



DELHI JUDICIAL SERVICE MAIN EXAMINATION 2015

CRIMINAL LAW

Time Allowed: 3 Hours

Max. Marks: 200

Instructions:

- (i) Please read the questions carefully and answer them as directed.
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- (iv) Support each of your answers with reasons, relevant legal provisions and legal principles. Length of the answer would not determine the marks.
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(PART-A)

- Q. 1.** Upon telephonic information received at PS Lajpat Nagar at 9.00 AM on 10.07.2015 that foul smell was emanating from house No. 292, Lajpat Nagar, Inspector Suri reached the house and found the main door locked. Breaking open the lock and entering the house, he found Sheila, the owner of the house, lying dead on the bed with clotted blood on her clothes and the bedsheet. A blood stained kitchen knife was lying on the bed. It was seized. The Crime Team was summoned but no chance prints could be lifted. The cupboard in the bedroom was found ransacked. Neelam, the daughter of the deceased reached the house and informed Inspector Suri that Ram was the domestic servant engaged by the deceased and was given a servant quarter to reside on the roof of the house. Inspector Suri found the room on the roof empty. Ram had absconded. On Neelam's statement, FIR for an offence punishable under Section 302 IPC and 380 IPC was registered. The dead body was sent to mortuary. Postmortem conducted by Dr. Sunil on the dead body of Sheila in afternoon of 10.07.2015 revealed that likely time when Sheila died was around 10.00 PM on July 08, 2015 and there were eight bruise marks on both palms and forearms. There was one stab wound on the chest. Internal examination revealed that the left ventricle of the heart had been pierced and death was on account of shock due to haemorrhage. Dr. Sunil opined later on, that the knife seized by Inspector Suri could have caused the stab wound. During investigation, Chaman, a vegetable vendor in the colony, told Inspector Suri that one Shyam, a carpenter, used to frequent the house and he had seen Ram and Shyam talking secretly in the market for the last few days. Tracking Shyam, Inspector Suri reached the slum cluster in Lajpat Nagar where Chet Ram and Brahm Prakash who were residing in the slum cluster told him that one Raju, mechanic, used to frequent the jhuggi of Shyam and was seen by them discussing something secretly with Shyam on 07.07.2015 and late afternoon of 08.07.2015. Their statements were recorded by Inspector Suri.





Tracking Ram and Shyam, Inspector Suri apprehended the two on 15.07.2015. On their personal search a mobile phone from each was recovered. Mobile number of Ram was 9879898710 and that of Shyam was 9890768592. The two made a confessional statement admitting to the crime and informed that one Sanju was also a participant in the crime and that the stolen jewellery was in the jhuggi of Sanju. The two took Inspector Suri to the slum cluster in Bhogal and jointly pointed the jhuggi of Sanju who was apprehended from the jhuggi and made a disclosure statement confessing to the crime and said that the stolen jewellery was put by him in a bag which he had kept with his friend Mohan for safe custody. He took Inspector Suri to village Barthal where one Govind Ram was associated in further investigation by Inspector Suri, in whose presence Sanju pointed out a house as that of Mohan. Mohan was present in his house and handed over to Inspector Suri a bag, stating that it was left with him by Sanju. From the bag 4 gold bangles, 2 gold chains, 2 gold pendants and 2 gold earrings were recovered.

Champa, a domestic help working in adjoining house no. 293, Lajpat Nagar, informed Inspector Suri that on 08.07.2015 at around 10.30 PM when she was going to the market to buy vegetables, she had seen Shyam walking away from the house of the deceased in a very perturbed condition and when she asked him why was he disturbed, Shyam said that Ram had fought with Sheila and therefore, he was disturbed. She further informed that around 10.45 PM when she was returning, she saw Ram, Raju and Sanju outside Sheila's house. Her statement to this effect was recorded by Inspector Suri. Thereafter Inspector Suri obtained the call detail records of the mobile phones of Ram and Shyam which showed that Ram and Shyam not only spoke to each other repeatedly from two days prior to 08.07.2015 but additionally the two were present in Lajpat Nagar since the evening of 08.07.2015 till around 11.00 PM.

Johri Mal, a jeweller, gave his bill book to Inspector Suri which showed that on different dates he had sold jewellery to Sheila and as per his statement recorded by Inspector Suri the jewellery which he used to sell had JM embossed thereon.

No TIP of the jewellery was conducted. Ram, Shyam, Raju, Sanju and Mohan were not subjected to any TIP either.

At the trial the witnesses deposed as per their statements made to Inspector Suri with the admission by Neelam that she did not participate in any TIP proceedings concerning the jewellery and identification of Ram. Champa also admitted that she was not called upon to participate in any TIP proceedings concerning Ram, Shyam, Raju and Sanju. The CDRs of mobile numbers 987089710 and 9890768592 were tendered by Inspector Suri, who deposed to prove the facts which surfaced during the investigation and the recoveries made.

Listing the incriminating evidence against all five accused, decide whether the charge has been established or whether against all or some a lesser offence is made out, for which reason may be stated.

Which provisions of the Indian Evidence Act, 1872 would be applicable to discuss the evidence be brought out clearly, especially concerning Sheila's death the argument that a kitchen knife was used as the weapon of offence with only one stab blow given and therefore the act which resulted in Sheila's death would at best constitute the offence punishable under Section 304-II IPC.

(60 marks)





- Q. 2.** Anil aged 25 years meets Nalini aged 21 years through the matrimonial website Jeevansathi. com on 01.01.2016. He proposes for marriage through the website and she accepts the proposal. His parents come and finalize the marriage on 15.01.2016 and they perform the roka ceremony. On the same night Amit persuades Nalini to go for a movie with him and on the way back they drop in at his friend's house whose house keys he was carrying in his pocket. In his friend's house, Amit persuades Nalini to have sexual intercourse with him saying that there was no harm since they were getting married soon and he had already promised to marry her. The only reason Nalini consented for sexual intercourse is because of Amit's promise to marry her. On 16.01.2016 Amit sends an e-mail to Nalini informing her that he cannot marry her since he was already married to another girl without his parents knowledge. Nalini files her complaint. A case for cheating and rape under Section 417 and 376 IPC is filed against Amit. The defense raised by Amit is that Nalini is an adult and their physical relation was consensual. Decide.
- Q. 3.** 'A' is arrested on the charge of murder punishable under Section 302 IPC. The allegation is that he had intentionally run his car over his neighbour 'B' and killed him. 'A' is remanded to judicial custody from time to time for a total period of 90 days out of which he was in police custody for 10 days and in judicial custody for 80 days. The investigation could not be completed within 90 days. The lawyer for 'A' files an application for bail on his behalf on the 91st day praying 'A' be released on bail and he was willing to obide by any condition for bail imposed by the court for bail. The court fixed the hearing of application for bail after a week. On the next day (92nd day) the police files the chargesheet under Section 173 Cr.P.C. stating that the report of the serologist with regard to the blood found on the wheels of the car of 'A' was still awaited and would be filed shortly. Decide the bail application of 'A' while also discussing the purpose of granting bail.
- Q. 4.** 'A' is charged with the offence of outraging the modesty of a woman punishable under Section 354 IPC (punishable for a minimum period of one year) and is undergoing trial. He files an application for plea bargaining in the court. He discloses in the affidavit accompanying the application that he has been earlier convicted for an offence under the Motor Vehicles Act. The mutually satisfactory disposition is arrived at as per which the court awards compensation to the victim and grants probation to 'A'. Is the procedure adopted in compliance with Chapter XXI A (plea bargaining) Cr. P. C?

(PART - B)

- Q. 1.** Amina, a Hanafi Muslim had married Hamid, after she had been divorced by her first husband, Yusuf. She has a daughter, Hina, now aged six, from her first husband. Due to physical violence inflicted on her by Hamid, Amina has been forced to shift to her grandfather's house along with her daughter, as both her parents are no more. She is unemployed and had studied only upto class X. Her grandfather is a retired railway station master and has to support his treatment for cancer as also his aged wife. In this background, Amina has filed a petition under Section 125 Cr.P.C. claiming maintenance from Hamid for herself and her minor daughter. When the nikahnama was drawn up between Hamid and Amina, Hamid undertook to bring up Hina as his own daughter, though Yusuf, the biological father, is alive. Hamid has two tempos which he hires out and earns about Rs. 1,50,000 per month. He has two drivers and one cleaner and one helper.





Hamid contends that the petition is not maintainable. Decide with case law. Would Hamid be liable to maintain Hina? What is the quantum of maintenance that can be granted and to whom and why? Give reasons for your decision.

(30 Marks)

Q. 2. Write short notes on any six of the following:

- (a) What are the grounds on which anticipatory bail can be granted?
- (b) When can bail be cancelled?
- (c) Abetment
- (d) Criminal conspiracy
- (e) Sedition
- (f) Incapacity due to unsoundness of mind
- (g) Age of criminal responsibility and juvenility
- (h) Remission and suspension of sentence

Q. 3. At an upmarket cinema hall, a full house was enjoying the screening of a new film. Unknown to them, a transformer belonging to the electricity company caught fire. The oil leaked and the fire spread and two cars parked immediately adjoining the transformer caught fire and then other cars parked nearby also were engulfed in flames. Soon, fire and noxious fumes from the burning oil, petrol, diesel, upholstery and other materials stored in the parking lot, spread in the area. As the ground floor parking was enclosed by walls, due to chimney effect, the fumes moved upward and through the air conditioning ducts, entered the theatre hall. The noxious fumes and smoke stagnated at the upper portion of the balcony. Due to the fire there was electricity failure in the hall. People started groping their way to the exit as the only available exit was at the back of the hall. The exit to the foyer was closed and no one could use the staircase. 59 people died due to asphyxiation in the balcony and passageway by inhaling the noxious fumes and smoke. 103 persons were also injured trying to get out.

An FIR was lodged at the local police station and the investigation was handed over to the CBI. During investigations the following facts were revealed:

- (i) There were violations of the building bye laws and the Cinematograph Act 1952 and Rules by changes in the seating arrangements, by closing one exit and narrowing the gangway to add 50 more seats and an owners' box, leaving only one exit at the back of the hall, at the far end of the balcony;
- (ii) The owners had allowed illegal parking in front of the transformer room against the requirement of keeping clear access to the transformer room and thus allowing 35 cars to be parked in an area where only 15 cars were permitted in order to leave adequate space for manoeuvring;
- (iii) The owners had been allowed a parapet wall of three feet height around the parking area but they raised 12 feet high walls, thus converting the parking into an enclosed area, which prevented the disbursement of the noxious fumes in the air over the ground floor and instead moved upwards into the hall;
- (iv) The MCD gave NOC for grant of licence to the cinema hall despite these violations of the building bye laws;
- (v) Fire clearance was given despite an initial report recording that there were inadequate fire safety measures, including only one exit and reduced gangway passage;





- (vi) The electricity company had attended a fault, only a few hours before the unfortunate incident, when three cables of the same transformer had got burnt and the repairs were conducted by accused I, J & K by replacing three sockets using the dye and hammer instead of the crimping machine and the loose connections resulted in sparking and the fire;
- (vii) The transformer was itself built in violation of safety norms inasmuch as there was neither a platform built for it nor was a soak pit provided to prevent any leak of hot oil to the neighbouring areas;
- (viii) The main foyer door was locked from the outside by the gatekeeper;
- (ix) Due to the absence of the soak pit, the unauthorised parking, the closing of the main foyer door from outside by the gatekeeper, the closing of exit doors to create additional seating and owner's box, narrowing of gangway to place more seats and leaving only a single exit at the back of the hall, when the noxious fumes moved upwards into the hall, people were unable to move smoothly out of the hall to save their lives;
- (x) Each violation of the law contributed to the loss of lives and to the injuries sustained by the theatre goers.

A charge sheet was filed against 16 persons under various sections including under section 304, Part II, IPC before the Ilaqa Magistrate.

The Magistrate summoned the accused and committed the case to the Sessions Court for trial. These 16 accused are:

- (a) A & B, the owners of the cinema hall;
- (b) C & D, the Director and DGM of the cinema hall;
- (c) E, F & G, the Managers of the cinema hall;
- (d) H, the gate-keeper of the cinema hall;
- (e) I, J & K, responsible officers of the electricity company;
- (f) L & M, officers of the Delhi Fire Service;
- (g) N, O & P, officers of the Municipal Corporation of Delhi. Draw up a reasoned order on the charges to be framed against the accused.

(40 Marks)





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CIVIL LAW - I

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Part -A

Q. 1. 'A' in Delhi entered into a contract with 'B' in Mumbai on 01.12.2015 as per which 'A' had to supply 100 metres of jute material at controlled price to 'B'. There was a term in the contract stating "I('A') shall go on supplying jute material to you ('B') of The Jute Mills Calcutta as soon as they are supplied to me by the said mills." 'B' gave Rs. 10,000 to 'A' as earnest money. The Jute Mills Calcutta shut down on 05.12.2015 because of losses and 'A' did not supply jute material to 'B'. 'B' in turn failed to perform his contract with 'C' of supplying stitched jute bags to 'C'. 'B' files a suit for damages and return of earnest money against 'A'. 'A' pleads frustration of contract and also the contract between 'B' and 'C'. Decide. he was not aware of

Also discuss with reference to precedents specific grounds of impossibility which are recognized and not recognized in Indian law.

(15+15= 30 Marks)

Q. 2. On 01.01.2006 'A' occupied an empty plot of land measuring 500 sq. yds which as per municipal records was in the name of 'B' a government employee. After one year 'A' built a two room house thereon. On 15.01.2015 'B' forcibly dispossessed 'A'. On 05.05.2015 'A' filed a suit under section 6 of the Specific Relief Act for possession against 'B'. 'B' contested the suit on the ground that he was the real owner while 'A' contended that he was in "settled possession" till 15.01.2015. Decide.

(20 Marks)

Q. 3. 'A', 'B' & 'C' are partners of the unregistered firm M/s ABC & Sons. Their former partner 'D' who owes Rs. 5 lakhs to M/s ABC & Sons without permission uses the trademark of M/s ABC & Sons. 'A', 'B' & 'C' filed a suit for perpetual injunction to restrain 'D' from passing off his goods as those of M/s ABC & Sons by using their trademark and for damages and also a suit to recover the amount due from 'D' to M/s ABC & Co. Are the suits barred under Section 69 of the Partnership Act?

(10 Marks)





- Q. 4. X & Co is a registered partnership firm in real estate business. It has three partners 'X', 'Y' and 'Z'. 'N' who is illiterate, contacts X & Co to sell his property. 'Z' informing 'N' that his signatures were being obtained on a sale deed dishonestly induces 'N' to sign a gift deed in the name of 'Z'. 'Z' disposes of the property of 'N' and misappropriates the money. 'N' sues X & Co for the pecuniary loss caused to him and for damages for harassment. X & Co contests saying that the firm and its other partners are not liable for the wrongful act of 'Z'. 'N' contends that 'Z' acted in his implied authority. Decide. (10 Marks)
- Q. 5. 'A' in Calcutta agrees to supply bananas to 'B' in Delhi. It was agreed that the payment would be made by way of RTGS by 'B' to 'A' exactly four days after the bananas are received by 'B'. The consignment of bananas is sent by 'A' to 'B' on 15.04.16 and is received by 'B' on 18.04.16. 'B' makes payment to 'A' on 22.04.2016 in the morning. On inspection of the received consignment of bananas in the afternoon of 22.04.2016, 'B' finds that the bananas are over ripe and some are rotten and not of the specification agreed upon and so he immediately informs 'A' about the condition of the consignment and that he has rejected the same. 'A' says 'B' cannot reject the consignment. 'B' sues for damages. Decide while citing the relevant provisions under the Sale of Goods Act. (10 Marks)
- Q. 6. Caveat Emptor is a defence available to every seller. Discuss with the help of decided cases. (10 Marks)
- Q. 7. 'A' entrusted her antique diamond necklace to 'B' a jeweller cum auctioneer for sale through a public auction on the term that 'B' shall not sell it for less than Rs. 15 Lakhs. 'B' sold the antique diamond necklace to 'C' in a private sale for barely Rs. 10 lakhs and misappropriated the amount and disappeared with the antique diamond necklace. Can 'C' recover the cost of the antique diamond necklace from 'A'? 'A' puts up the defence of nemo dat quod non habet (nobody can give what he himself does not have). Decide. (10 Marks)

(PART-B)

- Q. 1. (a) "The concept of bona fide need or genuine requirement under Section 14(1)(e) of the Delhi Rent Control Act, 1958 needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against." Do you agree with this proposition? Elucidate your response with reference to decided cases. (10 marks)
- Q. 1. (b) What are the conditions of applicability of Section 14(1)(e) of the Delhi Rent Control Act, 1958? (5 Marks)
- Q. 1. (c) Can a perpetual lessee of a property constructed on government land seek eviction of a tenant under section 14(1)(e) of the Delhi Rent Control Act, 1958? (5 Marks)
- Q. 1. (d) How do you interpret the word 'dependent on the landlord' in terms of section 14(1)(e) of the Delhi Rent Control Act, 1958, as amended. (5 Marks)





- Q. 2. (a) What is iddat? What is the object of iddat? (5 marks)
- Q. 2. (b) When is observance of iddat necessary? (2 Marks)
- Q. 2. (c) When is iddat not necessary? (2 Marks)
- Q. 2. (d) What is the period of iddat? (2 Marks)
- Q. 2. (e) What is the effect of death of the husband during iddat of divorcee? (2 Marks)
- Q. 3. (a) What is defamation? Is it actionable as a tort? (5 Marks)
- Q. 3. (b) What privileges can be claimed as defence for defamation? (5 Marks)
- Q. 3. (c) Differentiate between tort and crime. (5 Marks)
- Q. 3. (d) What are the rules laid down in:
(a) Rylands v. Fletcher (1868) LR 3 HL 330.
(b) Rule of strict liability in M. C. Mehta & Anr. v. Union of India and Ors. Decided on 20.12.1986. (10 Marks)
- Q. 4. (a) What is the effect of the Hindu Succession (Amendment) Act, 2005 on the rights of Hindu women? (10 Marks)
- Q. 4. (b) What is Stridhan? (5 Marks)
- Q. 4. (c) What are the essential features of a co-parcenary property? (5 marks)
- Q. 5. What are the grounds on which divorce may be obtained the Hindu Law? (5 Marks)
- Q. 6. (a) What is dower? Specify the kinds of dower. (2 Marks)
- Q. 6. (b) How can a claim for dower be satisfied? (2 Marks)
- Q. 6. (c) When can a Muslim wife seek dissolution of marriage? (2 Marks)
- Q. 7. (a) How can irregular marriages be made valid under the Muslim Law? (2 Marks)
- Q. 7. (b) When does oral talaq become effective? (2 Marks)
- Q. 7. (c) How is written talaq effective? (2 Marks)





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CIVIL LAW II

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(PART - A)

1. Bansi (Plaintiff) in possession of House No. P-53, Seelampur, Delhi (suit property) has filed a civil suit on 05.01.2016 against Ramesh seeking declaration that he (Plaintiff) is the owner of the Suit property and for injunction against any interference in his possession, use or enjoyment thereof. The suit is contested by Ramesh (defendant) on the basis of registered sale deed executed by the plaintiff on 31.12.2010 transferring the suit property for consideration of Rs. Ten lacs in his favour. In the pleadings, the following facts are admitted:(30 Marks)

1. The Plaintiff had purchased the suit property for consideration of Rupees Eight Lacs from its erstwhile owner in the year 2009.
2. On 31.12.2010, the plaintiff, in possession of the suit property, executed the sale deed relied upon by the defendant.
3. On 31.12.2010, simultaneous to the sale deed, the plaintiff also executed a rent-note, indicating the lease money to be Rupees Ten Thousand per month, in respect of suit property in favour of the defendant.
4. The plaintiff issued cheques for amounts of Rupees Ten Thousand each on 01.02.2011 and 01.03.2011, both of which when presented by the defendant returned dishonored for want of sufficient funds.
5. The defendant instituted a suit under Order 37 of Code of Civil procedure, 1908 (CPC) on 01.06.2011 against the plaintiff pleading that he is the owner and landlord, seeking recovery of rental on the basis of two cheques. The said suit (former suit) was contested by the plaintiff, inter alia, on the pleadings that the sale deed and the rent note were sham documents and that the true & correct facts were that he being in urgent need of money for renovation of the newly acquired house had raised a loan of Rupees Ten Lacs from the defendant and that the said document were executed only as a security.
6. The civil court decreed the suit, inter alia, holding that the defendant is the owner and landlord of the property qua the plaintiff.
The defendant in the suit for declaration & injunction moves an application under Order 7 Rule 11 CPC raising the following issues:





- (a) The suit is barred by principle for res judicata in view of the decision in former suit;
- (b) The plaintiff cannot lead oral evidence contrary to the written contracts in the nature of the sale deed and rent note, the execution whereof is admitted, in view of the bar contained in Section 92 of the Indian Evidence Act.

The plaintiff urges that the principle of res judicata & bar of Section 92 Indian Evidence Act, 1872 do not apply in the present case. Decide.

(40 Marks)

Q. 2. Ramlal filed a partition suit against his father Nanak and two brothers, namely Kishori and Kannihya in respect of joint family property comprising of four houses (i.e. 'P', 'Q', 'R' and 'S'). All three defendants appeared and filed their respective written statements. However, thereafter Kishori stopped appearing and was proceeded ex parte. During the further proceedings, before the trial commenced, the parties that were contesting filed an application for compromise along with a compromise deed, inter alia, declaring as under:

- (a) That property 'P' belonged exclusively to Ramlal, the others having no claim or concern with or interest in it.
- (b) That property 'Q' belonged exclusively to Nanak, the others having no claim or concern with or interest in it.
- (c) That property 'R' belonged exclusively to Kishori, the others having no claim or concern with or interest in it.
- (d) That property 'S' belonged exclusively to Kannihya, the others having no claim or concern with or interest in it.
- (e) That the parties are in separate & exclusive possession of the properties respectively belonging to them and further that they have obtained separate and exclusive possession of the properties respectively allotted to their shares.

The trial court, after recording the statements of the said parties, was satisfied and accepted the petition of compromise, and passed a compromise decree on 03. 04. 1964, treating Kishori as ex-parte.

Kishori later filed an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (CPC) through his son & special attorney Sudama, on which notices were issued. However, before effective proceedings could take place on the said application. Kishori died. No steps were taken in terms of Order 22 CPC and the said proceedings were closed.

In the year 1973, Sudama, son of late Kishori, brought a fresh suit for partition, also seeking declaration that the earlier decree had been obtained by fraud, also contending that no proceedings had been initiated for any follow up on the decree based on compromise.

The defendants in the above mentioned suit of Sudama, namely Ramlal, Nanak and Kannihya, contested this suit contending that the partition had effectuated in terms of the compromise decree, attaining finality.

The arguments raised by Sudama are:

1. The compromise decree was non est as Kishori was not a party thereto;
2. The parties to the first suit had not brought any application for final decree of partition to be passed; and
3. That with no execution application having been moved, the compromise decree has not given effect to any partition.





The defendants in the suit assert that they are in exclusive possession of the respective properties, which fell to their share in terms of the partition under the compromise decree, and the same has attained finality.

Decide.

(40 Marks)

Q. 3. Gurnam Singh executed a registered Will on 02. 01. 1943 in favour of his wife Des Rani. According to the terms of the Will, on the demise of Gurnam Singh, his estate comprising of a house at Patel Nagar, would devolve unto Des Rani, who will be limited owner during her life time without any right of alienation, and upon her death, the house would devolve unto their only daughter Kulwinder Kaur. Gurnam Singh died on 16.12.1946.

Des Rani, during her life time, gifted the property in favour of Gurdeep Singh and executed a registered gift deed on 13.12.1956 and also parted with possession in his favour. Des Rani died on 14.03.1968.

After her death, Kulwinder Kaur filed the present suit for possession and injunction against said Gurdeep Singh in the year 1978.

While the statement of Kulwinder Kaur was being recorded and before she could be tendered for cross-examination, Kulwinder Kaur expired and her legal heirs were brought on record. During her said deposition, late Kulwinder Kaur had brought on record the certified copy of the Will dated 02.01.1943. In the said suit, the legal heirs have relied upon the testimony of Kulwinder Kaur and the certified copy of said Will.

The counsel for defendants argued that the suit of plaintiff is liable to be dismissed, inter alia, on the following grounds:

1. Since Kulwinder Kaur died before her testimony could be completed, her testimony being incomplete and not subjected to cross-examination, cannot be considered at all; and
2. The plaintiffs have not proved the Will dated 02.01.1943 in Indian Evidence Act. accordance with the provisions of Per contra, the counsel for the plaintiffs argued that evidence of Kulwinder Kaur, though not subjected to cross-examination, is admissible in the eyes of law and cannot be discarded. In respect of the Will dated 02.01.1943, the Plaintiff submitted that since the registered Will is more than 30 years old document, and is being produced from proper custody, under Section 90 of the Indian Evidence Act, it should be presumed that the signature and every part of the document is in the handwriting of the person concerned, and that the Will was duly executed.

Decide.

(20 Marks)

(PART-B)

Q. 1. A entered into an agreement with B for purchase of an immovable property on 20.12.64. The agreement was got registered. It was agreed that the sale deed was to be executed by B within 03 months of the date of getting due permission for sale from other co-owners. Possession of the suit property was also delivered to A by B.

A died in 1972, whereas B died in 1965. C is the successor in interest of A, whereas E is the successor in the interest of B. In 1993 C wanted to sell the suit property to D. D issued a public notice inviting objections, if any, to the intended sale/purchase of the suit property. E filed her objections on 21.11.93. Thereafter, C filed a suit against E on 06.04.94, for specific





performance of the agreement dated 20.12.64 and for perpetual injunction restraining E from interfering with his possession of suit property.

It was pleaded by C that the entire sale consideration was paid by A on 20.12.64 itself to B and possession of the suit property was also handed over to A and nothing remained to be done on part of A or his successor in interest. It was further stated that C came to know on 21.11.93 that E was refusing to perform his part of agreement and therefore he filed the present suit on 06.04.94.

The suit was contested by E raising a preliminary objection that the suit for specific performance and injunction was barred by limitation as it was filed after about 30 years of the agreement to sell dated 20.12.64.

Decide the preliminary objection

(15 Marks)

Q. 2. Plaintiff/A was inducted as a tenant in respect of half portion of suit property on a monthly rent of Rs. 300/- w.e.f. 22.12.70 by the defendant/B. On 24.12.70 the defendant/B executed an Agreement to Sell the suit property to plaintiff/A for a sum of Rs. 3,75,000/-, out of which a sum of Rs. 50,000/- was paid by A to B as part payment on the same day. It was stipulated in Agreement to Sell that defendant/B will obtain Tax Clearance Certificate from Income-Tax Authorities for sale of suit property and shall deliver a copy of the certificate to the plaintiff within 12 months from the date of execution of agreement dated 24.12.70. It was further agreed that within 03 months thereafter the plaintiff/A shall pay the balance sale consideration on receipt of which defendant/ B shall execute sale deed in favour of the plaintiff/A.

On 05.11.77 the plaintiff/A filed a suit for specific performance of agreement dated 24.12.70 alleging that he had written a letter dated 29.12.71 to the defendant/B enquiring about the necessary Tax Clearance Certificate. On failure of defendant/B to reply to the said letter, plaintiff/ A had issued a legal notice dated 16.11.72 reiterating his readiness to tender the balance consideration and asking the defendant/B to fulfill his part of obligation and execute the sale deed. The defendant/ B vide notice dated 18.09.77 terminated the tenancy of plaintiff/A qua half portion of the suit property. It was specific plea of the plaintiff/A that the suit for specific performance of agreement to sell dated 24.12.70 could not be instituted earlier, as defendant/B was all along residing in London.

Denying the claims of plaintiff/A, the defendant/B contended that the suit was liable to be dismissed being barred by limitation.

The defendant/B admitted the execution of Agreement to Sell dated 24.12.70 but claimed that the plaintiff/A was not entitled to any relief, as he had himself breached conditions of the Agreement. As regards plea of plaintiff/A that defendant/B was not in India from Dec. 1970 till Sept. 1977, the defendant/B claimed that he was in India during following periods:

1. From 19.12.70 to 30.12.70
2. From 18.08.71 to 13.09.71
3. From 31.10.72 to 12.11.72
4. From 04.09.77 to 03.10.77

Quoting relevant provisions of Limitation Act, give your findings with detailed reasons, as to whether the suit of plaintiff/A is barred by limitation or not.

(20 Marks)





Q. 3. L filed a suit for declaration and injunction against M claiming that under a family settlement he was given a plot of agricultural land and residential house, both part of ancestral property. He was in possession of both the land as well as the residential house. However, now M is refusing to admit the claim of L to the agricultural land and the residential house negating the family settlement and is threatening to dispossess L, both from agricultural land and residential house.

On service of summons, M appeared before the court and filed his written statement admitting the entire claim set up by L and gave a statement before the court that a consent decree in favour of L may be passed in terms of relief claimed by him. The suit was accordingly decreed vide judgment dated 24.11.80 in favour of L.

Thereafter another suit was filed by N, son of M, claiming that judgment and the decree dated 24.11.80 was obtained by L and M in collusion with each other and that there was no family settlement whatsoever. The agricultural land and residential house being ancestral property, M could not have gifted the same to L. Further, the decree dated 24.11.80 amounted to gift of suit property by M to L and could have been made only through a duly stamped and registered document. The decree being neither registered nor stamped could not be acted upon.

During trial, it was proved that there was no family settlement, wherein the agricultural land and residential house were given to L and that the suit property i.e. agricultural land and house were part of self acquired property of M.

Decide the suit filed by N in view of plea raised by him that the decree passed vide Judgment dated 24.11.80 not being registered and stamped, could not be acted upon.

(15 Marks)

Q. 4. A as guardian/father of B entered into an oral agreement with C for sale of his house/suit property on 28.02.06 for a sum of Rs. 1,80,000/-. Sale deed was agreed to be executed and registered on the same day. C purchased the stamp papers, paid the entire sale consideration and was handed over possession of the suit property by A and B on the same day. They also executed the sale deed in favour of C, which was taken to office of Sub Registrar on the same day i.e. 28.02.06. The sale deed, however, could not be registered. It is the plea of C that Sub Registrar informed them that there was an order of attachment against the suit property and that A and B had promised C that they will get the attachment removed and get the sale deed registered at the earliest. On failure of A and B to get the sale deed registered, C issued a legal notice to A and B on 05.02.07, where after A and B tried to dispossess C from the suit property.

C filed a suit seeking direction to A and B to execute fresh sale deed and prayed for relief of permanent injunction restraining A and B from : disturbing possession of C.

In defence, A and B claimed that they had taken a loan of Rs. 1,75,000/- from C and had executed an agreement to sell (not sale deed) in favour of C on her insistence. C had fraudulently got prepared sale deed and therefore A and B had refused to get it registered. In evidence, C tendered the unregistered sale deed in support of her case, which was refused to be admitted in evidence by trial court on the ground that it was an unregistered document.

C challenged the order invoking Sec. 49 of the Registration Act, 1908.

Decide whether the sale deed could have been admitted in evidence or not.

(15 Marks)





Q. 5. Write short notes on the following:

- (i) Effect of acknowledgement/part payment on computation of limitation.
- (ii) Limitation in case of suit with application for leave to sue as pauper.
- (iii) Effect of death of a person on or before accrual of right to sue/be sued.
- (iv) The persons authorized to present a document for registration.
- (v) The period within which a document can be presented for registration.

(15 Marks)

