GUJARAT JUDICIAL MAINS EXAMINATION, 2017
PAPER - I
CRIMINAL

Time: 2½ Hours **Total Marks : 75**

1. Answer the questions : (any two) **10**

(1) Enumerate the provisions of the commencement of proceedings before the Magistrate.

(2) State what are the contents of the charge, the consequences of defect in framing of charge and when can charge be altered or amended.

(3) Explain the law relating to circumstantial evidence.

(4) What are the nature of reliefs which can be granted under the provisions of the Protection of Women from Domestic Violence Act?

2. Explain in brief : (any two) **10**

(1) "Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed." State the exceptions to this rule

(2) 'Oral evidence in all cases must be direct.' Explain this rule with illustrations and exceptions.

(3) Relevance of Motive and Intention in Criminal Law.

(4) Explain in brief the historical background of Probation Law in India.

3. Discuss in detail : (any two) **10**

(1) Maintenance of Wife, Children and Parents.

(2) Evidence has to be Weighed and not Counted.

(3) Powers of Magistrate under the Protection of Women from Domestic Violence Act.

(4) Prohibition of determination of sex of a foetus.

4. Answer the questions : (any two) **10**

(1) Difference between Theft and Extortion.

(2) Difference between Common Intention and Common Object.

(3) Difference between Simple Hurt and Grievous Hurt.

(4) Difference between Admission and Confession.

5. Write Short Notes : (any two) **10**

(1) Dowry Death.

(2) Right of Private Defence.

(3) Importance and Relevancy of Case Diary.

(4) Double Jeopardy.

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6. Write Short Notes : (any two) **10**

(1) Juvenile Justice Board and its Powers.

(2) Liability of Company under Section 138 of the N. I. Act.

(3) Cognizance of Offences and jurisdiction of Court in the context of dishnour of cheque.

7. State whether True or False : (any five) **10**

(1) Offence punishable under Section 304-A of the IPC, causing death by rash or negligent act, is Non-bailable.

(2) Offence punishable under Section 352 of the IPC, assault or use of criminal force otherwise than on grave provocation, is Non cognizable.

(3) Offence punishable under Section 338 of the IPC, causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of the others, is compoundable.

(4) As held by the Apex Court in the case of Lalitakumari Vs. State of U.P., it is not mandatory for the PSO to register the FIR in cognizable offences.

(5) Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of case, has been clarified by the Supreme Court recently in the case of Anirudhh Vs. State of Gujarat.

(6) The decision in the case of Dashrath Rupsinh Rathod Vs. state of Maharastra is in reference of validity about of service of notice through e-mail in N.I. Act offences.

8. Draw the Order granting or refusing Bail :

First Information Report being CR No. I 302/2017 for the offence punishable under Sections 406, 417, 420, 467, 468, 471, 477 and 114 of the IPC, is registered with Dediyapada Rural Police Station on 9.3.2017, against the applicant-accused Chimanbhai Vasava and five others. The applicant-accused Chimanbhai has been arrested by the Investing Officer on 17.3.2017 at 11.00 am and then produced before the Ld. Magistrate. Dediyapada on 18.3.2017 at 10.30 am. At the time of production, the accused himself made complaint against the Investigating Officer about ill-treatment. An application for bail has also been submitted by the accused Chimanbhai through Ld. Advocate Mr. Tamakuwala stating that there is no prima facie case, investigation qua

the applicant is almost completed, he is the permanent resident of Dediyapada and he possesses immovable properties within the jurisdiction of the Court. Mr. Afinwala Assistant Public Prosecutor has strongly raised objections against the bail application submitting that the co accused persons are absconding, investigation is going on, muddamal articles are still to be recovered, alleged offences are serious in nature, there is possibility of tampering with the evidence and as the applicant-accused also possesses Passport, there are chances of fleeing from justice therefore, discretion should not be exercised in favour of the applicant-accused.

PAPER – II
(CIVIL)

Time: 24 Hours **Total Marks : 75**

1. Answer the questions : (any two) **10**

(1) What are the essentials of pleadings ?
(2) What are the exceptions to the rule of "No consideration, No contract ?
(3) Can a minor be admitted as a partner of a firm ? If so, can he subsequently ratify or revoke such partnership. Describe the rights and liabilities of such minor partner.
(4) What do you mean by specific performance of a contract ? What contracts cannot be specifically enforced ? Can a part of contract be specifically enforced ? Explain with suitable illustrations.

2. Explain in brief : (any two) **10**

(1) Explain the provisions, as also principles to invoke the jurisdiction of Civil Curt.
(2) 'The Executing Court cannot go behind the decree. However, it does not mean that the Court has no duty to find out the true effect of the decree.'
(3) Explain 'The doctrine of frustration' according to the Contract Act with illustrations.
(4) "Law of limitation simply bars judicial remedy, it neither affects extra judicial remedies nor the substantive right itself." Comment

3. Discuss in detail : (any two) **10**

(1) Mention the various types of injunctions and discuss how far it is correct to say that injunction is purely a preventive relief.
(2) The provisions and principles with regard to Summary Suits.
(3) 'All contracts are agreements, but all agreements are not contracts.'
(4) 'The liability of a surety is co-extensive with that of the principal debtor.'

4. Answer the questions : (any two) **10**

(1) Difference between a contingent contract and a wagering agreement.
(2) Difference between Res Judicata and Res Sub Judice.
(3) Difference between Partnership and Joint Hindu Family Business.

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5. Write Short Notes : (any two) **10**

(1) Amendments of Pleadings.
(2) Attachment before Judgment.
(3) Lis Pendens.
(4) Effect of Non-registration of a Firm.

6. Write an Essay only in English : (any one) 10

(Answer in Gujarati/Hindi to this Question-6 will not be considered.)

(1) ADR Mechanism.

(2) Legal Aid – Ambit and Scope in Indian Judicial System.

(3) Principle of Natural Justice.

7. State whether True or False : (any five) 10

(1) In Gujarat, as per the recent amendment, the pecuniary limit of jurisdiction of a Court of Civil Judge is Rs. 10,00,000/-

(2) The principle of Res Judicata applies also as between two stages of the same litigation. x

(3) Even if the guardian of the minor fails to execute the decree passed in favour of the minor, the right of the minor to execute the decree within three years, after attaining majority, is not affected.

(4) Court is duty bound to dismiss the suit which is barred by limitation, irrespective of question, where issue was raised or not by the defendant. ✓

(5) can initiate criminal Even an unregistered partnership firm proceedings.

(6) As per the recent amendment made in the Gujarat Court Fees Act, now process fees are not required to be paid in any Civil or Criminal proceedings.,

8. Draw the Order granting or refusing exparte interim injunction : 5

An agriculture land Survey No. 723 of village Ranakpur Talkula Dwarka is an ancestral property. The plaintiff Omprakash is a government servant and residing at Valsad with his family, since last more than 12 years. The defendants Ramprakash and Krishnaprakash, brothers of the plaintiff, are residing at village Ranakpur since beginning and cultivating the land jointly. As per say of the plaintiff, every year 1/3 share of the profits is being given to him by the defendants. It is the case of the plaintiff

that due to considerable rise in the value of the land, his brothers have now declined to give him share saying that he is residing separate since last more than 12 years at Valsad and has not spent any amount towards development of the land in question. It has been alleged by the plaintiff that the defendants are trying to dispose of the said ancestral land without the consent of the plaintiff. The plaintiff has therefore, filed the suit for declaration and permanent injunction. Along with the plaint the plaintiff has also submitted an application (Ex. 5) for interim injunction in respect of transfer and possession of the land, and also claimed relief to restrain the defendants from prohibiting the plaintiff in entering in the suit land.

PAPER - III
(GUJARATI LANGUAGE)

Time: 11 Hours **Total Marks : 50**

1. નીચેનાં વાક્યોમાંની જોડણી ભૂલો સુધારીને ફરીથી લખો : (ગમે તે આઠ) ૪

(૧) કોમલ વર્ગખંડમાં હોશિયાર વિદ્યાર્થિની છે.
(૨) સોહનનું વ્યક્તિત્વ નરભિમાન છે.
(૩) કરીશ્મા પ્રતિકૂળ પરિસ્થિતીમાં પણ સ્વસ્થ રહે છે.
(૪) કમલેશભાઇ મંડળના પ્રતિનીધી તરીકે આવ્યા છે.
(૫) તેઓ સહાનૂભૂતીથી સેવાકાર્યો કરે છે.
(૬) વિદ્યાર્થીઓએ વર્ગખંડ સૂસોભીત કર્યો હતો.
(૭) તેમનું સ્થાન નિલગિરી પર્વતમાં છે.
(૮) હું તેના માટે ખૂબ દિલગીર છે.
(૯) સૌરભે એન્જનિઅર મારફત પ્લાન બનાવડાવ્યો.

2. નીચેના શબ્દોના સમાનાર્થી શબ્દ દર્શાવી તેનો વાક્યમાં પ્રયોગ કરો : ૮
(ગમે તે ચાર)

(૧) વ્યોમ (૨) અરુણોદય
(૩) લલિત (૪) તાસીર
(૫) ગ્રંથી (૬) વિભૂષિત

3. નીચેના શબ્દોના વિરુદ્ધાર્થી શબ્દ દર્શાવી તેનો વાક્યમાં પ્રયોગ કરો :
(ગમે તે ચાર)

(૧) પ્લાન (૨) વિરક્તિ
(૩) પરલક્ષી (૪) ઉન્નતિ
(૫) એકાંગી (૬) સાવધ

4. નીચેના રૂઢિપ્રયોગોનો અર્થ જણાવી વાક્યમાં પ્રયોગ કરો : (ગમે તે પાંચ) ૧૦

(૧) જીવ તાળવે ટીંગાઇ રહેવો
(૨) રાખ વળી જવી
(૩) કંઠે ભુજાઓ રોપવી
(૪) હેલારે ચઢવું
(૫) ગોદડે ગાંઠ વાળવી
(૬) કાળા અક્ષર કુહાડે મારવા
(૭) ગંગામાં જળ વહી જવું

5. નીચેના ફકરાનું ગુજરાતીમાં ભાષાંતર કરો : 10

In the light of the provisions of Section 363 read with Section 361 of the Indian Penal Code, the first question that arises for consideration is as to whether the age of the victim was under eighteen years at the time of the incident so as to fall within the ambit of Section 361 of the Indian Penal Code, The evidence on record reveals that a school leaving certificate came to be produced at Exhibit 20 wherein the birth date of the victim is shown to be 5th October, 1982, In the present case, the alleged offence is stated to have been committed on 6th March, 1999. Therefore, if the age of

the victim is computed on the basis of the age as stated in the school leaving certificate, she is clearly below eighteen years of age/However, the record further reveals that prior to getting married to the accused, an ossification test of the victim and the accused had been carried out which reveals that the age of the victim was nineteen years. Subsequently, a medical test of the victim came to be carried out and as per the medical report (Exhibit 13), the victim was nineteen years of age, The trial court, in the impugned judgment has chosen to place reliance upon the medical report rather than school leaving certificate, What is required to be, therefore, examined is as to whether the trial court was justified in giving more weightage to the medical certificate at Exhibit-13 rather than the school leaving certificate, The record reveals that the school leaving certificate at Exhibit 20 has been produced on record by one Ranjanben Girdharbhai Upadhyay, Assistant Teacher at the Kashibai Vijkorbai Girls School No. 1, Rajula. The said witness has deposed that the date of birth of the victim as entered in the school register is 5th October, 1982.

નીચેના ફકરાનો અંગ્રેજીમાં અનુવાદ કરો : ૧૦

આ કામે પડેલ પુરાવાને સમગ્રપણે જોતાં ફરિયાદીએ કોર્ટમાં કરેલ ફરિયાદ ઉપર અમારા પુરોગામી ન્યાયાધીશશ્રી દ્વારા ક્રિમિનલ પ્રોસીજર કોડની કલમ ૧૫૬(૩) મુજબની ફરિયાદ દાખલ કરી પોલીસ તપાસ કરવાનો હુકમ કરવામાં આવેલ. આ કામની અસલ ફરિયાદ (આંક-૧૯) ફરિયાદણ દ્વારા કોર્ટમાં રજૂ કરવામાં આવેલ છે, જેમાં ફરિયાદીની સહી છે. આ ફરિયાદ અને પડેલ પુરાવાની સરખામણી કરતાં ફરિયાદ, ફરિયાદણની જુબાની અને ફરિયાદપક્ષના અન્ય સાહેદોની જુબાનીઓ વચ્ચે ગંભીર વિરોધાભાસ જણાઇ આવેલ છે. અત્રે ઉલ્લેખનીય છે કે આ કામે કોઇ અરજદારણના ભરણપોષણના મુદ્દાનો કે છૂટાછેડાનો નિર્ણય કરવાના અર્થે અરજદારણને પોતાના પતિનો ત્યાગ કરવા માટે પૂરતાં અને વાજબી કારણ હતાં કે કેમ તે તપાસવાનો મુદ્દો નથી. પરંતુ ઇન્ડિયન પીનલ કોડની કલમ ૪૯૮ (ક)માં સમાવિષ્ટ તત્ત્વો આ કામે આરોપીઓની વિરુદ્ધ પુરવાર થાય છે કેમ તેના ન્યાયિક નિર્ણયનો મુદ્દો છે. ભરણપોષણનો કે છૂટાછેડાનો ન્યાયિક નિર્ણય કરવો એ અનુક્રમે અર્ધ-દીવાની અને દીવાની પ્રક્રિયા છે જ્યારે આરોપી વિરુદ્ધ ગુનાની કાર્યવાહી ચલાવવી તે ફોજદારી પ્રક્રિયા છે. ફોજદારી પ્રક્રિયામાં પુરાવાનું સ્તર તે દીવાની પ્રક્રિયાના પુરાવાના સ્તર કરતાં ઊંચું છે અને તે નિઃશંકપણે માની શકાય તેમ હોય તે મહત્ત્વની આવશ્યકતા છે. તે દૃષ્ટિથી જ આ કામે પુરાવાનું મૂલ્યાંકન કરવામાં આવેલ છે. આ કામે ફરિયાદીએ પોલીસ સ્ટેશને નહીં પરંતુ કોર્ટમાં લેખિત ફરિયાદ કરેલ છે. વળી ફરિયાદી પોતાની જુબાનીમાં એ વાતને વળગી રહે કે મારી ફરિયાદ મેં જ લખેલ છે.

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