order XVII Rule 2 of the Code of Civil Procedure, 1908 and fixed another date for hearing of the matter finally. On the next date, the defendant again did not appear. The court heard the arguments and decreed the suit. The defendant filed an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 which was rejected by the trial court as being not maintainable. The revision petition under Section 115 of Code of Civil Procedure, 1908 was also dismissed. What is the remedy available to the defendant?

(10 marks × 4 = 40 marks)

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Maximum Marks: 200

Law-II**Important Instructions**

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PART-I**(Answer any four out of six questions)**

1. A Bank took a property on lease for 10 years by a registered lease deed at a monthly rent of Rs. 10 lakhs. After few years, there was fall in the rental of that area. So the parties re-negotiated the terms of the lease and executed an un-registered Rectification deed to reduce the rent from Rs. 10 lakh to Rs. 7 lakh per month. The landlord accepted the reduced rent of Rs. 7 lakh per month for about three years from the Bank. After three years, the landlord claimed Rs. 3 lakh per month for last three years based on the original rent @ Rs. 10 lakhs per month and invoked the arbitration. The Bank contested the claim on the ground that the rent was reduced from Rs. 10 lakh per month to Rs. 7 lakh per month by a Rectification deed. According to the landlord, he did not reduce the rent and the Rectification deed being unregistered, cannot be looked into. The Arbitrator allowed the claim and passed the award in favour of the landlord in respect of balance rent @ Rs. 3 lakh per month for last three

years. The Bank has challenged the award on the ground that the landlord has raised a false claim as the landlord has not denied the signatures on the Rectification deed and has accepted the reduced rent for the last three years. According to the Bank, award is against the most basic notions of morality and justice. Decide the objections with reference to the relevant provisions and case law.

2. A Finance Company extended a loan of Rs. 5 lakhs to an individual who failed to repay the loan. The loan agreement provided for the appointment of a Sole Arbitrator by the Finance Company. The Finance Company appointed a Sole Arbitrator who issued notice to the borrower. However, the borrower failed to appear before the Arbitrator. The Arbitrator passed an *ex-parte* award of Rs. 5 lakhs plus interest against the borrower. The borrower filed objections to the award under Section 34 of the Arbitration and Conciliation Act challenging the unilateral appointment of the Arbitrator by the Finance Company without the consent of the borrower. Decide the objection of the borrower with reference to the relevant provisions and case law.
3. A contract containing an arbitration agreement was executed between the parties at Lucknow. The place of performance of the contract was at Patna and both parties are based in Ranchi. The contract provided for exclusive jurisdiction of the Courts at Delhi. The arbitration agreement does not contain any stipulation with respect to the seat of arbitration. One party filed an application for appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act 1996 before the Delhi High Court which was contested by the other party on ground that the Delhi Courts have no jurisdiction. The response of the Petitioner is that the exclusive jurisdiction clause should be interpreted to mean that Delhi is the seat of Arbitration. Decide the objection with reference to the relevant provisions and case law.
4. Ashok entered into an agreement with a Hotel Chain for construction of a hotel over his plot and gave irrevocable operational rights to the Hotel chain to operate the hotel for 20 years on profit sharing basis. The agreement provides for payment of liquidated damages of Rs. 20 crores in the event of termination of contract before 20 years. Ashok illegally terminated the contract after 2 years whereupon the Hotel filed a suit for liquidated damages of Rs. 20 crores and loss of profit of Rs. 18 crores for balance 18 years, based on profit of Rs. 2 crore

earned in the first two years. Ashok has approached you for advice on the law with respect to quantum of compensation, anticipating he may be held liable to pay for breach of contract. Advise Ashok with reference to relevant provisions and case law.

5. Karan let out his property in Karol Bagh, New Delhi to Anil for a period of three years at a monthly rent of Rs. 10,000/- by an unregistered lease deed. Anil stopped paying the rent after two months whereupon Karan terminated the lease by a 15-day notice and thereafter, filed a suit for possession, recovery of rent and *mesne profits*. Anil admitted the relationship of landlord and tenant as well as monthly rent but contested on the ground that lease cannot be terminated before expiry of three years, and the notice of termination was invalid as it did not give him 30 days notice. Decide the objections of Anil with reference to the relevant provisions and case law.
6. Comment on the following with reference to the relevant provisions and illustrations :
 - (i) Contracts that are not specifically enforceable.
 - (ii) Liquidated damages are not a bar to specific performance.
 - (iii) Cases in which injunction cannot be granted.
 - (iv) Is a suit for mere declaration without seeking a consequential relief maintainable?

(20 marks x 4 = 80 marks)

PART-II

(Answer any three out of five questions)

7. What are the legal requirements of a valid Will? Is registration of a Will mandatory? Is the probate of a Will mandatory in Delhi? Which Courts have jurisdiction to entertain a Probate Petition? Answer with reference to the relevant provisions of law.
8. What is the procedure to be followed by the Courts in Probate proceedings? Can the Probate Court adjudicate the title of a property mentioned in the Will? What is the nature of evidence required to prove a Will? What are the legal consequences, if a Will is found to be forged by the Probate Court?
9. Anil filed a petition for divorce against his wife Sunita under Section 13 (1)(ia) of the Hindu Marriage Act, 1955 in which Sunita filed an application for seeking maintenance of Rs. 1 lakh per month under Section 24 of the Hindu Marriage Act.

According to Sunita, her husband is a businessman earning Rs. 3 lakh per month. Anil is contesting the application on the ground that his monthly income is Rs 1 lakh only as disclosed in Income Tax Returns. Sunita claimed that Anil is not disclosing his true income in his Income Tax Returns. What steps can the court take for determining the true income of Anil in order to award maintenance to his wife? Answer with reference to relevant case law.

10. Karan and Swati were married according to the Hindu Marriage Act, 1955. Karan was arrested on the charge of murder of his neighbour on 15th day of marriage whereupon his mother started humiliating Swati that her son went to jail because of marrying her and demanded Rs. 2 lakhs for pursuing the bail application, which Swati could not arrange. After suffering cruelty for six months at the hands of mother-in-law, Swati left matrimonial home and filed a Petition for divorce on the ground of cruelty under section 13(1)(ia) of the Hindu Marriage Act, 1955. Karan denied having treated Swati with cruelty as they lived happily for 15 days after marriage. In the meantime, Karan was convicted and sentenced to life imprisonment by the Sessions Court. The Family Court dismissed the divorce petition on the ground that Karan did not treat Swati with cruelty during their 15 days of their stay and the cruelty of mother-in-law is not relevant. Swati has challenged Family Court Judgment before the High Court on the ground that Karan's offence of murder has resulted in cruelty to her. Is Swati entitled to divorce on the ground of cruelty? Give your decision with reasons.
11. What is the prescribed procedure for solemnization of a marriage under the Special Marriage Act, 1954 ? What are the grounds for divorce under the Special Marriage Act?

(20 marks x 3 = 60 marks)

PART -III

(Answer any three out of five questions)

12. Central Motor Vehicle (Fifth Amendment) Rules, 2022 have incorporated a Special Procedure for investigation and adjudication of motor accident claims. Explain the salient features of the Special Procedure with reference to the relevant Rules.

13. A motor accident due to rash and negligent driving of a truck resulted in the death of a pedestrian whose legal representatives filed an application for compensation before the Motor Accident Claims Tribunal (MACT). The deceased was aged 30 years, working as a teacher earning Rs. 30,000/- per month and was survived by his widow, mother and two minor children. What are the principles for computation of compensation in such cases? Compute the amount of compensation which the claimants are entitled. Answer with reference to the relevant principles and case law.
14. A driver was employed by the owner to drive a taxi. The taxi was hired by the passengers to travel from Delhi to Calcutta. The taxi driver was murdered on the way and the Police recovered the dead body. The taxi was insured with New India Assurance Company Ltd. The legal representatives of the taxi driver filed an application seeking compensation under the Employee's Compensation Act, 1923. The Insurance Company contested the case on the ground that the "murder" cannot be said to be an "accident" under the Employee's Compensation Act. Decide the objection with reference to relevant case law.
15. A construction worker employed by a contractor in construction of a house fell down from the 4th floor and suffered fatal injuries. The legal representatives of the worker claimed compensation under the Employee's Compensation Act, 1923 from the owner of the house. The owner contested the claim on the ground that he had entrusted the work to the contractor who alone is liable to pay compensation. Are the legal representatives entitled to compensation from the owner of the house? Answer with reference to relevant provisions and case law.
16. Atul employed ^{driver} a driver to drive his car. After six months of employment, ~~Atul~~ hit a pedestrian due to rash and negligent driving which resulted in fatal injuries to the pedestrian. Atul terminated the driver for this misconduct. The driver wants to challenge his termination. What are the legal remedies available to the driver to challenge his termination. State the legal principles for terminating a Workman under Industrial Disputes Act, 1947 ?

(20 marks x 3 = 60 marks)

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Roll No. _____

DELHI HIGHER JUDICIAL SERVICE MAINS EXAMINATION (WRITTEN) 2024

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Maximum Marks: 200

Law-III

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PART 1

Write short notes on ***any four*** out of the following six issues:

1. Trial or judgement in absentia of the proclaimed offender.
2. Is it permissible to file fresh charge sheet with Sanction Order against the accused, who is a public servant, who was discharged earlier for want of sanction?
3. A crime never dies.

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4. Power of the appellate court, when the convict is turned out to be a juvenile conflict with law.
 5. Re-Examination of prosecution witness by the state when permissible.
 6. Power of the MM/Sessions Court for directions for further investigations or fresh investigations/re-investigation.

(10 marks x 4 = 40 marks)

PART 2

Attempt *any two* out of the following three questions:

7. In the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not permissible to draw inferential deduction of culpability/guilt of a public servant under section 7 and 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution.
8. On filing of the Closure Report in police case, what power is to be exercised by the Special Judge under the Prevention of Corruption Act, 1988?
9. Explain the Right of the accused to silence.

(20 marks x 2 = 40 marks)

PART 3

Attempt *any four* out of the following six questions:

10. At about 8 p.m., one KC, the deceased, and his father NC were taking their meals in the verandah of their house. The mother and sister of the said KC were serving the meals when the accused no. 1 along with 8 other persons came there variously armed with lathis, bhala and chhura. They assaulted KC, dragged him into the courtyard of the house and further assaulted him. When the mother and the father tried to save him, they were also assaulted. The accused took KC to a nearby ditch and pushed him down there. The accused no. 1 gave a chhura-blow on the chest of KC which resulted in his death. All those persons thereafter left the place taking away the body of the deceased. According to the prosecution the motive for this is that a child of the family of the accused had earlier been kidnapped and had been found dead. The accused suspected KC to be responsible for such kidnapping and death.

At the trial, the prosecution examined five witnesses, of which PW 5 was a formal witness, who proved the FIR and the seizure list by which bloodstained earth, lungi and lathi had been seized. The eyewitnesses to the incident were PW 1 DC, who is a neighbour, PW 3 Mrs. PD, who was the mother of the deceased and who had promptly lodged the FIR and PW 4 Ms. MD, the sister of the deceased. The prosecution also examined PW 2, the brother of the deceased who deposed that when he returned home, he was informed about what had happened. It has come on record that the father of the deceased died before the trial started. The prosecution did not examine the IO.

Accused Arguments:

(a) This is a case where the corpus delicti had not been found (b) there was no proof that KC has actually died (c) there was no medical evidence of

death (d) the defence theory that the boy was still alive at the time of the trial could not be ruled out (e) PW 1, a neighbour has deposed that on hearing a noise he had come out of the house and that the assault was not in the courtyard, as claimed by the other witnesses, but was on the road adjoining the house (f) PW 3 stated that the incident had taken place outside the courtyard (g) PW- 4 had also deposed that the accused persons had dragged the boy to the "tat" which is known as a manure pit which was always outside the courtyard (h) Based on the principles as laid down by the courts, even though it is not necessary that *corpus delicti* be found, still the prosecution must prove that KC had died (i) the IO was not examined which has caused serious prejudice to the accused persons inasmuch had IO been examined, the accused could have established that the assault had taken place not in the courtyard but on the road.

Prosecution's Contentions:

(i). The evidence in this case is direct and there is no reason to disbelieve it. (ii). Presence of the mother and sister at the place of incident could not be doubted. Their evidence clearly indicates that the incident took place before their eyes. (iii). Accused are referring to stray sentence that incident took place on the road side. The evidence has to be read as a whole. Both the ladies have given positive evidence that the murder took place in the courtyard. PW1 had deposed that KC had died on causing churra injury by A-1. (iv). The IO was not an eyewitness and could not have given any evidence as to the actual place of occurrence. (v). The body had already been removed by the accused persons. (vi). This is a case where Section 106 of the Evidence Act would apply. The accused have carried away the body. What happened thereafter to KC is especially within the knowledge of the accused persons who have given no explanation as to what they did after they took away the body. KC has not been since seen alive. In the absence of an explanation, and considering the fact that the accused

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persons were suspecting the KC to have kidnapped and killed the child of the family of the accused, it was for the accused to have explained what they did with the deceased after they took him away. When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy.

Decide the culpability of the accused.

11. Shortly after midnight the deceased heard some footsteps in his house and came out to investigate. He found A-2 standing on the balcony of the first floor. A scuffle ensued between the two and the shouts and screams that came about in the scuffle woke up the other occupants of the building and they saw the deceased and A-2 grappling with each other. As the deceased was a sportsman and physically strong, he managed to pin A-2 to the ground by falling on him. A-2 thereupon took out a knife from the right side of his hip pocket with his right hand and stabbed the deceased on the left side of the abdomen and when PW-3 went to his rescue A-2 stabbed him on the lower part of the right arm as well.

In the meanwhile, A-1 came and stabbed the deceased on both his thighs. A-1 also prevented PWs 1 and 3 from going to the rescue of the deceased by holding a knife at the throat of PW 3. A-1 also stabbed PW 2 on his left shoulder. Despite the injuries having been caused to them, PWs 1 and 2 overpowered A-2 and pushed him from balcony. In the meanwhile, the other neighbours arrived at the scene and got hold of A-1 as well. PWs 1 to 3 brought both the accused to the ground floor, where they were tied up with a rope and information was also sent to the police.

Prosecution's contention: The two accused had entered the premises at midnight duly armed with the intention of committing robbery. They were also charged under Section 460 IPC on that account. It is also in evidence

that the deceased had managed to pin A-2 down to the ground and A-2 had caused one injury in the stomach of the deceased while he lay on top of him. Two injuries were thereafter caused on the thigh of the deceased by A-2 and the other accused. It is also in evidence that when the neighbours arrived on the scene, they too were caused injuries and threatened with dire consequences. The initial purpose was to commit robbery, but as the accused were armed with knives which they had used repeatedly and effectively, they were willing to kill as well and that they could not cause more damage as they were overwhelmed and pinned down.

Decide the culpability of the accused persons.

12. The prosecutrix PW-1 is 19 years of age and a grown-up girl studying in a college. The accused is aged about 21 years of age. They were deeply in love and used to meet frequently. They used to do intercourse twice a week and did for about 25/30 times after which the prosecutrix realised that she became pregnant. The prosecutrix's family members came to know of their relationship. The accused kept on delaying their marriage on the pretext of building his house. The prosecutrix gave birth to their child. After a quarrel between the family of the prosecutrix and the accused, the prosecutrix lodged the FIR against the accused u/s 376 IPC.

Prosecution's contention: The consent was obtained by the accused by making a false promise of marriage and it was a consent obtained by fraud and misrepresentation.

Defence Contention: PW-1 admitted that she was aware of the fact that since they belonged to different castes, marriage was not possible and the proposal for their marriage was bound to be seriously opposed by their

family members. She admitted having told so to the accused when he proposed to her the first time.

Decide the matter.

13. Accused was a tenant in the house of PW-5 (Ombir Singh) and his wife (deceased). The accused R and two other co-accused played game of cards with PW-5 on the night of 11.09.2021 and left at 6:30 AM next day. PW-5 left for work at 7:30 AM. PW-5 received a phone call at 2:30 PM that his wife had passed away. PW-5 reached his home at 3:30 PM to find the dead body of his wife. The almirah was found unlocked and all the goods therein lying scattered. A number of jewellery items including gold ornaments were found missing. PW 12, had deposed that he had seen the accused persons moving around in the neighbourhood and looking perplexed in the morning on the day of the incident. PW 15, Raj Kumar, a TSR driver, also deposed that he had occasion to take the accused persons in his TSR at about 11.00 a.m. on 12.09.2021 and in the course of their conversation he had overheard them discussing as to whether they should have killed "her" or not. The accused were apprehended on 16.09.2021 when they were alighting from a bus. On their personal search, various jewellery items were recovered from them which were duly seized by Seizure Memos, Ext. PW-14/C and Ext. PW-14/D. The jewellery items so recovered from the possession of the accused were identified by PW 5 to be belonging to his wife. The accused persons did not give any explanation for their possession of the jewellery items.

Decide the culpability of the accused.

14. The complainant (Respondent no.2) is the Director of a finance company. The accused, a retired bank employee, approached the complainant's Company in the month of January 2018 for a loan of Rs.27,00,000/-. The Respondent 2 transferred the funds as a loan, which was to be repaid by the accused within a year with interest. The accused did not repay the amount to the finance company. The Respondent 2 alleged that when he approached the accused, he was threatened by the accused with dire consequences. The Respondent 2 filed a complaint on 05.01.2022 based on which the FIR was registered against the accused under Sections 406, 409, 417, 420, 294(b) and 506 Part II IPC. The accused was enlarged on bail by the High Court after being arrested on 29.01.2022. Charge-sheet came to be filed against the accused under Sections 406, 420 and 417 IPC. Pursuant to the same, the Magistrate issued summons. The charges were framed by the Magistrate. The Respondent no. 2 already filed a summary suit in the year 2021 for recovery of Rs.33,46,225/- inclusive of the interest against the accused, which is pending before the Civil Judge.

The accused preferred a petition u/s 482 Cr Pc for quashing of the FIR and the criminal proceedings.

Give your answer with reasons.

15. The prosecution case is that on 10.08.2024, at about 3.00 p.m., there was a quarrel between L, the accused and G, the deceased, who was in drunken state, at the house of the accused. The accused asked G to go home but he was not acceding to his request. The accused brought G from his house on the road by lifting him but he fell down. The accused struck him with a spade on his head. As a result, G sustained injuries on his head and became unconscious. The accused proceeded towards the house of one Patel. While going there, he made disclosure to some persons that he had

killed G. One Ful Chand, who had heard the utterances of the accused, informed Tejram (PW 2) that the accused was telling that he had killed G. The accused was returning from the side of the house of Patel. He informed PW 2 also that he had killed G. PW 2 went to the police station and lodged the report that he was informed by the accused that he had killed G. An FIR was registered ASI (PW 12) u/s 302 IPC. By the time the accused reached there along with spade, ASI (PW 12) arrested him and seized the spade. Thereafter, PW12 went to the spot and noticed that G was lying unconscious. Spot Panchnama was prepared and the samples of bloodstained earth and plain earth were collected. G was sent to the hospital in a vehicle. The doctor examined him and found a lacerated wound on his forehead with underlying bone fractured into pieces. As G was unconscious, the ASI could not take his statement. On 17.08.2024, ASI PW 12 received a message from Dr. Jaiswal of the Hospital that G succumbed to his injuries. On the same day the post-mortem was conducted.

After the investigation, the charge-sheet was filed before CJM who committed the case to the Court of Session for trial. The charge for the offence under Section 302 IPC was framed against the accused.

PW 3 Malti stated that the accused gave him a call and said that G, the deceased was under the influence of liquor and he was not willing to leave his house and there was a quarrel between the accused and the deceased at the house of the accused. At the time of quarrel, Mahadeo (PW 4), who was present in the nearby house has witnessed that in the course of quarrel, the accused dragged G outside of his house and gave a stroke of spade on his head.

Patel (PW 7) stated that accused came to his house and informed him about the incident. PWs Ful Chand and PW2 stated that accused told them that he had killed G.

ASI (PW 12) stated that he and Executive Magistrate could not record the statement of G on advice of the doctors as the victim was not in a position to give the statement. Dr. Arvind (PW 1), Medical Officer proved a certificate (Ext. 19) that the injured person was not able to give any statement. Dr. Pradip Kumar Gujar (PW 9) who conducted the post-mortem on the dead body of G also found that the cause of death was head injury, laceration of the brain matter, resulting into neurogenic shock and peripheral circulatory failure.

Accused contention: i). The injured was alive for seven days but no attempt was made to record his statement about the incident, ii). even according to the prosecution one blow was caused on the head of G, that too in a quarrel, iii). As per prosecution, there was a quarrel between the accused and the deceased inside the house of the accused and the deceased consumed liquor and was adamant not to leave the house of the accused which necessitated the accused to drag him out of his house and inasmuch as the deceased still refused to accede to the request of the accused, he inflicted single blow on the head with the spade, and he had no pre-plan or intention to kill the deceased and his main worry was to get the deceased out of his house, who had consumed excessive liquor.

Prosecution Arguments: the spade blow given by the accused on the deceased was at the vital part because of which he was unconscious for seven days and ultimately succumbed to his injuries.

Decide the culpability of the accused.

(30 marks x 4 = 120 marks)