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## JUDICIARY EXAMS QUESTION PAPER

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**Delhi Judicial Service**

**Mains Examination, 1996**

**Question Paper**

### **CRIMINAL LAW 1996**

**Q. 1.** On 05.06.94 at 5 A.M. Police Control Room received information that an incident had taken place in House No. 10, New Colony. The police reached there and found that wife of the accused had been murdered. The accused told police that he slept with his wife in the back verandah after his brother retired to his bed-room at 10 P.M. He locked the collapsable door of the verandah. His wife wearing gold ornaments. At 1.30 A.M. he felt chilly so went to sleep in the bedroom. He came out at 4 A.M. to urinate and found his wife almost naked upto thighs, her tongue protruding and on touching her he found her dead. He also noted some scratches on her tongue neck and her gold ornaments missing from her body. He told that his wife as strangled by somebody while committing theft of her ornaments. He screamed and his brother and neighbour collected. His telephone was out of order so he asked his brother and neighbour to inform the police. Police found injuries in the nature of bruises etc., on the front part of the body, on the neck, as well as on the back of the accused. The accused was tried for committing the murder of his wife. There was no eye witness of the occurrence. The circumstances set up by the prosecution against the accused during trial were:-

- (i) Information to the police at 5 P.M. given by a neighbour and not the accused.
- (ii) The accused having slept alone at night in the verandah with the deceased after having locked the collapsable door of that verandah from inside and the lock having been found in the corner of the back courtyard in the morning without being tampered with;
- (iii) The deceased and the accused were last seen together;
- (iv) The ornaments, which were stated to be on the person of the deceased while she was sleeping, and which were found missing when she was discovered and having been recovered from the drain hole of the bath-room attached to the bed-room of the accused in consequence of and in pursuance of a disclosure statement made by the accused;
- (v) Injuries found on the person of the accused in the nature of abrasions, contusions, and lastly;
- (vi) The accused having given false information to the police by means of his statement.

Other evidence was that relation between accused and his wife were cordial and there was some discrepancy in the statement of the witnesses of recovery of gold ornaments. About injuries on his person accused alleged that he was beaten up by the police. Write a judgment.

OR

**Q. 1.** *B* was neighbour of *A*. He had illicit relations with *A*'s wife *C* for many years. On 31.03.1993 *B* went to sleep in his house in the evening and did not appear thereafter. On 04.04.1993 brother of *B* lodged a report with the police expressing suspicion against *A* and *C*. During the course of investigation *A* allegedly made disclosure statement and consequently led the police party to his sitting room where he pointed out a spot covered by a cot. He thereafter dug the floor and dead body of *B* was recovered from a five feet deep grave. At *A*'s pointing out the police also seized a wood cutter and a knife from a bag hanging in the adjacent room. Knife had no blood stains while wood cutter had it and serologist on examination found it to be human blood and of the same group as that of deceased *B*. Both *A* and *C* were tried

for offence under section 201/34 and 302/34 Indian Penal Code. The entire case of prosecution is based on circumstance evidence. The circumstances relied up by the prosecution are:

- (i) The deceased had illicit relations with *C*, wife of *A*;
- (ii) The deceased was last seen on the night of 31.06.93 when he went to sleep in his house and thereafter his dead body was found buried in the house of accused;
- (iii) *A* on interrogation made disclosure statement leading to recovery of the dead body from a five feet deep pit in the sitting room of *A*;
- (iv) Recovery of wood cutter from the possession of *A* which was found to bear the same human blood group as that of the deceased.

50

Write a judgment.

(Section 201 Indian Penal Code causing evidence of commission of offence to disappear, section 302 Indian Penal Code committing murder, section 34 Indian Penal Code commission of offence in furtherance of common intention).

**Q. 2. (a)** 'X' on hearing that his brother *Y* was being beaten up by an iron by *Z* reached the spot. He found the accused abusing and saying to the victim that he would not let him remain alive. On seeing 'X' and other coming he ran away. 'X' removed his injured brother to the hospital where *Y* died. 'X' reported the matter to the police naming *Z* as the sole accused of crime. During interrogation two witnesses claimed to have seen and heard before hand *A*, brother of *Z*, to have exhorted the accused to kill the deceased whereafter the actual assailant is said to have assaulted the deceased. Police filed challan against *Z* on the basis that *A* was not involved in the crime. *X* moved application before the Magistrate to summon *A* also so as to send him to stand trial alongside *Z* before the Court of Sessions. Decide *X*'s application.

OR

**Q. 2. (a)** *A* filed a complaint with the allegation that *B* had conspired and fabricated an agreement of sale and forged the signature of *C* and on the basis thereof he attempted to claim retention of the possession of the remaining part of the house. Magistrate examined witness under

section 202, Cr.P.C. and ordered issue of summons to B. B then filed a civil suit for injunction to restrain C from interfering with his possessions and produced the agreement of sale in question. Thereafter B filed an application to quash the complaint on the ground of bar under section 195, Cr. P.C. decide his application. 25

**Note:** Section 195 Cr.P.C. bars a Court from taking cognizance of any offence punishable under section 471, I.P.C. etc., (using forged document as genuine) when such offence has been committed in respect of a document produced or given in evidence in a proceeding in any court.

**Q. 2. (b)** 'A' wife, applies and gets maintenance fixed for herself and her new-born child. The husband denies paternity and applies to the court for blood group test of the mother and the child and his own. Write a reasoned order.

OR

**Q. 2. (b)** A case of criminal breach of trust was registered against 'X'. The police (i) arrests 'X', (ii) searches the premises of 'X', (iii) freezes his bank account, (iv) seizes property found in his possession connected with crime. 'X' raises objection that he should have been given opportunity of being heard before these actions. Dispose of his objection. Also discuss the application of principle of *audi alteram partem* in criminal proceedings. 25

**Q.3. (a)** "Rules of evidence are in general the same both in civil and criminal cases".

Comment on the correctness of the above statement. 25

OR

"If a person has a right to live, he also has a right not to live."

**Q. 3. (b)** Write short notes on any two of the following:-

- (i) Maxim "*Falsus in uno falsus in omnibus*"
- (ii) Maxim "Evidence has to be weighed and not counted.
- (iii) Rule of *Res gestae*
- (iv) "Doctrine of Bar of *antefois acquit* and *antefois convict*"
- (v) "Retracted confession". 25

## CIVIL LAW-I, 1996

**Q. 1. (a)** How does an adoption effect the rights and status of adoptive child *vis-a-vis* his family of birth and family of adoptive parents? Discuss. 15

**Q. 1. (b)** *A* was adopted by *H* and *W* (Both Hindus), a Husband and Wife. An adoption deed was executed and duly registered wherein both *H* and *W* conferred rights of ownership on *A* in all their properties (including the stridhan of *W*). They also agreed that none of them will make any alienation of the properties mentioned in the adoption deed. Later on *H* dies. After sometime, the relation of *A* and *W* become strained. *W* sold a part of property out of her stridhan, which was in possession of *A* to *P*. *P* then filed a suit for possession against '*A*' who contested the suit on the ground that in the face of the adoption deed *W* has no right to alienate the property as at the time of adoption deed *W* had agreed not to alienate the property and it was so mentioned in the adoption deed. Discuss whether *P* can succeed and whether the restriction suffered by *W* is valid. 10

**Q. 1. (c)** What are the legal provisions regarding restitution of Conjugal rights and judicial separation under Hindu Marriage Act? Discuss in the light of case law? 15

**Q. 1. (d)** Mahesh and Meera (Both Hindus) are husband and wife and are living very decently. Mahesh in connection with his business has generally to go out of towns on tours and sometimes even for a

**Q. 4. (i)** Discuss the law of exemption from Criminal liability in case of minors. 30

**Q. 4. (ii)** '*A*' an illiterate boy, servant of 8 years stole a new 'Parker' Fountain Pen worth Rs. 300/- from the table of his employe and sold to *B*, a student aged 21 years and reading in M.A. for Rs. 10/- only. Both '*A*' and '*B*' are put on trial. The former is charged with theft and latter for receiving the stolen property. 10

**Q. 4. (iii)** A boy over 11 years and below 12 years of age picked up a knife and proceeding towards the deceased with a threatening gesture saying that he would cut him into pieces actually stabs him to death. Is he guilty of murder? Give reasons? 10

OR

**Q. 4. (i)** What is meant by privileged communication? Explain the law. 30

**Q. 4. (ii)** A person approaches a lawyer, "I have forged the documents kindly defend me". Is it a privileged communication? 10

**Q. 4. (iii)** A warder of a prison promised to post a letter given to him by a prisoner. The letter was addressed to the prisoner's father and contained confession signed by the prisoner. Instead of posting, the warder sent the letter to the Public Prosecutor, who wanted to use it at the trial of the prisoner. Is it admissible as a confession? Give reasons. 10

week or more. Once on his return from tour, he found a letter addressed to Meera, his wife. He opened the letter and found that his friend Naresh had written the letter to thank Meera for her stay with him for two days in local hotel when husband was away. Mahesh then showed the photocopy of letter to Meera, who denied having any intimacy with Naresh. However, she left the matrimonial home under unbearable pressure from Mahesh and started living with her parents. Mahesh then applied for divorce. Will he succeed? What defence is available to Meera? Discuss. 10

OR

**Q. 1. (a)** It is often said that "Muslim Marriage is a Civil Contract" - Can parties to this contract put any condition to contract they like? Discuss. 10

**Q. 1. (b)** Nazma, a Muslim girl was married to Ahmed when she was 13-year-old. After 6 months she went back to her father's house and refused to come back to Ahmed's house. Ahmed filed a petition for restitution of conjugal rights. Nazma pleaded she is no longer his wife as immediately on attaining the puberty she had repudiated the marriage with him. In rejoinder Ahmed pleaded consummation of marriage and stated that she had lost the right of option to repudiate the marriage on attaining puberty. Decide who will succeed. Give reasons. 10

**Q. 1. (c)** Mahmood has got property worth Rs. 10 lacs. He has to pay Rs. one lac to his creditor and Rs. 50,000/- to his wife as dower. He bequeaths his entire property by will in favour of his son. Mahmood dies without discharging his debt. Whether the son will succeed on Wasayat? Discuss. 10

**Q. 1. (d)** Akbar an NRI resides in London, offers to marry Waheeda in Delhi by long distance call over the phone. Waheeda accepts the offer on phone. Is this a valid marriage under Muslim Law? Discuss. 10

**Q. 1. (d)** Rehman is suffering from Blood Cancer and is bed ridden. When he comes to know of it he makes a gift of all of his property in favour of his wife, 6 months later he dies. His legal heir challenges the gift (Hiba), Will they succeed? Discuss. 10

**Q. 2. (a)** M/s Jainsons, a firm dealing in readymade garments advertises in newspaper about Clearance Sale of their stocks. C, a customer visits the shop, picks up a shirt lying in the lot with price tag of Rs. 400/-, takes to salesman, asks him to pack the shirt and prepare the bill. Salesman discovers that shirt in question should have been in the lot of articles with price tag of Rs. 500/- and refuses to sell the shirt to C and tell him it was wrongly put in the lot of articles with price tag of Rs. 400/-. Can C compel the firm Jainsons to sell the particular shirt to C at Rs. 400/-? Discuss whether contract had been concluded. 12

**Q. 2. (b)** X, a resident of Ambala is in the manufacturing business of household appliances. For the past five years he is participating in display of goods in Exhibition-cum-Sale held every year at Ashoka Hotel, New Delhi. X used to send his goods through a particular transporter, who had knowledge about X participating in Exhibition-cum-Sale. In 1995, he again delivers his goods to same transporter well in time for the purpose of participating in Exhibition-cum-Sale, also mentions so in the consignment note. But this time due to negligence on the part of employee of the transporter, goods reached New Delhi only after the exhibition. X then files a suit for loss of his freight charges as well as for the loss of profits which he would have made in Exhibition-cum-Sale. Will he succeed? Discuss. 12

**Q. 2. (c)** Free consent is an essential element of contract. Discuss whether the contract entered upon with the consent which is not free is void or voidable? 12

**Q. 2. (d)** B holds agriculture land on lease from 'A' the landlord. A was in arrears of land revenue payable to Government. The land was advertised for sale by the Government. Consequent to the sale taking place lease in favour of 'B' is also liable to be annulled under Revenue Laws. B in order to prevent the same pays arrears to Government. Can B recover the same from A? Decide. 12

OR

**Q. 2. (a)** What are the tests to determine the existence of Partnership firm? Discuss. 12

**Q. 2. (b)** A is the Karta of a Hindu Undivided Family (HUF) which was carrying on whole sale business of food-grains. S one of the sons

of 'A' joined the HUF business on a monthly salary of Rs. 5,000 only from April, 1994. In November, 1994 business was converted into partnership between A as Karta of HUF and S. Partnership deed was also executed in November, 1994 which indicated S having been admitted as partner w.e.f. November, 1994 having 30% share in profit and loss; remaining 70% remained with A as Karta of HUF. Partnership firm applied for registration with income tax authorities, who refused to register the firm on the ground that there was no valid partnership. Whether refusal is justified? Comment. 12

**Q. 2. (c)** In the year 1970, Ram and Sham entered into a partnership. They agreed that if any one of them died, the firm would not be dissolved but the eldest child of the deceased partner would be taken as partner in the firm. Sham died in 1975. His son Kumar was taken in as partner. In the year 1976, they applied for the registration of firm with Income Tax Authorities. But the ITO refused to register their firm on the ground that on the death of Sham, firm was dissolved. Ram and Kumar cannot be treated as partner. Ram relied on sections 42(c) and 31 of Partnership Act. Do these provisions help Ram for registration of firm? Discuss. 12

**Q. 2 (d)** A, B and C are partners of firm which has not been registered under section 69 of Partnership Act. X had purchased goods worth Rs. 10,000 from the firm on 15.04.1995. Firm filed a suit against X on 01.10.95 as X did not pay the amount. Firm applied for registration on 15.10.95 and certificate of registration was issued on 01.11.95. X filed written statement on 01.12.95 and also took plea that firm was not registered and suit was liable to be dismissed. How would you decide? 12

**Q. 3. (a)** What are the rules regarding transfer of property in goods as per Sale of Goods Act. 10

**Q. 3. (b)** Haryana Oil Mills is engaged in the business of manufacture of vanaspati. For their raw material, they are allocated vegetable oil by Government of India up to certain percentage. Oil is supplied by STC, which imports the same from foreign countries. The Mill was allocated 300 MT of oil at the issue price of Rs. 8,000/- P.M.T. The Mill paid the entire price for 300 MT and were issued 3 separate delivery orders dated 15.01.1993, 15.02.1993 and 15.03.1993. All these orders had an endorsement regarding price to be charged as on date of

delivery after the measurements are taken, since the oil was to be taken out of large containers and then supplied to buyer. The Mill had taken delivery of 200 MT. But when they went to take delivery of 3rd installment by then prices had been revised to Rs. 10,000/- P.M.T. STC claimed difference in price. Haryana Mills refused to pay as they pleaded that they had already made the full payment for 300 MT and are not liable to pay enhanced price. Discuss their rights and obligations. Whether STC could refuse to deliver remaining 100 MT vegetable oil at pre-revised price. 15

**Q. 3. (c)** A manufacturer of wollen cloths sold woollen cloth to a tailor on the basis of particular sample. The tailor had purchased the cloth for particular purpose but he had not told the seller about the same. Owing to latent defect in cloth as well as in sample, the cloth turned out to be unfit for the purpose for which tailor had purchased, though the same was fit for other purposes. Tailor filed suit for damages will be succeed. Decide. 10

**Q. 3. (d)** "*Nemo dat quod non habet*" Explain. A buys a cow for Rs. 1500/- and makes payment to B but does not take delivery. Subsequently B sold the cow to C for Rs. 1800/- and delivers it to C, B leaves his house and is untraceable. Can A sue C for recovery of Cow. 15

OR

**Q. 3. (a)** A applies to a banker for loan when there is stringency in the money market. The banker declines to make the loan except at unusual high rate of interest. A accepts the loan on the terms of high rate of interest. Can A refuse to pay high rate of interest taking the plea of undue influence? Discuss. 12

**Q. 3. (b)** An administrator of estate agreed to pay X his share of the estate if X would give a promissory note for portion of a time barred debt claimed by A from him. X executed a promissory note in favour of A, gave it to administrator and received his share of estate. A sued X on the promissory note. X pleads it was without consideration. Who will succeed? Decide. 12

**Q. 3. (c)** A, a minor having well built body and quite tall falsely represented his age and obtained a loan of Rs. 10,000 and spent the

loan amount for his luxuries. The money lender filed a suit for recovery of money on contract and also in the alternative asked for damages arising out of tort of deceit committed by *A*. Can *A* be held liable either on contract or in torts? Discuss. 12

**Q. 4. (d)** *P* gave his new woollen suit for drycleaning to a drycleaner. The woollen suit was destroyed due to negligence of drycleaner. *P* claimed the market price. Drycleaner relied upon the condition printed on the back of the bill to the effect that customer would be entitled to claim 50 percent of the market price of the suit and pleads condition to be a part of contract. Whether condition so put by drycleaners is valid and enforceable? Discuss. 12

**Q. 4. (a)** Which are those contract which cannot be specifically enforced? Discuss with relevant case law. 12

**Q. 4. (b)** *A* had agreed to sell a house to *B* 15 lacs. Rs. 5 lacs are paid as advance. After one month further Rs. 5 lacs are paid and *A* put *B* in possession of house and balance amount of Rs. 5 lacs are to be paid on completion of paper work and registration of sale deed. *A* fails to keep his commitment. *B* files a suit for specific performance of contract which is decreed. Court allows *B* two months time to make balance payment. However within the time allowed by Court decree *B* fails to make payment of Rs. 5 lacs. *A* then applies for rescission of decree and contract. Will *A* succeed? Discuss. 12

**Q. 4. (c)** *A* is in possession of lands for the last 20 years and had been forcibly dispossessed by *B*. *A* filed a suit for recovery of possession against *B* within 6 months of his dispossession. *B* in his defence denied forcible dispossession and also stated that suit for possession did not lie without proof of title. He also pleaded that a prior trespasser cannot eject a later trespasser. *A* in fact had no title deeds. How would you decide? 12

**Q. 4. (d)** What are the circumstances under which an injunction in the Mandatory form can be issued by Court? Whether it can also be issued at interlocutory stage? 12

OR

**Q. 4. (a)** *A* had let out a shop to *B* where *B* was running his business. After the death of *B*, his eldest son *C* continued the business and for

## CIVIL LAW-II, 1996

**Q. 1. (a)** 'A' owned some land, which 'B' was cultivating as a tenant. 'A' had four sons 'C', 'D', 'E' and 'F'. After 'A's death, the land was sold by 'C', 'D', 'E' and 'G' son of the pre-deceased son 'F' to 'H' vide registered sale deed dated 12.02.1968. 'H' filed a suit for recovery of possession against 'B'. 'B' contested the suit on the ground *inter alia* that there are other co-owners of the property and since all the co-owner have not joined in filing the suit, the suit is bad for non-joinder of necessary parties. In the written statement, he also gave the pedigree table of A but did not lead any evidence in this regard. The revenue record also did not show that there was any evidence in this regard. The revenue record also did not show that there was any other sometime had been paying rent also. Later on C committed default in the payment of rent so much so that an eviction order is passed by Rent Controller on the ground of non-payment of rent. When A sought to execute the eviction order other heirs of B namely his wife and other son filed objections pleading that C was not the exclusive tenant, they had also inherited the tenancy. Whether their objections have any merits? Decide. 15

**Q. 4. (b)** A landlord lets out a premise for the purpose, which is contrary to term of perpetual lease granted to landlord by DDA. DDA threatens to cancel the lease on the ground of misuser. Can landlord seek eviction of tenant under section 14(1)(k) of Delhi Rent Control Act? What defence is open to tenant in such a case? Discuss. 10

**Q. 4. (c)** X and Y (landlord and tenant) are living peacefully in the same building, which is quite old. Municipal Authorities gave notice to landlord for repairs of one of the walls. For repair of wall it is necessary that water and electric supply be cut off. However, even after the repair of wall, landlord does not get the supplies restored from MCD. Tenant files a petition under section 45 of Delhi Rent Control Act. Landlord pleads he had to get the supplies disconnected under forced circumstances? How would you decide? 12

**Q. 4. (d)** In an eviction petition by landlord against his tenant an order under section 15(1) of Delhi Rent Control Act is passed directing the tenant to pay arrears of rent within one month of the date of order and also to pay future rent month by month. Tenant paid the amount to his Advocate, who handed it over to his clerk for deposit. But the clerk due to some personal needs spends the money and does not deposit. Landlord filed an application under section 15(7) Delhi Rent Control Act for striking the defence of tenant. Tenant pleads for extension of time and negligence of the clerk of counsel? How would you decide? 12

legal heir of *A* except '*C*', '*D*', '*E*' and '*G*' at the time of sale. So '*H*' contended that he is the sole owner and suit is not bad for non-joinder of other co-owner. Decide the question of non-joinder of parties by a reasoned order. 25

**Q. 1. (b)** *A* is survived by his widow, daughter, sister and four brothers. On a partition suit filed by *B*, one of the brothers of deceased *A*, the disputed property fell to the share of *C*, the daughter of *A*. During the pendency of partition suit filed by *B*, *B* was appointed receiver of the entire estate of *A*. In this capacity *B* inducted *D* as a tenant and took some advance from *D* but the possession of whole of leased premises was not given to *D*. So, *D* filed a suit against *B* for recovery of the amount of advance. This suit was decreed against *B* and his estate. In execution of this decree *D* purchased the suit land belonging to *C* in auction and then transferred it to some other persons without any notice to *C*. *C* then filed a suit for recovery of possession of her land. The suit was resisted by *D* and his transferees on the ground, *inter alia* that the same is barred by section 47 C.P.C. Decide whether the bar created by section 47 C.P.C. will apply to the suit filed by *C*. 25

OR

**Q. 1. (a)** *A* became a tenant of seven lots of account grove under *B*. Annual rental agreed was Rs. 3,600/- to be paid in three installments. *A* filed a suit for declaration and injunction alleging that *B* with the help of *C* is trying to cast clouds on his tenancy rights and to dispossess him. The Court found that *A* had already been dispossessed. The suit was therefore dismissed on the ground that suit for mere declaration does not lie in view of the prohibition contained in the Specific Relief Act, without seeking the consequential relief of possession.

*A* then filed another suit for possession of the land under his tenancy. The suit was resisted on the ground, *inter alia* it is barred by principles of *res judicata* and also under Order 2, Rule 2, C.P.C. Decide giving reasons for your decision, whether the defendant's plea is sustainable. 25

**Q. 1. (b)** *A* obtained a decree for possession of immovable property against *B*. That decree became final. Thereafter *A* files execution application dt. 24.05.1979 under order 21, Rule 35(3), C.P.C. The

execution was resisted by *C* whereupon *A* filed an application on 25.05.1979 complaining of resistance by *C* and seeking police aid for execution of decree. *C* does not claim through *B*. So the Court directed *A* to file an application under Order 21, Rule 97, C.P.C. *A* filed the application under Order 21, Rule 97, C.P.C. on 18.07.1979, but the said application was dismissed as being barred by Limitation under Article 129 of the schedule to Limitation Act. *A* then filed another application under Order 21, Rule 97, C.P.C., which too was dismissed as being barred by *res judicata*. *A* filed appeal contending that the very first application dt. 25.05.1979 under Order 21, Rule 35(3) could be treated as the one under Order 21 Rule 97, C.P.C. so the application was within time. How will you decide the appeal? 25

**Q. 2. (a)** *A* and *B* two brothers were attacked by the appellants, causing them serious injuries to which both the brothers succumbed. Soon after the incident, *C*, wife of *B* went to the spot. She found *A* lying unconscious but her husband though injured was conscious and told her that the appellants had attacked them with lathis and other weapons. *D*, father of *A* and *B* also rushed to the spot and *B* made a similar dying declaration before *D*. Trial Court convicted the appellants believing the statement of *C* & *D*. In appeal, it was contended on behalf of appellants that both *C* & *D* are close relations of the deceased *B* so the dying declaration made to them should not be made the basis of conviction, because there was no independent corroboration. How would you decide the appeal? 25

**Q. 2. (b)** Six appellants were convicted under sections, 395, 396, 395 read with section 397, I.P.C. for having looted a passenger bus at about 11 p.m. on a moonless night and having caused death of one passenger. The sole basis for their conviction was their identification by different PWs in the identification parade conducted by the Executive Magistrate the evidence showed that after their arrest, the accused persons were kept in the police station for 2 days and that at the time of holding test identification parade, the accused persons were in fetters whereas the other undertrials, who were mixed with the accused persons were not in fetters. The witnesses also deposed that the culprits had their faces muffled at the time of incident. It is argued on behalf of the appellants that in these circumstances it would not have been possible

for the PWs to identify the distinctive features of the culprits at the time of commission of offence so their subsequent identification in test becomes doubtful. It is also contended that during their detention at the police station for 2 days, they were shown to the PWs. What is evidentiary value of such a test identification? Would you uphold the conviction? 25

OR

**Q. 2. (a)** *A* filed a suit against her maternal uncle *B* seeking partition of her share in land measuring about 24 acres left behind by *A*'s father. *B* resisted the suit on the ground that *A*'s mother who was old, blind, tribal woman, and was living with *B* had executed a sale deed in favour of '*B*'. *A* challenged the sale on the ground that it was obtained by exercising undue influence on her mother, who was blind, illiterate, tribal woman living at the mercy of *B* till her death. *B* led no evidence to show that any consideration had actually passed at the time of registration of sale deed. In these circumstances, '*A*' can be said to have discharged the onus of proof that the sale transaction was vitiated because of undue influence? How would you decide the question of onus of proof in these circumstances? 20

**Q. 2. (b)** A daughter-in-law of the accused, suffered 70% burns while working. She was taken to the hospital by her husband. At the time of admission, she told the doctor that her clothes caught fire while cooking on the stove. After sometime, she made statement to another doctor wherein she implicated only her mother-in-law as having sprinkled kerosene on her and having set her on fire. A third statement was made by her the same night before S.P. to the effect that she was set on fire from behind the somebody, may be her parents-in-law. In the fourth statement kerosene on her and having set her on fire. She died in the hospital next day. In all these dying declaration she had stated that she was rescued by her husband who brought her to the hospital. Her husband who was examined as a defence witness supported the defence version that his parents were away to the temple when the incident of burning took place.

What rule of precaution should be followed when there are more than one dying declarations? Decide the case preferably with reference to case law. 30

**Q. 3. (a)** *A* obtained a decree for pre-emption and in execution of that decree, he was given actual possession of 135 kanals of land on 13.6.1963. By mistake handing over of symbolic possession of 63 kanals of land was also recorded in the execution proceeding. *B*, who was in actual possession of this 63 kanals of land filed a suit for declaration and injunction which was decreed and this decree was affirmed in appeal on 12.5.69.

*A* then filed a suit in 1973 claiming partition of 63 kanals of land on which symbolic possession was recorded on 13.6.63. Appellants who are legal heirs of *B* then filed objections under section 47 C.P.C. The objections/application under section 47 C.P.C. was contested by *A* on the ground, inter alia, that the same is time barred as it has been filed after the expiry of more than 3 years from 13.6.63 the day on which his symbolic possession was recorded on this land. As against this, appellants' arguments that the land has always been in their possession, the right to apply accrues only when *A* filed suit for partition of this land in 1973. Decide whether the application/objections under section 47 C.P.C. is time barred, giving reason for your decision. 30

**Note:** Article 137 of schedule to Limitation Act is a residuary article which prescribes a period of limitation of 3 years for filing any application for which no period of limitation is provided in this Act.

**Q. 3. (b)** *A* filed an appeal to the Distt. Judge against the order of the Estate Officer on 11.10.88. The appeal was delayed by one day. *A* did not file any application for condonation of delay but made an oral application for condonation on the ground that his son and grandson were implicated in a false and frivolous case at Ambala under section 307/332/353 I.P.C. and Section 3, 4, 5 of T.D.P.S. Act so he had to attend the Ambala Court on 10.10.88 and that is why he could not hand over complete papers to his Counsel to file the appeal. On his return to Delhi on 11.10.88, he handed over complete papers to his Counsel, who filed the appeal on that very day. Decide whether the delay of one day could should be condoned in these circumstances. 20

OR

**Q. 3. (a)** *A* purchased the property in question, an evacuee property, in an auction sale held on 20.11.62. He failed to pay the full auction price in accordance with the terms of sale and as such the Deputy Chief

Settlement Commissioner cancelled the sale by order dated 27.5.77. *A* filed a writ petition challenging cancellation of sale. Vide order dated 6.12.79, Hon'ble High Court allowed the writ petition, granting the appellant some more time to pay off the balance sale price. The appellant made payment of balance sale price in 1980. A sale certificate was issued to him on 31.3.81 under which the title was conveyed to *A* with effect from 16.1.64. *A* then filed the suit for possession of the suit property on 1.2.84. The suit was contested, inter alia on the ground that the defendants were in actual physical possession of the property continuously for more than 12 years and, as such, they have become owners of the property by adverse possession and the suit was time barred. Is the suit time barred? Decide, giving reasons for your decisions. 30

**Note:** Sub-rule (15) or Rule 90 of Displaced Persons Compensation and Rehabilitation Rules, 1955 provides that sale certificate cannot be issued unless and until full sale price had been paid by the highest bidder. So the title cannot pass till then.

**Q. 3. (b)** *A*, a manufacturer of Cement, at Chittorgarh, Rajasthan, transported cement to various destinations through railway carriages and paid freight charge. On 21.1.91 he sent a legal notice to the Western Railway under section 78-B of Indian Railway Act claiming refund of different amounts. The claim was rejected on 23.12.91. The petitioner *A* filed the claim before the Railway Claims Tribunal at Jaipur which by its order dated 25.11.92 dismissed the petition holding it to be time barred under section 78-B of the Act which prescribes a period of 6 months for claiming refund of excess payments/over charges paid to Railways. *A* challenged the order of the tribunal before the High Court in an appeal contending that he had discovered the mistake when the railway authorities, vide their letter dt. 12.10.90 confirmed that they have committed mistake in charging excess freight on wrong calculation of distance. *A*'s argument is that limitation starts running from the date of discovery of mistake and therefore, Section 17(1)(C) of Limitation Act of 1963 will apply and Section 78-B of Railways Act has no application to the facts in this case. Railways contested the appeal on the ground that Section 17(1)(C) of Limitation Act would apply only to a suit instituted on an application moved in that behalf in a civil suit. How would you decide the appeal? 20

**Note:** Section 17(1)(C) of Limitation Act lays down that in a suit for relief from the consequence of a fraud or mistake, the period of Limitation shall not begin to run until plaintiff has discovered the fraud or mistake.

**Q. 4. (a)** *A* & *B*, two brothers purchased an evacuee property but the sale certificate was issued by the Rehabilitation Authorities in the name of '*A*' only. Later on, when some dispute arose between the two brothers regarding partition of the property the matter was referred to a private arbitrator with the consent of both the brothers. From evidence adduced before the arbitrator, he came to the conclusion that *B* had contributed equally towards the sale price, but *A* being elder, the sale certificate was got issued in his name only. Accordingly, he gave the Award declaring *A* & *B* have equal ownership rights. The Award was also made a rule of the Court by Civil Courts decree. However, *A* entered into an agreement to sale the entire house in favour of *C*, who filed a suit for specific performance of the agreement. On coming to know about the pendency of this suit, *B* got himself impleaded as a party thereto, claiming that he was owner of half share in the property and to that extent the agreement to sale executed by his brother is unenforceable, *C* contested this plea on the ground that *B*'s right in the property was created by the Award which was compulsorily registrable and since the Award was not so registered, *B* cannot claim any right thereunder.

Decide, whether *B*'s claim for half share in the property can be upheld on the basis of unregistered award. 25

**Q. 4. (b)** *A*, the landlord filed an eviction petition against his tenant *B* under Rent Control Act. During the pendency of the eviction petition he also filed a suit for injunction seeking to restrain the tenant from carrying out any additions/alterations in the demised premises. In this suit, a compromise was arrived at. In terms of compromise, the landlord agreed to withdraw the eviction petition and also to carry out some additions/alterations to the satisfaction of tenant. The tenant agreed to enhance the rent and to vacate the premises after 10 years from the date of compromise. After the expiry of 10 years, when the Landlord applied for execution of compromise decree, the tenant opposed the same on the ground that the compromise amount to creation of a fresh

tenancy involving enhancement of rent and enlargement of demised premises. It was contended that compromise deed was required to be registered both under section 17(1)(d) of Registration Act as well as under Section 107 of T.P. Act and since it was not so registered, it remains unenforceable. Decide the plea of the tenant giving reasons for your decision. 25

OR

**Q. 4. (a)** A obtained a loan from a bank. Bank asked A to furnish security. A accordingly executed a mortgage deed in favour of bank. The mortgage deed was duly registered before the Sub-Registrar. Later on the Sub-Registrar realized that the mortgage deed was deficiently stamped, deficiency being to the tune of Rs. 29,000/-. The Sub-Registrar issued a notice to A calling upon him to pay the deficient Court fee. A challenged the said notice before High Court in a writ petition contending that after registration the sub registrar became *functus officio*. So no such notice asking him to make up the deficiency in Court fee could be issued by the Sub-Registrar. How would you deal with this plea of the petitioner. 20

**Q. 4. (b)** A executed a gift deed in favour of his nephew (sister's son) in respect of some agricultural land. His brothers B, C & D filed a suit challenging the gift made by A to his nephew on the ground that all the four brothers were members of a coparceners could not make a gift of coparcenary property without the consent of other coparceners. In defence, A pleaded that a mutual partition had already taken place in July 1952 and the property in question had fallen to his share so he could validly gift it to his nephew. He relied on a list Ex. D, of the coparcenary properties which were mutually divided. The execution of Ex. D, was admitted by the plaintiffs but they contended that Ex. D, amounted to a partition deed which required compulsory registration under section 17 of Registration Act. Can Ex. D, be taken into consideration for ascertaining the intention and conduct of the parties as to the disruption of coparcenary? Decide the case giving reasons for your decision. 30

## LANGUAGE, 1996

Q. 1. Translate the following passage into Hindi:

The third great defect of our civilization is that it does not know what to do with its knowledge. Science has given us the power fit for the Gods, yet we use them like small children. For example we do not know how to manage our machines. Machines were made to be man's servant; yet he has grown so dependent on them that they are in a fair way to become his master. Already most men spend most of their lives looking after the waiting upon machines. And the machines are very stern masters. They must be fed with coal and given petrol to drink and oil to wash with and they must be kept at the right temperature, and if they do not get their meals when they expect them, they grow sulky and refuse to work or burst with rage and blow up and spread ruin and destruction all around them. So we have to wait upon them very attentively and do all that we can to keep them in good temper. Already

we find it difficult either to work or play without the machines and a time may come when they will rule us altogether just as we rule the animals.

And this brings me to the point which I asked in the start of the speech "What do we do with all the time which the machines have saved for us and the new energy they have given us?" On the whole it must be admitted, we do very little. For the most of the part we use all time and energy to make more and better machines; but more and better machines will only give us still more time and still more energy and what are we to do with them? The answer, I think, is that we should become more civilized. For, the machines themselves and the power they have given us are not civilization but aids to civilization. But you will remember that we agreed at the beginning that being civilized meant making and linking beautiful things, thinking freely and living rightly and maintaining justice equally between man and man. Man has better chance today to do these things than we ever had before; he has more time, more energy, less to fear and less to fight against. If he will give his time and energy which the machines have won for him, to making more beautiful things, to finding out more and more about the universe, to remove the causes of quarrels between nations, to discover how to prevent poverty, then I think, our civilization would undoubtedly be the greater as it would be the most lasting that has even been. 50

Q. 2. Translate the following passage into English:

यह संसार कर्मप्रधान है, अर्थात् काम करने से ही जीवन में लक्ष्य की प्राप्ति होती है। यदि मनुष्य कर्म नहीं करता, तो उसे जीवन में लक्ष्य या किसी भी वस्तु की प्राप्ति नहीं हो सकती है। अर्थात् कर्म और फल का सीधा सम्बन्ध है। पर कई बार ये देखा जाता है कि कर्म करने पर भी मनोवाञ्छित फल प्राप्त नहीं होता। यदि फल प्राप्ति नहीं होती, तो मनुष्य निराशा के कोहरे में धिर जाता है। सफलता और असफलता, हार या जीत जीवन में उसी प्रकार आती-जाती है जिस प्रकार रात और दिन का क्रम बना रहता है।

साहसी और विचारवान व्यक्ति तो इस प्रकार की असफलताओं से सदैव कुछ न कुछ दाव सीखते हैं और फिर दुगने उत्साह से अपने कार्य में जुट जाते हैं। देखा जाता है कि यदि मनुष्य हिम्मत हार बैठता है, तो उससे सफलता कोसों दूर भाग जाती है। लेकिन जो मनुष्य असफल होने पर भी कर्म क्षेत्र से पीछे नहीं हटता,

जिसका मन नहीं हारता है और जो पराजय की चुनौतियों का सामना करके के लिए तैयार तथा कटिबद्ध रहता है, उससे सफलता दूर नहीं होती है अपितु उसके चरण चूमने के लिए तैयार रहती हैं। असफलता मिलने पर निराश होना, हिम्मत हारना और मनोबल का टूटना कायर पुरुष को शोभा देता है। जो व्यक्ति नदी के किनारे पर जाने से ही डरेगा वह समुद्र की लहरों में कैसे तैर सकेगा और समुद्र की गोद में छिपे मोती कैसे प्राप्त कर पायेगा।

अर्थात् वृक्ष यदि कट जाता है, तो वह फिर बढ़ने लगता है। क्षीण हुआ चन्द्रमा भी फिर वृद्धि को प्राप्त हो जाता है। इस प्रकार विचार करके बुद्धिमान व्यक्ति भी कभी विपत्तियों में दुःखी नहीं होते हैं। वास्तव में मन ही हमारे सुख और दुःख का कारण है। इसलिए जो व्यक्ति मन पर विजय पता है तथा जो मन हारता नहीं, टूटता नहीं उसे जीवन के संघर्ष, दुःख और असफलताएँ कभी भी हरा नहीं सकती। वैज्ञानिक एक ही प्रयोग में सफलता प्राप्त करने के लिए दस-दस वर्ष तक उसी पर कार्य करते हैं। मन की विचारधारा के कारण ही हममें कार्य के प्रति उत्साह या निराशा की भावना उत्पन्न होती है। क्योंकि मानसिक रूप में जब व्यक्ति हारता नहीं है तो वह विचार करके स्थिर गति से पुनः कार्य करने के लिए प्रेरित होता है, तब उसे सफलता भी प्राप्त हो जाती है।

## ESSAY AND GENERAL KNOWLEDGE, 1996

### PART I

- Q. 1. Write an essay on any one of the following: 100
- (a) Comprehensive Test Ban Treaty and the position of threshold countries on it.
  - (b) India's (non-) performance in Olympics.
  - (c) Society expects too much from a judge, inside and outside the Court.
  - (d) Moral values and hardwork shall never become irrelevant, however high scientific achievements may be.

### PART II

- Q. 2. What do you know about the following: 10
- (a) S. Ramanujam
  - (b) Akash Ganga
  - (c) Big Ben
  - (d) Dr. Hargobind Khurana
  - (e) Leander Paes
  - (f) Satish Gujral
  - (g) A.R. Rehmen
  - (h) Bejamin Netanyahu
  - (i) Anurandhati Ghose
  - (j) Dr. Salem Ali
- Q. 3. Write short notes on: 20
- (a) Judicial appointments
  - (b) 'Hawala' transactions
- Q. 4. Name the following:- 5
- (a) Capital of Panama
  - (b) Deputy Speaker of Lok Sabha
  - (c) Our National Flower
  - (d) Smallest Country of the World
  - (e) National game of U.S.A.
  - (f) The builder of Golden Temple
  - (g) The disease of liver which renders a part of spongy liver tissues scarred and useless.
  - (h) The sport involving the skilful use of swords for attack or defence.
- Q. 5. Who wrote the following: 5
- (a) The Good Earth
  - (b) War and Peace
  - (c) Meghdoot.
  - (d) Until This last: Four essays on the first principles of political economy.
  - (e) Oliver Twist

Q. 6. (a) How did Archimedes detect impurity in the Gold Crown? Explain.

Q. 6. (b) What do you understand by 'Light Year'? 4

Q. 7. When did the following events take place:

- (a) The man first landed on the moon-surface
- (b) India conducted its nuclear test.
- (c) Part IV A relating to the Fundamental Duties was inserted in the Constitution of India.