



## Previous Year Paper

### DELHI JUDICIAL SERVICE MAINS EXAM 2010

#### CRIMINAL LAW (PART - A)

Q. 1. R was living with her 5 children and 70 years old father-in-law at House No. 10, Vikas Puri, Delhi. Her husband was living separately. S, a friend of her husband, had an evil on her.

On 19-12-2009 at around 3 a.m. in the morning, some person knocked her door. When she went to open it, no one was found. She returned back to her room and thereafter went to the toilet. Toilet was open to the sky. On entering the toilet she saw S hiding there. He immediately poured kerosene on her and lit her with a match. R ran out, shouting for help. Her elder son D, aged 6 years, woke up and tried to save her. S fled away. R was admitted in the hospital in a semi-naked condition. At 4.45 a.m. R was declared fit for statement. Her statement was recorded by the Investigating Officer. She named S as the culprit.

FIR was registered under section 307, I.P.C. SDM was informed. SDM recorded a second statement of Rat 5.30 a.m. after obtaining a fitness certificate. M.L.C. of the victim has recorded 100% burns. Statement of D was recorded under section 164 Cr.P.C.

R died on 24-12-2009. FIR was converted to an offence under section 302, I.P.C. S was arrested. From his personal search a bus ticket dated 19-12-2009 was recovered.

#### Case of the prosecution:

The two dying declarations are consistent and a valuable piece of evidence. D was an eyewitness. Bus ticket recovered from the personal search of S evidenced his presence in Delhi on 19-12-2009.

#### Defence of accused:

The dying declarations are suspect; 1st was in the narrative form. Victim had 100% burns. 2nd dying declarations had the stamp of the SDM engrossed beneath the writing showing that the page was already stamped which was at some later point filled in. Child witness cannot be relied upon; why grandfather





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was not produced as a witness; R had intimate relations with S; to save her honour she had falsely implicated S. Accused entitled to benefit of doubt.

Write a judgment, dealing with the rival contentions, citing the statutory provisions and case law.

Q. 2. Trial court had convicted Sunder section 302, I.P.C. for having committed murder of N. Two pieces of evidence were relied upon:

(i) Extra judicial confession made by S to MN.

(ii) Recovery of a blood-stained pana from bus No. DL 1P A 1294 and blood-stained pant of S.

Facts:

On 16-01-2009 at 7.25 a.m. dead body of N was recovered from a park near Kamal Cinema. Trail of blood from the dead body led to bus no. DL 1P A 1294 parked near the park. Driver of the bus Rand bus helper MN were examined. MN stated that S, who had boarded the bus along with his friend N, had made an extra judicial confession to him inculpatating himself. Bus had developed a snag; N, S and MN had dinner together in the bus; in the morning dead body of N was found in the bus parked behind bus no. DL 1PA 1294; S was sleeping is bus No. DL 1P A 1294 when MN woke him; S confessed to the crime. Disclosure statement of S was recorded; he got recovered a blood-stained pana from bus No. DL 1PA 1294 and his bloodstained pant. Conviction under section 302, I.P.C. followed. Case of the Prosecution: Extra-Judicial confession coupled with the recovery of the weapon, i.e., the blood-stained pana, and the pant was sufficient to sustain the conviction.

Defence of the accused:

Circumstances are not proved. Extra-judicial confession is a weak evidence; recovery of the blood-stained pana and the pant are demolished as the recovery was not witnessed by public witnesses; there is no medical or scientific evidence. Write a judgment, dealing with the rival contentions, citing the statutory provisions and case law.

Q. 3. On 23-01-2009 at 8.05 p.m. DD No. 15 was recorded at PS Ambedkar Nagar that R was reported missing; she had not returned from school. On 24-01-2009 a written complaint was given by her father that R had been kidnapped. On 25-01-2009, R was produced in the police station by her father. Her MLC recorded a torn hymen; no injury was visible; age was recorded as 15 years.

Statement of R was recorded under section 164, Cr. P.C. Accused was arrested on her statement. He was charge-sheeted and convicted under

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sections 363 and 376, I.P.C. Case of prosecution: Version of R by itself is sufficient to convict the accused. This version is corroborated by the medical evidence. Defence of the accused:

The three statements of R under section 161, 164 Cr. P.C. and on oath in court are contrary and conflicting. R was admitted known to the accused; it is a case of consent. Write a judgment, dealing with the rival contentions, citing the statutory provisions and case law.

## PART B

- Q. 1. Death by negligence. Discuss in the light of plea bargaining.
- Q. 2. Registration of FIR to filling of charge-sheet in a non-bailable offence. Discuss the stages.
- Q. 3. Bail and parole! What are the guidelines for the courts?
- Q. 4. Sentencing parameters in non-bailable offences.
- Q. 5. Abetment; conspiracy; common intention: Do they overlap? Discuss.
- Q. 6. Locus standi in a Protest Petition: Can it be entertained after acceptance of the closure report?
- Q. 7. Cyber crime and electronic evidence: Is it admissible?

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## CIVIL LAW I (PART - A)

### Q.1. FACTS:"A"

along with his father ("F") and mother ("M") were joint owners of an immovable property which comprised of a land and a dwelling house consisting of a ground floor, garage and first floor. F and M had another son B.

A deed of declaration was drawn up; whereby it was declared that A held an undivided half share in aforementioned property as joint tenant. The deed, however, provided a right to either party, to sever joint tenancy at any time.

By another agreement A and F decided to hold the property as tenants in common each having an undivided equal share in the property. F some years later transferred his undivided equal share in the property as tenants in common each having an undivided equal share in the property. F some years later transferred his undivided equal share in the property to his other son B comprising of the garage and ground floor.

B died. The widow (X) and his two minor sons Y and Z acquired B's undivided half share in the property. X, Y and Z sold their share to a stranger S. Stook possession of the ground floor and garage.

### STAND TAKEN:

A filed a suit for perpetual injunction on the ground that the superstructure built on the immovable property was a dwelling house, even though he and his brother's family lived separately there had been no division by metes and bounds, and that the two families were living separately only by way of convenience.

S who is stranger to the family had no right of joint possession. In support of his submission second paragraph of section 44 of the Transfer of Property Act was relied upon. Ad-interim injunction was sought on the ground that irreparable harm would be caused to him which could not be compensated by money.

In defence, X, Y and Z submitted that though late B was owning the land and superstructure thereon in equal moiety with A. B in point of fact was holding the ground floor and garage in his individual capacity, which position obtained even after the death of B. X, Y and Z had separate water and electricity meters; X, Y and Z paid property taxes separately for portion of the property in their possession. In these circumstances even though they were tenants in common, there was already a partition of property by virtue of user.

### POSER:





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In the background of the aforesaid facts, circumstances and stands taken by the opposite parties, is A entitled to mandatory injunction against S in a form which would result in 'S being evicted from the property? Give detailed reasons in support of your conclusion.

**Q.2.** S, a ten year old son of T, fractured his leg while playing on the beach near a sea resort. T who was trained as a para-medical gave first-aid treatment to S by strapping the leg with wooden splints. Looking to the gravity of the injury, S was removed to a city hospital which was almost 200 miles away from the sea resort. It was a long journey by car, there being no other mode of transport available. The journey by car took nearly 12 hours.

At the city hospital S was attended by A. A took x-rays of the fractured leg and thereafter reduced the fracture with the help of three assistants at the hospital. Within four hours the condition of S worsened. S died the following morning.

T sued A for damages on the ground that he had acted negligently. The gravamen of the suit was that A had reduced the fracture without subjecting S to general anaesthesia.

At the trial, evidence emerged that: S died of shock; A had manually reduced the fracture, a process which lasted nearly an hour; fractures were reduced by subjecting patients to general anaesthesia; and lastly, S was fatigued when he reached the city hospital and was suffering from high temperature on arrival at the city hospital.

In his defence, A had submitted that he acted to the best of his ability; at a given point of time doctor is required to take a call as to the best procedure to be adopted, and lastly, in every medical intervention there is an inherent risk of failure attached.

**Q.3. FACTS:**

In January, 1991, a public limited company announced issuance of fresh share capital. Interested applicants applied for shares of T. The share issue was oversubscribed. In the meanwhile, T had employed B, a scheduled bank, to deal with the refund order. For the said purpose, T had remitted to B funds to the tune of Rs. 10 crores. The refund orders were valid only for 3 months. B, however, honoured refund orders beyond 3 months.

From time to time, B dispatched details of the refunds made in the form of a statement of account. T as a matter of fact gave additional funds to B even



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after the validity of the refund orders had expired. The last refund was made by Bon 31st December, 1992.

Four years after the share issue, i.e., in 1995, T instituted a suit seeking rendition of accounts and thereupon recovery of money of the amount found due.

## STAND TAKEN:

B defended the suit. In its defence it was contended that the suit was barred by limitation; it had submitted accounts to T from time to time; it had no surplus funds available with it; and lastly the money of which recovery was sought did not belong to T and that I had not shown that any applicant had come forth asking for refund.

B had proved in support of its stand the statement of account by filing a certified copy by relying upon the Bankers Books Evidence Act, 1891. In the cross-examination the counsel for Thad not confronted the witness of B who sought to prove the statement of account on this aspect.

The counsel for T, however, contended that if the statement of account filed by B is accepted in its totality even then it would not add up to more than Rs. 9 crores. In support of its stand that there were unclaimed refund orders normally to the extent of 105 of the total value of refund, it relied upon the testimony of several share transfer agents.

## POSER:

Is T entitled to a judgment and decree for rendition of accounts and recovery of amount as prayed?

## PART B

Q. 4. X, a partner in an unregistered partnership firm M/s. X& Co., which was in the business of exporting ready made garments, entered into contract with Y for purchase of 1000 meters of raw fabric to enable him to execute an export order with Z Ltd. Z Ltd. had a back to back arrangement with retail outlets in Europe and USA. The delivery of raw fabric had to be made within 8 weeks.

Y reneged on his obligation to supply the fabric. X & Co. resultantly suffered a huge loss.

T, who was the other partner of X & CO, blamed X in failing to carry out adequate market survey before identifying Y as the supplier for the export order concluded with Z Ltd. T wanted to opt out the partnership firm by suing for dissolution.

X, on the other hand, wanted to sue Y for breach of contract and damage.







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Similarly, Z Ltd. was inclined to sue X & Co for failure to fulfill their obligations under the contract with it and resultant loss suffered thereof.

**Q.5.** X Ltd., which is in the business of manufacture and sale of air conditions, appointed Y as their sole and exclusive dealer for the NCT of Delhi. The dealership agreement, which was for 5 years, provided that on every sale Y would be paid a 5% commission in addition to transportation and installation charges at the rate of Rs. 1,000 per sale.

Within 2 years the officers of X Ltd. received complaints from customers as to the rude behaviour of the employees of Y and faulty installation of air conditioners. There were also reports received that Y was also selling the air conditioners of Z Ltd; a rival of X Ltd.

X Ltd terminated the dealership of Y. In the termination notice reference was placed on clause 2 of the dealership agreement which empowered X Ltd to terminate the dealership agreement forthwith in case a dealer acted against its business interest.

The dealership agreement also contained clause 3 which permitted either party to terminate the agreement without assigning any reason upon giving one one month's notice.

Y instituted a suit. In the suit y prayed for the following relieves:

- (i) declare that the termination of dealership agreement was illegal;
- (ii) specific performance of the agreement for the balance period, i.e., 3 years,
- (iii) Damages

X Ltd opposed the suit on the ground that the termination was valid, in the alternative the dealership agreement was determinable at will and hence specific performance could not be ordered, and lastly damages, if any, could only be paid only for the 30 days period in terms of clause 3.

The evidence on record showed that the complaints against Y were bogus. Y in the past one year had contributed to the increase of sales of X Ltd in the NCT of Delhi.

Discuss what relief, if any, would y be entitled to?

**Q.6** Discuss with the help of relevant case law the exceptional circumstances in which a court will injunct a bank from honouring a guarantee issued by it in favour of the beneficiary.

**Q.7.** A, who was in Shimla, made an offer to B residing at Delhi over telephone for sale of 1000 boxes of apples of 10 Kgs. Each of the rate of Rs. 100 per kg. B

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accepted the offer. It was agreed between them that 50% of the consideration will be paid in advance by wire transferring the money to A's account with his bank in Shimla within 2 days. The consignment was to reach Delhi most definitely by the end of the following week since the season for apples was drawing to a close. A breached the contract inasmuch as the consignment was late by 2 weeks. B, who had transmitted the advance sum, refused to lift the consignment. A instituted a suit in Shimla for the balance consideration.

**STAND TAKEN:**

B defended the suit on merits as well as on the ground that since the acceptance was intimated from Delhi the contract was concluded in Delhi and hence, the court in Delhi had jurisdiction to entertain and try the suit.

**POSER:**

Is the suit instituted by A in Shimla maintainable? Give short reasons.

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## CIVIL LAW II (PART - A)

**Q. 1.** The plaintiff sued for specific performance of an agreement for sale of immovable property and for recovery of damages. After the framing of issues but before the commencement of evidence, the plaintiff filed an application under section 65 of the Indian Evidence Act stating that the original agreement to sell had been handed over to the counsel earlier engaged by the plaintiff, that the said counsel expired and a new counsel was engaged; that the new counsel upon inspection of the court record found that the original agreement to sell was not on record; that inquiries were made from the office/residence of the earlier advocate but the original agreement to sell was not found there also. The plaintiff thus seeks permission to prove the photocopy of said agreement to sell. The defendant files a reply to the said application denying each and every content thereof.

Whether secondary evidence is admissible? Also answer the stage at which such an application is to be decided?

**Q. 2.** The plaintiff instituted a suit for recovery of money. It is the case of the plaintiff that he had purchased certain land from the defendant; the said land was acquired by the Government and accordingly he applied for compensation; however the defendant objected to the release of compensation to the plaintiff owing where to the release of compensation to the plaintiff was delayed by several years. The defendant however subsequently withdrew his objections and where after the compensation was released to the plaintiff.

The suit is filed for recovery of compensation for delay caused by the defendant in release of land acquisition compensation. The defendant contested the suit by denying sale of land to the plaintiff and further pleaded that the objections to release of compensation was withdrawn by him on the basis of a compromise in writing arrived at between the parties but the plaintiff mischievously obtained his signatures on an unconditional application for withdrawal of objection also. The defendant however did not file the compromise in writing along with the written statement. However, during the cross-examination of the plaintiff, the defendant put to him the said compromise in writing. The plaintiff denied his signature on the same. The defendant thereafter in his own evidence sought to prove the said compromise in writing. The plaintiff objected to the same contending that the defendant having not filed the document at the appropriate stage could not prove the same. Decide the said objection of the plaintiff.





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- Q. 3. The plaintiff sued for recovery of money as an indigent person. The plaint was accompanied with an application under Order 33, rule 1 of the CPC. An inquiry into the indigency of the plaintiff was ordered. The said inquiry remained pending and no progress was made therein. The plaintiff thereafter withdrew the application under Order 33, rule 1 of the CPC, wanting to proceed with the suit as a non-indigenous person. The defendant contended that the claim in suit, though within time when permission to sue as an indigent person was sought, was barred by time when the application under Order 33, rule 1 was withdrawn. Decide the said application.
- Q.4. The plaintiff institutes the suit for recovery of Rs. 3 lacs by way of damages for breach of contract against the defendant. It is the case of the plaintiff that the defendant had vide a lease deed dated 1st January, 2008 prepared on a stamp paper of Rs. 50 let out his property in Delhi to the plaintiff at a rent of Rs. 5000 and for a period of ten years; that the defendant however without any reason and in breach of the said lease terminated the said lease on 1st January, 2010 only and also instituted a suit for ejection of the plaintiff. the plaintiff thus claimed damages of Rs. 3 lacs for breach of contract. The defendant files an application for rejection of the plaint on the ground that the plaint does not disclose a cause of action. Decide the said application.
- Q.5. The plaintiff on 1st February, 2010 institutes a suit for recovery of money for price of goods sold to the defendant. It is the case of the plaintiff that the goods were sold vide invoice dated 3rd January, 2007; that the defendant had given a cheque dated 27th January, 2007 for the invoice amount; that the said cheque was returned dishonored on 3rd February, 2007. The defendant takes a plea that the suit is barred by time. Decide the said plea.
- Q. 6. A applies for execution of a decree for possession against B. During the pendency of the said execution, B dies on 10th March, 2008. A applies on 10th September, 2008 for substitution of legal representatives of B in the execution. is the said application within time? Give reasons also.
- Q.7. The petitioner in a probate case examined an attesting witness to the Will who was cross examined by the objector. The evidence of the objector has begun. The objector wants to examine, as his own witness, the attesting witness to the Will whom he had cross examined earlier. It is his case that the said attesting witness had on an earlier occasion deposed under pressure from the petitioner and now wants to give the correct statement. Whether the objector can be permitted to examine as his own witness, the witness whom he had cross examined earlier.



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## PART B

- Q. 1. The plaintiff instituted a suit pleading that one A was the producer of certain films, negatives whereof had been kept by him in the custody of defendant No. 3 Laboratory for preservation;

A died leaving the defendant No's. 1 and 2 as his only legal heirs; that upon the demise of A, defendants Nos. 1 to 2 had become the owners of the films, negatives whereof were kept in the custody of the defendant No. 3; that the defendants No. 1 and 2 had sold their rights in the said films/negatives in favour of the plaintiff.

The plaintiff thus sued for mandatory injunction for direction to defendant No. 3 to deliver the negatives of the films to the plaintiff. The defendants No. 1 and 2 did not contest the suit. The defendant No.3 files a written statement pleading that A had kept the negatives with it for safe custody on payment of charges, that a sum of Rs. 6 lacs was due towards the said charges. One of the issues framed in the suit was as to whether the defendant No. 3 was entitled to the sum of Rs. 6 lacs towards charges for safe custody of the negatives. The defendant No. 3 did not lead any evidence in the suit. Resultantly, the issue as to its entitlement to Rs. 6 lacs was decided against it. The decree for mandatory injunction was passed directing the defendant No. 3 to hand over the negatives to the plaintiff subject to payment of appropriate charges.

The plaintiff filed an application for execution. The defendant No.3 again said that besides the sum of Rs. 6 lacs earlier stated to be due, further amounts had accrued towards charges for safe custody of the negatives. How would you proceed with the execution?

- Q.2. A died leaving his widow and a son as his only legal heirs. A was thw owner of a house the ground floor whereof was commercial and occupied by various tenants and one portion of the ground floor was in use of the son for his business. The widow and the son were residing on the upper floor. The widow filed a suit against her son claiming that upon the demise of A, under his Will she had become the absolute owner for the house; that the son was merely a licensee in a portion of the ground floor and which license came to an end on the demise of A; that the son had however failed to vacate the said portion of the ground floor.

The widow sought a decree for injunction restraining the son from selling transferring or parting with possession of the portion of the ground floor in his occupation. The son after some contest gave a statement stating that he will not sell, transfer or part with possession of the said portion of the ground floor and the suit was disposed off.







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On the demise of the widow, her brother filed a second suit against the son claiming that the widow under her Will bequeathed the house to him and claiming possession not only of the portion of the ground floor in which the son was had been running a shop but also of the upper floor. The defendant contended that the suit was barred Order 2, rule 2 of the CPC. Decide the said application.

- Q. 3. The application of the plaintiff under Order 39, rules 1 and 2 of the CPC was dismissed by the Trial Court. The plaintiff preferred an appeal against the said order. However, after some arguments the appeal was dismissed as withdrawn. The plaintiff thereafter applied to the Trial Court for review of the order of dismissal of the application. The defendant took a preliminary objection that an appeal having been preferred and withdrawn, the plaintiff was not entitled to apply for review. Decide the said preliminary objection to the maintainability of the review.
- Q. 4. The plaintiff instituted a suit for recovery of money from the defendant. The defendant filed a written statement contesting the suit. It is, inter alia, the case of the defendant that it had sent its proposal to the foreign parent company of the plaintiff and negotiations were held with and terms settled with the foreign parent company of the plaintiff; that the said foreign parent company of the plaintiff however forwarded the proposal to the plaintiff which accepted the same. The defendant thus averred that the terms and conditions of the agreement on the basis whereof monies were claimed by the plaintiff were different from as claimed by the plaintiff. The defendant after filing of the written statement filed a counter claim not only against the plaintiff but also against the foreign parent company of the plaintiff. Discuss the maintainability of a counter-claim against a non-party to the suit.
- Q.5. The plaintiff instituted a suit for recovery of money under Order 37 of the CPC on the basis of a dishonoured cheque. It is the case in the plaint that one A owed monies to the plaintiff and in payment of the said monies had issued the cheque aforesaid in favour of the plaintiff, however, the plaintiff did not present the said cheque on request of A; however A died unexpectedly and where after the plaintiff presented the cheque which was returned dishonoured with the remark "Withdrawal stopped owing to death". The plaintiff thus instituted the suit for recovery of the cheque amount against the legal representatives of A. Whether the suit is maintainable under Order 37.
- Q. 6. The court makes efforts for amicable settlement in a suit. Amicable settlement is arrived at between the parties, the broad terms whereof are recorded by the



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court in its order. The matter is adjourned for filing of an application under Order 23, rule 3 of the CPC by the parties. However, the defendant does not join in the said application. The plaintiff applies for decreeing the suit in terms of the compromise recorded in the earlier order of the court. The defendant opposes. Decide.



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