



Previous Year Paper

DELHI JUDICIAL SERVICE MAINS EXAM 2019

CRIMINAL LAW

Q.1. On the night intervening 31-8-2019 and 1-9-2019, "P" strangled his wife "X" and caused her death at around 11:00 PM on the rooftop of the premises. On 1-9-2019, a case was registered against "p" under section 302, IPC. "P" was tried by the Court of Sessions. To prove its case, the prosecution examined 10 witnesses.

Case of the prosecution:

- Star witness "C", son of the deceased aged around 7 years has in his deposition implicated "P" for causing death of his mother by strangulation with 'saria'.
- Neighbour "Z" testified that he had seen "P" leaving the house in the morning on 1-9-2019 at 6:30 AM.
- Crime weapon i.e., 'saria' was recovered pursuant in the disclosure statement of "p" from underneath the bed in the house.
- "P" absconded from the crime spot.
- False explanation in section 313 of the CrPC statement.

Defence of "P":

- He is not the author of the crime.
- C's testimony cannot be believed as he was sleeping at the relevant time; he is a tutored witness. "C" did not inform the police and his statement was recorded by the police after a delay of 10 hours. He used to scold "C" for missing his school classes.
- The 'saria' was a piece of rod having ridge marks but the post-mortem examination report did not suggest whether the strangulation marks appearing on the neck of the deceased had those ridge marks of the 'saria'.
- He had no intention to kill "X". On that night, he had come late at home after viewing a movie at 11:00 PM and was under the influence of liquor. He asked "X" to prepare food for him. When she declined, a quarrel took place; he lost his cool and gave beatings to "X". In anger, "X" went to her room and committed suicide.





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(e) They were married for about 10 years and no quarrel had ever taken place between them.

- Q. 2. (a) "X", a blind by birth, is facing trial for commission of offence under section 302, IPC. The prosecution closed its evidence and the matter was listed on 10-10-2019 for recording X's statement under section 313 of the CrPC. Before that, on 15-9-2019 "X" moved an application to supply copy of questionnaire in advance to enable him to file written statement to understand the questions with a calm mind and to respond completely and correctly which would not be possible if he was taken by surprise by putting questions spontaneously. The application is opposed by the prosecution stating that the accused was present during trial and was represented by an advocate. The purpose of the accused in moving the application is to delay the proceedings.
- (b) Do you agree that putting entire incriminating evidence to the accused under section 313 of the CrPC is a futile exercise when entire evidence is recorded in his presence.
- (c) What are the remedies before the appellate court if an incriminating circumstance/evidence is not put to the accused under section 313 of the CrPC?

- Q.3. On 31-10-2018, an unidentified body of a male person is seen by "R", a forest guard, in the forest. He informs the police. The police records information regarding the finding of an unidentified body and its unnatural death. The post-mortem is conducted on the next day. As the body remained unidentified, it was buried in the burial ground after taking its photographs.

Subsequently, an FIR is lodged about the murder of "X" by his wife on 20-11-2018. The accused is arrested and makes a confession of X's murder. Pursuant to his disclosure statement, he takes the police to the spot where he had thrown the body after X's murder in the forest. The dead body was exhumed and second post-mortem was conducted. During the course of investigation, the procedure of super imposition of the face of the deceased was done by a doctor, after which the dead body was determined to be that of "X". The accused pleads that non-recovery of corpus delicti is fatal and the prosecution has failed to establish identity of the dead body.

Discuss the permissibility and reliability of identification by super imposition test. Does DNA test in such cases stand on a different footing?

- Q.4. "A" was the victim of an attack on the night of 6-2-2009. He lodged an FIR with the police and after necessary investigations. charge-sheet was filed before the court against the accused for commission of various offences under the IPC. The Sessions Court acquitted the accused by a judgment and order dated 28-10-2013. Aggrieved thereby, "A" preferred an appeal in the High Court under section 372



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of the CrPC. It was dismissed as being not maintainable, as the proviso to section 372 of the CrPC came into the Statute book with effect from 31-12-2009. He preferred another appeal in the High Court now under section 378(4) of the CrPC. It was again dismissed by the High Court being not maintainable as it was not an acquittal in a complaint case. State has preferred not to challenge the order of acquittal. "A" challenges the decision of the High Court before the Supreme Court. Decide.

- Q.5. "A" and "B" together enter into a shop of home appliances at 8:00 PM by breaking open its window to commit theft. A servant was sleeping inside the shop who woke up on hearing the noise. When he confronted "A" and "B" while they were committing theft, "A" apprehending threat to their lives and in order to defend himself, picked up a kitchen knife lying in the shop and stabbed the servant. Both "A" and "B" ran away from the spot without taking away any property with them. Though the knife blow was not fatal but the servant succumbed to the injuries next day due to loss of blood as he could not get timely medical treatment. Decide the culpability of "B".
- Q.6. On a complaint given by the mother of victim "A" (aged 25 years), the police registers an FIR under section 376, IPC against the accused. The victim "A" supports the allegations in her statement under section 161 of the CrPC. But in her statement under section 164 of the CrPC before the Magistrate, she does not support the allegations and claims that family disputes were given a colour of criminal offence. Later on, her supplementary statement under section 161 of the CrPC was recorded, wherein she reaffirmed her initial version and claimed that she had given statement under section 164 of the CrPC in perplexed mental condition. In view of conflicting versions, the police files charge-sheet against the accused alleging offence under section 376, IPC. Whether the Magistrate would take cognizance of the offence?
- Q.7. Allegations have been leveled against three public servants for commission of offences of cheating and falsification of accounts while they were discharging their official duties as public servants. The investigation established role of two accused persons and charge-sheet was accordingly filed against them after obtaining sanction under section 197 of the CrPC from the competent authority. The Magistrate took cognizance of the offence and summoned both the said accused persons to face trial. During evidence, the prosecution witnesses depose about involvement of the third accused as well. The complainant moves an application under section 319 of the CrPC, contending that the material is sufficient to summon the third public servant as an additional accused. The complainant argues that cognizance of "offence" has already been taken and

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bar under section 197 of the CrPC will not be applicable. Decide if the additional accused, a public servant, can be summoned by the Magistrate considering the provisions of section 197 of the CrPC.

Q.8. If the court is satisfied that some material documents have been withheld by the investigating agency and do not form part of the charge-sheet, whether the accused can invoke section 91 of the CrPC and seek their production? Does it debar the court from summoning such documents and relying upon them at the stage of consideration of the charge?

Q.9. Complainant "X" was owner of a plot No. 5. She alleges that A-I, with the aid of an imposter who by impersonating as "X" created a power-of-attorney in his name as if he was her agent. It was further alleged that using the aforesaid power-of-attorney, A-I attempted to transfer the property of the complainant by executing a mortgage deed in favour of A-2 for a sum of Rs. 50,000. After getting information about the aforesaid transaction, the owner of the property "X" gave a complaint to the police who registered an FIR on 14th March, 2019. After the completion of investigation, the police filed final report under section 420, 423 and 424, IPC against A-I and A-2. The complainant died after filing the complaint.

The Magistrate framed charges against A-I for the offences punishable under section 420, 423 and 465, IPC and against A-2 for offences under sections 424 and 465, IPC read with section 109, IPC. Both the accused persons were tried and finally A-I was convicted under section 465, IPC and A-2 under section 465, IPC read with section 109, IPC. Aggrieved by the said orders, the accused filed appeal before the Sessions Court which ended up in dismissal by upholding the order of conviction. Thereafter, the accused persons approached the High Court. The High Court acquitted the accused persons by setting aside the concurrent findings of the courts below.

Dissatisfied with the judgment of the High Court, X's daughter has filed an appeal before the Supreme Court. Whether she would succeed? Discuss.

Admitted position is that signatures of A-I and A-2 were not found on the forged documents. The appellant has got back the property and mortgage deed has been cancelled by a competent court. The imposter who executed power-of-attorney is not traceable.

Q.10. On 7-12-2009, "X" a police officer lodged an FIR alleging that one "A" in association with "B" was engaged in collection of monies from different people on the promise of jobs in the police. "A" was arrested and one mobile phone was seized from him. The Investigating Officer wanted to verify whether the recorded conversation in the mobile phone was between "A" and "B". He

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therefore needed the voice sample of "B" and accordingly filed an application before the Magistrate praying for summoning "B" to the court for recording his voice sample. The Magistrate by an order dated 8-1-2010 issued summons to "B" to appear before the Investigating Officer and to give his voice sample. Discuss the validity and legality of the order.

- Q.11. The prosecution case is that on 10-1-2012, the petitioner married "X". After one year of marriage, "X" was subjected to physical and mental cruelty on account of dowry demands by her husband. On 14-9-2016, at midnight at about 2:00 AM, the petitioner assaulted her by thrashing her head against a concrete structure. "X" got injuries on her head. In the MLC, nature of injuries was opined as 'simple'. On the complaint of "X", an FIR was registered under section 498A, IPC. Upon completion of investigation, the police filed final report under section 498A, IPC against the petitioner. After recording evidence, the court was of the view that the prosecution could not bring home the guilt of the petitioner for commission of offence under section 498A, IPC. However, from the evidence, it was amply proved that on 14-9-2016, the petitioner had caused simple hurt to the wife and was liable to be convicted under section 323, IPC. On the Magistrate after passing the judgment of conviction on 6-10-2016 and on that very day, passed a separate order stating that charge so framed was required to be altered and section 323, IPC was to be added in addition to section 498A, IPC. The trial court accordingly framed charge under section 323, IPC and convicted the petitioner thereunder. The petitioner challenges his conviction under section 323, IPC. Decide.
- Q. 12. Write short notes on any five of the following:
- Object and evidentiary value of inquest report.
 - Right of the victim to oppose bail in sexual offences.
 - Protest Petition - procedure to be followed.
 - Cancellation of bail - relevant considerations.
 - Can an accused move an application for recording his confessional statement under section 164 of the CrPC?
 - Admissibility of finger prints and foot prints in evidence.
 - What is Plea Bargaining? At what stage can a case be referred for Plea Bargaining?
 - Power of the police to attach immoveable property under section 102 of the CrPC?





CIVIL LAW I

- Q.1. Pushpa was the owner of five acres of agricultural land. In the year 1980, she agreed to sell that land to Karan for a sum of Rs. 50,000. Karan paid a sum of Rs. 10,000 to Pushpa as earnest money. The rest of the sale consideration was to be paid at the time of registration of sale deed in the name of purchaser. A civil appeal was pending in respect to the land and Pushpa was expecting that it would be decided by the Court in one year. A written agreement of sale in respect to the land was executed between the parties. It contained various terms, including the following:
- The possession of the sold land would be handed over to Karan at the time of the execution of the agreement of sale in the year 1980.
 - The registered sale deed of the land would be executed within one month of the disposal of the Civil Appeal.
 - In case the Civil Appeal would be decided after one year of the agreement of sale, then Karan would pay annual rent of Rs. 500 to Pushpa.
 - The balance sale consideration would be paid by the purchaser to the seller at the time of the executing of the sale deed.

The Civil Appeal was decided by the Court in the Year 1990 Thereafter, Karan issued a notice to Pushpa to execute the sale deed on receipt of the balance sale consideration. However, Pushpa declined to execute the sale deed of the land in favour of Karan stating that he did not pay the fixed rent of the land at any time.

Karan has filed a civil suit for specific performance of the agreement to sale of the land with the request to the court to direct Puspha to execute the registered sale deed in his favour. In the alternative the seller may be directed to refund the earnest money and also to pay damages. Pushpa has opposed the case of Karan by stating that he did not comply with the terms of the agreement.

The parties have raised the following pleas in support of their respective stands:
Pushpa:

- Karan failed to pay or offer to pay rent of the land. The payment of rent was essential to get the sale deed executed. Karans:
 - The agreement to sell the land was against the payment of sale consideration. Earnest money was paid and that he was ready and willing to pay the balance sale consideration at the time of the execution of the sale deed and its registration.
 - The payment of rent was not a part of the agreement to sell U90E the land. He is willing to pay the entire due rent to Pushpa in the Court. Examine the pleas





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of the parties and decide the case as per provisions of law and also support your decision with case law.

Q.2. Anil is the owner of a shop and he let it out to Naresh at a monthly rent of Rs. 3000 for doing business. Naresh has another shop in the interior of the same locality and is carrying on business from there also.

Anil has filed an eviction petition against Naresh alleging that Naresh illegally and without his permission sub-let tenanted shop to Hari. Naresh is no more in possession of the shop and that Hari is carrying out his own business from the tenanted shop. it

Naresh has denied that he has sub-let the shop to Hari and asserts that he is in Possession of the tenanted shop. He has taken the following pleas:

(a) Hari is his friend and Hari has been looking after his (Naresh's) business in the tenanted shop.

(b) Hari is working on commission basis to send customers to per the shop of the tenant, situated in the interior of the locality.

(c) Hari opens the tenanted shop in the morning and closes it in the evening and hands over the key of the lock to him (Naresh).

(d) He, the tenant has changed the name on the Bill-board hanging at the tenanted shop to make it more attractive to get more customers.

Anil has averred that:

(a) Naresh has not produced any document to show that he has ever paid commission or salary to Hari.

(b) Hari has got printed visiting cards in his own name with address of the tenanted shop.

(C) There is a Bill-board hanging on the tenanted shop with the name M/s. Hari & Sons, whereas at the inception of the tenancy of the shop the Bill-board was in the name of M/s. Naresh & Sons.

(d) On visiting cards of Hari, the name of the business of M/s. Hari & Sons is printed. Examine if Anil can succeed in evicting his tenant Naresh under the provisions of the Delhi Rent Control Act, 1958 from the shop along with reasons for the same.

Q.3. A, B & C formed a partnership in the year 1987 to do the business of sale of garments. 'B' was entrusted with the responsibility of keeping accounts of the firm. The firm took a loan from the bank. The firm suffered heavy losses and it caused mistrust among the partners.

Thereafter, 'A' served notice upon the remaining partners for dissolution of the firm and asked 'B' to render the accounts of + firm. B' did not comply with the notice. 'A' has filed a civil against B & C for declaration of the dissolution of the partners firm and 'B' to render accounts.

B & C have opposed the suit.



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The partnership deed has the following terms for the dissolution of the firm

- (1) If any party dies then in that event the partnership shall not be dissolved, but the sons of the deceased will become partners of his share.
- (2) If any party wants to separate from the business of the firm he can do so by giving a month's notice to other partners.
- (3) No partner can retire from the firm until the loan of the bank is paid off.

'A' says that he could have retired from the firm by serving notice of one month. Such notice was served upon B & C and the firm stood dissolved.

B & C have pleaded that loan of the bank has still not been paid off as such partnership firm has not been dissolved and that suit of 'A' is not maintainable.

Is the partnership firm alive or has been dissolved and that 'B' is liable to render the accounts of the firm?

Q.4. Sunil married Reena in the year 2013 and a daughter was born to them in the year 2014. Reena discovered in the year 2015 that Sunil was already married to Maria and that a daughter born out of that marriage, was alive.

In the year 2016, Sunil obtained a decree of divorce of his marriage with Maria.

What is the legal status of the marriage of Sunil and Reena and of two daughters born out of the above referred two marriages.

Would it make any difference to the legal status of the marriage Sunil and Reena if Sunil obtained a decree of nullity of his marriage with Maria in the year 2016? Also find out the legal status of the daughters born out of the two marriages after the decree of nullity of marriage.

Q.5. D.D.A. engaged a contractor to carry out repairs in its fifteen flats, which were occupied by its employees and their families. The contractual period was six months to carry out the repairs. Two of the occupants of the flats did not permit the contractor to do the work of repairs in their flats by stating that it was not required. The rest of the work was completed in ten months against the agreed period of six months.

D.D.A. deducted a part of due payment to the contractor by stating that he did not start the work in the first month of the contract period and the work was completed in ten months against the contract period of six months.

The contractor pleaded that there were difficulties in the start of the work lest he would have completed the work within the contract period of six months. He could not do so as site was not made clear to him to do the work. The occupants of the flats permitted him to do the work as per their convenience and that two occupants did not permit to do the job in their flats.

The contractor has filed a suit against D.D.A. for the recovery of deducted amount with interest.



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Decide the case with the help of relevant provisions and the case law.

- Q.6. Attempt any two of the following with due reasons:
- "All contracts are agreements but all agreements are not contracts." Elaborate it.
 - Why should a partnership firm be registered under the Partnership Act, 1932? Consequence of a complaint filed under section 138 of the Negotiable Instruments Act, 1881 by an unregistered partnership firm.
 - The general rule of 'caveat emptor' with its exceptions under law has become virtually a rule of 'caveat venditor'. Do you agree with the statement. Give reasons.
- Q.7. "H", an ordinary person was returning to his home on a bicycle in the night. There was little light on the road and visibility was poor. When he was pedalling his bicycle, its front wheel slipped into an open manhole on the road and he fell down and received head injuries. He brought an action for damages against the Municipality of the city claiming that it was duty bound to keep the manhole covered.
- The Municipality denied its liability by stating that in the night somebody must have stolen the cover of the manhole though it was covered in the day time. The officials would have got covered the manhole in the day time.
- Distinguish between absolute and strict liability. Is the principle of strict liability applicable in this case? Is the Municipality liable to pay damages to "H"?
- Q.8. "A", the seller and "B", the buyer entered into a contract for the supply of goods. The goods were to be dispatched by the seller from Kanpur to Patna by road. "A", sent the goods through a transport company and got the receipt drawn in his own name. The freight and the insurance were to be paid by the buyer. The goods were to be delivered to "B" at Patna through the seller's bank against payment. The truck, which was carrying the sold goods met with an accident on its way to Patna and the goods were destroyed.
- "A", the seller asks "B", the buyer to pay for the sold goods. The buyer has denied his liability.
- Find out who will bear the risk of lost goods.
- Q.9. Write a short note on any five of the following, as applicable under Muslim Law:
- The Maher
 - Talaq-ul-biddat
 - The Wasiyat
 - The Hiba
 - Wakf (1) Formalities/Ceremonies of a valid 'Nikah'
 - The Muttawalli



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Q.10. Irfan entered into a contract with company "X" to purchase 2000 quintal of coal at a fixed price to sell it in the market. The coal was to be lifted in two months against payment. Prem, a selling agent of "X" stood guarantor that Irfan would lift the coal in two months.

Irfan took delivery of 1000 quintal of coal in one month against payment. He declined to take delivery of the rest of the coal by stating that the market price of the coal had fallen and that he would suffer losses if he would lift the balance quantity of coal. "X" threatened

Irfan that if he would not lift the balance quantity of coal against payment, it would sell it at the risk of Irfan.

Prem, the agent suggested to Irfan that he should take delivery of the remaining quantity of contractual coal from "X" and that he (Prem) would purchase from him 500 quintal of coal out of the lifted 1000 quintal of coal; otherwise, he would pay him Rs. 50,000.

Accordingly, Irfan took delivery of 1000 quintal of coal from "X". However, Prem refused to purchase 500 quintal of coal or to pay Rs. 50,000 to Irfan.

Irfan has filed a suit for recovery of Rs. 50,000 with interest against Prem. Can Irfan succeed. Give reasons.

Q. 11. Attempt any two of the following:
(a) Discuss in brief maintenance 'Pendente Lite' and permanent maintenance and their objects under the Hindu Marriage Act, 1955.
(b) Discuss rights of a Hindu female to take a son in adoption under the Hindu Adoptions and Maintenance Act, 1955. Does the law permit adoption of two sons by a Hindu female.
(c) What is the effect of the Hindu Succession (Amendment) Act, 2005 on the rights of Hindu women?

Q. 12. Meera let out a residential house to Shyam and he with his family started living there. After five years of the tenancy, wife of Shyam was allotted a flat by DDA as it was applied much earlier.

Meera came to know about such allotment of flat to the wife of the tenant after about one year of its allotment. Then, the landlady filed an eviction petition against her tenant to get him evicted on the ground that the tenant through his wife, acquired/was allotted a residence in the locality of the tenanted premises.

Shyam has opposed the eviction petition on the ground that Meera is not the owner of the tenanted house and as such she cannot file eviction petition. Secondly that the allotted house is no more available for the residence of tenant and his family as it was sold out to meet the expenses to perform marriage of his daughter.





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Can Meera succeed to evict Shyam from the tenanted house under the provisions of the Delhi Rent Control Act, 1958?

Q.13. "A", is the buyer of rice under a 'cost, insurance and freight (C.I.F.) contract. Immediately after taking the delivery of the goods, he sold a part of rice and dispatched the same to sub-buyer. Later on, "A" came to know that the quality of purchased rice was not in accordance with the contract and wants to reject the same.

Is "A" entitled for any relief under the law? Give reasons.

Q.14. Four persons, A, B, C and D purchased a piece of land jointly. Subsequently, a cinema hall was constructed on that land with their joint money. Then, they formed a firm to exhibit films to earn profit.

Dispute arose between the partners. A and B claim that the piece of land and the cinema hall are properties of partnership but C and D dispute the same.

Find out if the properties or any one of them form part of the property of partnership firm.

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CIVIL LAW II

Q.1. Vide agreement to sell dated 10-1-2016, executed on a stamp paper of Rs. 100, 'A' agrees to sell his house at Vasant Vihar in New Delhi to 'B' for a consideration of Rupees twelve crores and 'B' pays a sum of Rupees one crore as advance sale consideration to 'A'. It is agreed between the parties that 'A' shall have the leasehold rights in the land underneath the property converted to freehold and the sale deed shall be executed by 'A' in favour of 'B' within three months of execution of conveyance deed of freehold rights in the land in favour of 'A' against payment of balance sale consideration and delivery or vacant possession of the land.

'B' in July, 2019 institutes a suit for specific performance agreement of sale against 'A', claiming that the possession of property was delivered by 'A' to 'B', three months after the date agreement to payment by payment to sell, in part performance of the said agreement against payment by 'B' to 'A' of Rupees five crores in cash.

A contests the suit. Besides filing a written statement, 'A' files an application under Order VII, rule 11, CPC and under Order XV of the CPC for rejection of the plaint/summary dismissal of the suit contending that the plaintiff on the basis of averment in the plaint and agreement to sell in writing is not entitled to the relief of specific performance. It is the plea of 'A' that the suit is barred by time and that 'B' by claiming to be in possession of the property has disentitled himself from the relief.

In the context of the aforesaid facts, analyse:

- (a) the law of limitation in a suit for specific performance of an agreement to sell of immovable property.
- (b) the need for registration of an agreement of sale of immovable property and the effect of non-registration thereof; and
- (c) the parameters of Order VII, rule 11, CPC.

Q.2. Explain the following in brief:

- (i) "Meaning of Cause of Action".
- (ii) "Meaning of Suits of Civil Nature".

Q.3A. Ramesh Kumar - landlord filed a civil suit for recovery of possession and mesne profits against his tenant Pawan Kumar. The tenant pleaded that he is governed by Rent Control Act and Civil Court has no jurisdiction to entertain Eviction Suit.

The landlord contended that his earlier eviction petition was rejected by the Rent Controller on the objection of the tenant that it was the Civil Court and





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not the Rent Controller, which had jurisdiction to entertain eviction suit against him as the Rent Act does not apply to his tenancy.

The landlord pleaded that the earlier judgment of the Rent Controller constituted *res judicata* between the parties and the tenant cannot be allowed to approbate and reprobate and is estopped from taking inconsistent pleas in the civil suit.

Decide the pleas of the landlord and the tenant by a reasoned order.

- Q.3B.** Plaintiff filed a suit for recovery against the defendant. The defendant did not file its written statement despite various opportunities granted by the Court. Ultimately, the Court struck off the defence of the defendant. The defendant asserted its right to participate in the proceedings and cross-examine the plaintiff and his witnesses, to lead evidence in defence and also to address argument.
Can the defendant be permitted to do so, decide the above contentions of the defendant with reasons.
- Q.4A.** "What should be the usual contents of a judgment in a civil suit"?
- Q.4B.** "How a money decree can be executed"?
- Q.4C.** "Can an Executing Court go behind the decree"? Give reasons.
- Q.5.** Write in short on:
(a) "Misjoinder of parties"
(b) "Which are the necessary parties to a suit"?
(c) Broad principles governing disposal of application for amendment.
- Q.6A.** Enumerate the essential principles for grant of Temporary Injunctions and quote relevant provision of law in this regard.
- Q.6B.** Two brothers are residing in one house consisting of ground floor only and both are having two rooms each. There is a common courtyard in the house. However, both the brothers are having strained relations with each other. Elder brother wants to construct a partition wall in the common courtyard which is resisted by the younger brother.
The younger brother had to go out for urgent work with his family. In his absence the elder brother along with his wife constructed a wall in the courtyard dividing the house into two portions.





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On return, the younger brother demolished the common wall which was again reconstructed forcibly by the elder brother. The younger brother again tried to demolish the wall. In the meanwhile, the elder brother obtained an ex parte injunction from the Court restraining the younger brother from demolishing the wall.

A few days later, the elder brother had gone out along with his family and in his absence, the younger brother and his major son demolished the wall in violation of the ex parte injunction granted by the Court.

On return, the elder brother filed an application under Order XXIX, rule 2A, CPC against the younger brother and major son.

Whether the major son of younger brother is liable under Order XXXIX, rule 2A of the CPC?

Q.7A. "In each case the best available evidence should be produced". Elaborate with at least four illustrations.

Q.7B. Write in brief on: "Grant of leave to defend under Order XXXVII of the CPC".

Q.8A. "If a party sleeps over his right and does not seek redress in a Court of law for its enforcement within the period of limitation prescribed therefor, a Court will not enforce it though the legal right is there and is not extinguished".

However, section 5 of the Limitation Act, 1963 provides for "extension of prescribed period in certain cases", provided the preferring the appeal or making the application within such period. Illustrate at least five examples of "sufficient cause" as per above section.

Q.8B. 'A' purchased the suit property from 'B' on the basis of registered general power-of-attorney and agreement to sell, after paying entire sale consideration to 'B'.

Later on, 'C' wanted to dispossess 'A' from the suit property on the basis of false documents executed by 'B' in favour of 'C'. A lodged an FIR against 'C'.

In the meanwhile 'C' on the basis of forged documents filed a suit for possession against 'A'. 'A' raises a preliminary objection that the suit of 'C' is not maintainable, as 'C' had not filed any documents on record regarding ownership of the suit property.

'C' in order to meet the objection of 'A' files an application under Order VIII, rule 1A of CPC seeking permission to file the documents alleged to have been executed in his favour. The application was resisted by 'A' on the ground, that 'C' has simply stated in the application that the documents which are to be filed were not in his power and possession in the entire pleading. 'C' has not



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explained in whose possession these documents were lying and how all of a sudden these documents came into his possession.

Decide the application giving reasons.

Q.9A. What is the effect of non-registration of a document which requires compulsory registration under the Registration Act, 1908?

Q.9B. Whether following documents require compulsory registration:

(i) Adoption Deed

(ii) Will

(iii) Gift Deed

(iv) Lease Deed

Q.9C. Plaintiff filed a suit for recovery of an amount against a defendant in the year 2001. The defendant filed its written statement in the year 2002. On the pleadings of the parties, in all five issues were framed. Issue number (1) was framed with regard to "court fee and jurisdiction".

Both parties never pressed that issue number (1) be treated as a preliminary issue.

The parties led their respective evidence.

When the suit was fixed before the Civil Court for final arguments, the defendant filed an application for deciding the issue number (1) in the first instance before hearing the final arguments.

Will such application be maintainable or not at the stage of the final arguments? Decide with reasons.

Q.10. In 1982, Smt. Rajrani - Plaintiff filed a suit for possession against Smt. Kamla Devi - Defendant. The summons were duly served upon the defendant. Despite service, the defendant did not appear in the Court nor she contested the suit. Accordingly, the defendant was proceeded ex parte.

The Civil Court vide its judgment dated 30-8-1983 decreed the suit ex parte in favour of the plaintiff.

Thereafter, plaintiff filed an application for execution of the decree in the year 1986 and notice of the same was issued to the defendant. It transpired that the defendant had already died in the year 1985. Accordingly, plaintiff filed an application under Order XXII, rule 4, CPC for bringing the legal heirs of defendant on record.

There were two legal heirs of the defendant who instead of filing reply to application under Order XXII, rule 4, CPC of the plaintiff filed an application under Order IX, rule 13, CPC for setting aside the ex parte decree passed against the deceased defendant.



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The plaintiff in its reply took an objection that since the defendant had been duly served in her lifetime with the summons and had not chosen not to appear or contest the suit, as such the application Order IX, rule 13, CPC filed by the legal heirs of the respondent is barred by limitation and is liable to be dismissed.

In view of the above facts, decide the application under Order IX, rule 13, CPC with detailed reasons.



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