

Final Copy

**DELHI HIGHER JUDICIAL SERVICE MAINS EXAMINATION (WRITTEN) 2023**

Duration: 2 Hours

Maximum Marks: 150

**GENERAL KNOWLEDGE & LANGUAGE**

**Important Instructions**

- (i) *Please read the questions carefully and answer them as directed.*
- (ii) *All questions are compulsory, unless specified.*
- (iii) *You are allowed 15 minutes time before the examination begins, during which you should read the question paper and, if you wish, highlight and/or make notes on the question paper. However, you are not allowed, under any circumstances, to open the answer sheet and start writing during this time.*
- (iv) *The answer to each question should begin on a fresh page.*
- (v) *This paper is to test the candidate's awareness of current affairs, general knowledge and English language. Credit will be given for substance, cohesive and concise presentation, articulation of views and ideas, and employment of appropriate vocabulary and expression.*

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1. Write on **any four** of the following in about 200-250 words each:
  - (a) Can IMEC be a challenge to the Belt and Road initiative?
  - (b) Conflict resolution – mediation or court room justice?
  - (c) Media – the molder of public opinion.
  - (d) Bridging the digital divide is not only a matter of policy but a moral imperative.
  - (e) Impact of AI on India's IT sector.
  - (f) Is India ready for the New Education Policy?

(g) QUAD is a force for the Global South.

(h) Caste Census – Need or Concern?

**(20 marks x 4 = 80 marks)**

2. Prepare a precis of the following passage in about 250 words.

Reservation is the most effective form of affirmative action and equity is the first step to equality. That it leads to inefficiency or incompetency is simply making excuses for not rendering tightly guarded spaces to ousted classes. I strongly contend that women are not inferior to men. Incompetencies, even if they arise, are short term, and are removed soon after opportunity for skill building is made available.

A very astute person once asked me whether we want women to fight women. The answer is 'no'. What women want is a level playing field where the factor of gender which is completely irrelevant but looms large, is removed from the equation.

The basic premise of advocates against reservation is that it will bring down competence. Alas, this is a completely misplaced notion as statistics show that women perform much better than men in academics, more women graduate from colleges than men, and more women enter the workforce than men. In contrast to this trend, the number of women sharply spirals downwards in leadership positions not because of their incompetence, but because of the hegemony of men.

The inauguration of parliamentary business in September 2023 in the new Parliament building also gave a fresh start to the aspirations of Indian citizens with the passage of the Women's Reservation Bill. After much delay, the Constitution (One Hundred Twenty-Eighth Amendment) Bill, 2023, popularly known as the Women's Reservation Bill, 2023 became a rare piece of legislation in independent India to be cleared overwhelmingly by both Houses. It is indeed a ground-breaking event. While India's founding fathers ensured that India was early to adopt universal adult suffrage, the role of women in shaping the

country's political future still remains minimal.

Global trends exhibit a sharp reduction in the age of political leaders. But can a common Indian woman, just by her commitment and ambition, dream of becoming the Prime Minister of India at the age of 37 — like Jacinda Ardern, the former Prime Minister of New Zealand?

Across the world, women are appreciated by society in supportive and emotional roles, but very seldom in leadership roles. The world hates and denigrates ambitious women. Take, for example, the case of Hillary Clinton. There is not an iota of doubt that her political experience and acumen trumped Donald Trump's competencies. However, America, the world's so-called top democracy, chose an inexperienced Mr. Trump over her to lead them.

Historical evidence points out that but for a few Taleb's black swans, all women who have assumed leadership roles did not get there by sheer industry, competence and intelligence. They were allowed only for the convenience of men who were disqualified from assuming these positions, or, if it served some political agenda. In the Indian political arena women leaders were, most often, convenient choices. Their initial acceptance was the perception that they could be conveniently removed, but their inherent acumen belied those designs.

Historical evidence also shows that most women who make it to leadership positions have a mix of privileges — of higher education, the support of influential mentors or families, or belong to upper classes or castes. If there is a survey, I am sure that the figures will show that the percentage of women legislators who have had university and higher education is almost cent per cent, versus such a percentage of male legislators.

The deepest cut is that the handful of privileged women who assume leadership are not supportive or empathetic to the aspirations of those women who do not even have access to basic needs such as nutrition, education and financial independence. They reel under the misconception that they have become leaders by virtue of their own efforts and sacrifices, ignoring the personal advantages they possess.

The archives bear testimony to this attitude. During the Round Table Conference held in the 1930s in London, a letter was written on November 16, 1931 by Sarojini Naidu and Begum Jahanara Shahnawaz presenting a joint

manifesto by the All India Women's Conference, the Women's Indian Association, and the Central Committee of the National Council of Women in India. They demanded neither discriminatory nor favourable treatment on the basis of gender in legislative representation, thereby rejecting reservation.

The accusation that the previous avatar of the women's reservation Bill would only champion the cause of educated, urban and elite women, failed to recognise that the core objective of the Bill was to create space for women who did not have the good fortune of belonging to privileged and elite classes. A report in the leading daily said that political analysts felt — and rightly so — that the stand of certain leaders did not stem from their concern for women, but because “it would reduce the space for men who dominate elections in our patriarchal society”.

It is time to quickly set right historical wrongs. Women want change. Society needs change. And there is no reason why it should be late.

**(40 marks)**

3. Write on **any three** of the following in about 100 words each:

- (a) Smart cities - inclusionary or exclusionary?
- (b) Success is what you think of yourself – not what others think about you.
- (c) Write a short note on any one Sustainable Development Goal.
- (d) PPP models of development.
- (e) A need for inter-generational dialogue to re-imagine education.
- (f) The Bio-Fuels Alliance

**(10 marks x 3 = 30 marks)**

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Maximum Marks: 200

**LAW-I**

**Important Instructions**

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**PART-I**

Answer **any four** out of the following six questions:

1. The defendant, on service of summons of the suit, made an application under Order VII Rule 11 of the CPC contending that the plaintiff had not sought the appropriate prayer of declaration of the sale deed as illegal, null and void and axiomatically not paid any court fees in that regard.

**Decide the said application.**

2. Defendants No. 1 and 2 in a suit concerning adjudication of rights over immovable properties, though filed a written statement but did not take effective part in the suit thereafter. The suit was decreed in favour of the plaintiff on 1<sup>st</sup> October, 2005 by the Court of the Civil Judge, Delhi. The defendants No. 1 and 2 filed a Regular First Appeal under Section 96 of the CPC assailing the suit judgment and decree. Since there was a delay of 62 days in filing the appeal, an application under Section 5 of the Limitation Act was filed seeking condonation of delay, on the ground that the judgment under appeal was not in the knowledge of the appellants/defendants No. 1 and 2.

**Decide the said application.**

3. What is a 'Bolar Exception' and what are the qualifying factors for determining whether the exception is applicable.
4. Discuss the scope of reservation in promotion under Article 16 of the Constitution of India.
5. Whether copyright protection can be granted to a religious scripture?
6. The father of twinboys files writ petition under Article 226 of the Constitution of India in the High Court of Delhi for issuance of appropriate writ directing the Government of NCT of Delhi, Union of India and Lt. Governor of Delhi to expedite the finalization of Delhi School Education (Amendment) Bill 2015 which prescribes for prohibition of screening procedure in the matter of admission of children at Pre-Primary Level in Schools. It is pleaded in the writ petition that the said Bill was prepared in the year 2015 and without any justification and against public interest was hanging between Central Government and Delhi Government and was not being passed and delay in proceeding further was contrary to the interest of children in the matter of admission to Nursery/Pre-Primary in private schools and had resulted in arbitrary procedure being adopted by different schools in matters of admission of children at Pre-Primary Level.

**Decide giving reasons, whether you would issue notice of the writ petition or dismiss the petition in *limini*.**

**(10 marks x 4 = 40 marks)**

## PART-II

Attempt **any two** out of the following three questions:

7. (a) The defendant in a suit applied for rejection of plaint under Order VII Rule 11 of the CPC, contending that the suit was barred by *res-judicata*. Alongwiththe application, the defendant filed several documents/orders of various courts. Discuss, whether a plaint can be rejected under Order VII Rule 11 of the CPC on such ground.
- (b) What are dynamic injunctions?
8. 'A', in the year 2003, instituted a suit in the Court of Civil Judge, Delhi against Union of India, Delhi Development Authority and Municipal Corporation of Delhi, contending that he had become the owner of certain land by adverse possession and seeking injunction against the defendants from dispossessing him. 'A' on 28.07.2007 withdrew the said suit and the same was dismissed as withdrawn. Though 'A' sought permission to file a fresh suit but the same was declined by the Civil Judge, Delhi. 'A' thereafter, in the year 2008 filed a writ petition in the High Court of Delhi praying for a direction to Union of India, Delhi Development Authority and Municipal Corporation of Delhi to record the land in his name. While filing the writ petition, no mention was made of the suit earlier filed or withdrawal thereof. Upon the respondents in the writ petition disclosing the suit earlier filed by 'A', 'A' in his rejoinder pleaded that during the pendency of the suit, he had applied to the authorities for recording the land in his name and since the said application was being actively considered by the Government, therefore the suit was withdrawn. Reliance was placed on file notings recorded at different levels wherein positive notes were prepared and opined that 'A' was entitled to the said land. It was further pleaded in the rejoinder that since in spite of such notings at different levels, the decision was not being taken, the writ petition was filed to ensure that the authorities decide the said application of 'A'.

**Decide the said writ petition under the headsof – 1) maintainability of the writ petition after withdrawal of the suit; 2) effect, if any, of non disclosure by 'A' in the writ petition, of the earlier suit and withdrawal thereof; and, 3) whether 'A' can rely on notings in the Government file, without any final decision being taken by the Government.**

9. (a) What is 'evergreening' of a patent and which provision of the Indian Patent Act prevents evergreening of a patent and how?
- (b) The plaintiff leased out land measuring 400 sq. yards in Shahdara, Delhi to the Municipal Corporation of Delhi (MCD) for a period of 10 years. On expiry of lease, the plaintiff served a notice on MCD, calling upon the MCD to hand over the vacant peaceful possession of the land and on the MCD not complying with the notice, instituted a suit for recovery of possession, before the Court of Civil Judge, Delhi and which was decreed in favour of the plaintiff and against the MCD. The plaintiff thereafter filed an execution, to get the decree for possession executed and obtained warrants of possession. MCD filed objections on the ground that on the spot there was a school built on land ad-measuring 1700 sq. yards and disputed decretal land ad-measuring 400 sq. yards could not be identified. It was also stated that a part of the said 1700 sq. yards of land had been encroached.

**Decide the said objections.**

**(20 marks x 2 = 40 marks)**

### **PART-III**

Attempt **any four** out of the following six questions:

10. Airport Authority of India (AAI), in November, 2022 awards the contract for construction of a runway to Runways Construction Company Pvt. Ltd. The said Runways Construction Company Pvt. Ltd., with the consent of AAI, in November, 2022 itself sub-contracts the said work to Runways Incorporated, a partnership of Dalip Kumar and Sanjeev Kumar. Runways Construction Company Pvt. Ltd., in March, 2023 terminates the sub-contract of Runways Incorporated, *inter-alia* on the ground that Runways Incorporated, in terms of the sub-contract was required to commence the work within one month of the execution of the sub-contract but had not commenced the work till then and forfeits the security deposit taken from Runways Incorporated and immediately thereafter awards the sub-contract in favour of Fly High Pvt. Ltd. Runways Incorporated institutes a suit, impleading AAI, Runways Construction Company Pvt. Ltd. and Fly High Pvt. Ltd. as defendants thereto, for,

- (i) declaration that termination of the sub-contract in its favour and award of the sub-contract to Fly High Pvt. Ltd. is illegal;
- (ii) permanent injunction to restrain AAI, Runways Construction Company Pvt. Ltd. and Fly High Pvt. Ltd. from proceeding with the work;
- (iii) for specific performance of the sub-contract in its favour.

Along with the suit, an application under Order 39 Rules 1 and 2 of the CPC is also filed to restrain all the three defendants from proceeding with the work. AAI contests the suit pleading that it has no privity with Runways Incorporated and has no concern with the dispute between Runways Construction Company Pvt. Ltd. and Runways Incorporated and the delay in construction of the runway would be detrimental to public interest. Runways Construction Company Pvt. Ltd. contests the suit pleading that Runways Incorporated, in accordance with the sub-contract was to commence the construction within one month and having not done so, it was fully entitled to terminate the contract. Fly High Pvt. Ltd. files an application for deletion of its name from the array of defendants, also stating that if owing to pendency of the suit or any orders therein, any delay is caused in execution of work, it would not be responsible therefore. Runways Incorporated in its replication to the written statement of Runways Construction Company Pvt. Ltd. states that it was unable to commence the work for the reason of the entire land for the runway having not been made available and without the entire land being made available, it could not be expected to commence construction. Both AAI and Runways Construction Company Pvt. Ltd., after taking permission of the Court filed a further pleading stating that of the total length of 2.4 kms of the runway, only the land for 0.03 kms had not been made available and would have been made available but Runways Incorporated could not have held up the work of the entire runway.

**Decide the application for interim relief.**

11. The plaintiff instituted a suit for permanent injunction pleading that,
  - (i) plaintiff was in the business of running Entertainment and Infotainment Media Channels;

- (ii) in addition to operating television channels, the plaintiff was also engaged in the business of creating television shows and which inter-alia, were broadcast under the well-known trademark '*BhaiyajiKahin*'; the plaintiff had also got the said trademark registered and had already broadcast over 1200 episodes;
- (iii) owing to said show being successful, the trademark '*BhaiyajiKahin*' had attained immense goodwill and reputation and the show had viewership of over 10 lakhs; the show - '*BhaiyajiKahin*' had also won several awards and generated revenue of crores of rupees;
- (iv) it had recently come to the knowledge of the plaintiff that defendant was about to launch a show titled '*Bhaiyaji Superhit*' which was planned to be a satire on the show of the plaintiffs;
- (v) owing to the similarity in trademarks as well as the nature of the show of the plaintiff as well as the defendant, there was likelihood of the patrons confusing the show of the defendant for the show of the plaintiff.

Along with the suit, an application under Order 39 Rules 1 and 2 of the CPC is filed for interim relief restraining the defendant from broadcasting the show '*BhaiyajiSuperhit*'.

The defendant contests the suit and the application for interim relief pleading that, (i) there is no likelihood of confusion between the show of the defendant and show of the plaintiff and between two marks; (ii) the registration in favour of the plaintiff of '*BhaiyajiKahin*' was with the rider/condition that 'registration of this trademark shall give no right to its exclusive use of the words separately', thereby meaning that the plaintiff has no right to claim exclusive use of the word '*Bhaiyaji*'; (iii) the word/term '*Bhaiyaji*' is a generic Hindi word that literally translates to brother and therefore the plaintiff cannot claim exclusive use of the said word; (iv) the show of the plaintiff and the show of the defendant would be broadcast on different news channels, further eliminating the possibility of confusion; (v) while the show of the plaintiff was in the form of news debate, the show of the defendant was an Infotainment programme to be hosted by a comedian.

**Decide the application for interim relief.**

12. A. Vallaiannai entered into an agreement dated 26<sup>th</sup> May, 1988 for sale of his property to K. Shreeram and received advance consideration and the balance consideration was to be paid by 26<sup>th</sup> May, 1989. With an endorsement dated 26<sup>th</sup> May, 1989, the timeline for payment of balance consideration and execution of sale deed extended till 26<sup>th</sup> November, 1989. On 11<sup>th</sup> July, 1991, K. Shreeram issued notice to A. Vallaiannai to accept the balance sale consideration and execute the sale deed within one month. A. Vallaiannai responded with a reply dated 9<sup>th</sup> August, 1991 alleging that K. Shreeram had failed to perform and abide by the agreement to sell within the stipulated deadline. On 15<sup>th</sup> July, 1991 K. Shreeram filed a suit for permanent injunction to restrain A. Vallaiannai from dealing with the property till he executes the sale deed. It was pleaded that A. Vallaiannai was negotiating with third parties to sell the suit property. It was further pleaded that K. Shreeram would be filing a suit for specific performance in a short time. A. Vallaiannai contested the suit pleading that K. Shreeram was never ready and willing to perform the agreement to sell and for this reason only, instead of filing a suit for specific performance, had filed the suit for permanent injunction. However, on 23<sup>rd</sup> December, 1992, the suit for injunction was dismissed as not pressed. Thereafter on 27<sup>th</sup> September, 1995, ~~K. P. Murali~~ <sup>K. Shreeram</sup> filed a suit for specific performance of the agreement to sell. It was *inter-alia* the defence of A. Vallaiannai that the suit was barred by limitation. K. Shreeram, in replication pleaded that A. Vallaiannai had not denied her intention to complete the agreement to sell and therefore the limitation period had not commenced.

**Decide whether the suit was barred by limitation.**

13. Madras Aluminium Co. Ltd. had entered into a contract with the Electricity Board and obtained an electricity load of 67000 KVA at its plant. Upon establishing a captive power plant, it applied to the Electricity Board to reduce the load to 10000 KVA with effect from 27<sup>th</sup> January, 2002. Despite such request, no steps were taken by the Electricity Board for so reducing the load. Therefore the company was being forced to pay charges for 67000 KVA load. The company, in the year 2005 filed a writ petition in the High Court in this regard, also seeking refund from the Electricity Board of the charges collected from the company over and above the load of 10000 KVA. The Electricity Board in its response to the writ petition placed reliance on various clauses of the agreement entered into with the company and the terms and conditions of supply of

electricity to justify their stand. It was further pleaded that simply because the Electricity Board was taking time to consider the application of the company for reduction of load would not entitle the company to automatically pay charges as per the rates applicable to load of 10000 KVA and till the load was actually reduced.

**Decide the writ petition in the context of 1) Article 14 of the Constitution of India; 2) maintainability of writ petition in contractual matters; and 3) grant of relief of recovery of money in writ petition.**

14. (a) Mrs. Cherian instituted a suit in the Court of Civil Judge, Delhi, for declaration of title with respect to certain lands and for recovery of possession of the land from the defendants and for recovery of mesne profits. The defendants contested the suit claiming to be tenants in the land and being not liable to be evicted therefrom. The suit was dismissed by the Court of Civil Judge on 16<sup>th</sup> November, 1989. Mrs. Cherian filed an appeal before the Court of District Judge, Delhi on 10<sup>th</sup> January, 1991. The Court of District Judge on 18<sup>th</sup> December, 1998 set aside the judgment of the Civil Judge and remanded the suit to the Civil Judge for adjudication afresh. The defendants preferred a second appeal to the High Court of Delhi against the judgment and decree of the District Judge but it was dismissed on 13<sup>th</sup> December, 1999. Upon remand, the suit was decreed by the Court of Civil Judge on 21<sup>st</sup> October, 2000, in favour of Mrs. Cherian and a decree for possession passed in favour of Mrs. Cherian. The appeal preferred by the defendants against the said judgment was dismissed and the judgment of the Civil Judge decreeing the suit in favour of Mrs. Cherian attained finality. Thereafter Mrs. Cherian applied for execution of the decree for possession in her favour. Objections were filed by one Mr. Mathew to the said execution claiming to have purchased the property from the defendants on 17<sup>th</sup> March, 1991 i.e. between 16<sup>th</sup> November, 1989 when the suit was dismissed and 10<sup>th</sup> January, 1991 when Mrs. Cherian filed the appeal thereagainst.

**Decide the said objections in light Order XXI Rule 102 CPC.**

- (b) The plaintiff instituted a suit in the Court of the Civil Judge, Delhi against the two defendants, for recovery of possession of land, pleading that he had purchased the land from the two defendants and paid entire consideration thereof and the defendants had also put the

plaintiff in possession of the land but subsequently the defendant No. 2 forcibly took possession of the land from the plaintiff. The first defendant filed a written statement admitting the case of the plaintiff. Second defendant contested the suit by filing a written statement, pleading that 1) the sale deed was a sham document which was never intended to be acted upon and had never been acted upon; 2) that the sale deed was executed only as a security for a money lending transaction. The Civil Judge dismissed the suit, finding in favour of the Defendant No. 2. The plaintiff preferred first appeal before the District Judge contending that in the face of the registered sale deed and the failure of the defendant no. 2 to make any counter claim for cancellation of the registered sale deed, the suit could not have been dismissed.

**Decide the said first appeal on the aforesaid contentions of the plaintiff.**

15. (a) What is the impact of the amendment with effect from 24<sup>th</sup> September, 2001 to the Registration Act, 1908 on Section 53-A of the Transfer of Property Act, 1982?
- (b) Section 12 of the Commercial Courts Act, 2015 is titled 'Determination of Specified Value'.
- Discuss whether it impacts the valuation of the suit for the purposes of court fees and jurisdiction and if so, how?
- (c) Write a short note on whether the Commercial Courts Act, 2015 impacts the limitation Act, 1963, in any manner whatsoever and if so, how?
- (d) Write a short note on time for presenting documents for registration including document executed by several persons at different times.
- (e) Whether after coming into force of the Commercial Courts Act, 2015, a petition under Article 227 of the Constitution of India in the High Court of Delhi is maintainable with respect to any order passed by the Civil Judge or the District Judge.

**Answer giving reasons.**

**(30 marks x 4 = 120 marks)**

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**LAW-II**

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**PART-I**

Write short notes on **any four** out of the following six questions:

1. Under the Partnership Act, 1932 what are the different modes of dissolution of a partnership firm?
2. Explain which person is capable of making Will under the Indian Succession Act, 1925 and what is the effect of a Will obtained by fraud, coercion or importunity under the Indian Succession Act, 1925?

3. Under what circumstances a Divorce by mutual consent can be granted, under the Hindu Marriage Act, 1955 and can any party withdraw his/her consent?
4. Explain what matters are to be considered by the Court in appointing a guardian of a minor under the Guardians and Wards Act, 1890?
5. Elaborate about General Prohibition of strikes and lock-outs as well illegal strikes and lock-outs, as per the Industrial Disputes Act, 1947?
6. Explain as to how under the Minimum Wages Act, 1948, the Court shall take cognizance of offences against, any person as well as against a company.

**(10 marks x 4 = 40 marks)**

## **PART-II**

Attempt **any two** out of the following three questions:

7. Elaborate as to what are the Rights and Liabilities of lessor and lessee under Section 108 of the Transfer of Property Act, 1882?
8. What are the obligations of the parties to a contract, effect of refusal to accept offer of performance and effect of refusal of party to perform promise wholly, under the Indian Contract Act, 1872?
9. Elaborate the difference between Temporary and Perpetual injunctions and under what circumstances Injunction can be refused as per provisions of the Specific Relief Act, 1963?

**(20 marks x 2 = 40 marks)**

### PART-III

Attempt **any four** out of the following six questions:

10. How 'Just Compensation' has to be determined under Section 168 of the Motor Vehicle Act, 1988?

In a motor accident case, the victim aged 28 years old died. He is survived by his wife, three minor children and his parents. The deceased used to run a business and earned about Rs.15,000/- per month.

The claimants approached the Motor Accidents Claims Tribunal by filing a claim petition under Section 166 of the Motor Vehicle Act, 1988 and sought compensation of Rs.20 lakhs.

The Tribunal awarded Rs.6 lakhs together with interest at the rate of 9% per annum from the date of filing the claim petition.

Not satisfied with the amount as awarded by the Tribunal, the claimants approached the High Court for enhancement.

In your view, whether the claimants are entitled for enhancement of the awarded amount and if so, then what should be the just compensation in this case?

11. What is the legal recourse against an Arbitral Award passed by an Arbitral Tribunal under the Arbitration and Conciliation Act, 1996. Cite the legal provisions in this regard with brief reasons.

One of the objectives of the Arbitration and Conciliation Act, 1996 is the speedy resolution of the disputes. How to achieve this objective? Elaborate.

12. In the proceedings initiated under the SARFAESI Act, action is taken against the borrower and the borrower is aggrieved by that action of the private bank. Then, the borrower has what remedy under the law? Quote

the relevant provisions of law.

A School availed credit facilities of Rs.1 crore from a private bank by executing various loan/security documents as well as by mortgaging property in favour of the bank. Subsequently, on account of non-payment of dues, the school account was declared as a non-performing asset (NPA). As the school failed to make payments, a notice under Section 13 (2) of the SARFAESI Act was issued to it. In spite of the above notice, the school continued to default in making the payments.

Ultimately, the bank sent a letter informing the school of its intention to take possession of the mortgaged properties on the expiry of 15 days from the date of the letter.

Against the bank's letter, the school filed a writ petition under Article 226 of the Constitution of Indian before the High Court, challenging the above letter of the bank. Will the writ petition be maintainable before the High Court? Elaborate with reasons.

13. What are the requisites of a valid adoption under the Hindus Adoptions and Maintenance Act, 1956 and who are the persons capable of giving in adoption?

What are the effects of adoption and what is the right of adoptive parents to dispose of their properties?

14. What is the object of "Conditions and Warranties" under the Sales of Goods Act, 1930 ? Elaborate with illustrations.

15. Who is the natural guardian of a Hindu minor under the Hindu Minority and Guardianship Act, 1956 and what are the powers of a natural guardian under this Act ? Elaborate.

(30 marks x 4 = 120 marks)

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### PART III (REFRAMED QUESTION)

- Q.15 What are the duties, rights and liabilities of guardians under the Guardians and Wards Act, 1890?

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**LAW-III**

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**PART-I**

Write short notes on **any four** out of the following six issues:

1. Absence of *corpus delicti*.
2. Transit anticipatory bail.
3. Determination of age of the victim under the Protection of Children from Sexual Offences Act, 2012.
4. (i) *mens rea* in case of dishonour of cheque.  
(ii) Filing of complaint u/s 138 of the Negotiable Instrument Act, 1881 by the General Power of Attorney or by his delegate.

5. Evidentiary value of the statement of an eyewitness, who supported the prosecution case, has died after completion of his examination-in-chief but before commencement of his cross-examination or after defence partly cross-examined him.
6. (i) Withdrawal of the sanction order for prosecution by the concerned Govt./competent authority under Section 19 of the Prevention of Corruption Act, 1988.  
(ii) Order to review its order of refusing sanction granted under Section 19 of the Prevention of Corruption Act, 1988 by the concerned Govt./competent authority.

**(10 marks x 4 = 40 marks)**

## PART-II

Attempt **any two** out of the following three questions:

7. In case of a confessional statement by a person who is accused of an offence while in custody of a police officer, explain when such statement is admissible in evidence. Is formal arrest of such person a pre-requisite?
8. Before grant of sanction under Section 19 of the Prevention of Corruption Act, 1988 to prosecute a public servant alleged to have committed an offence under the Act, explain when an opportunity of hearing is required to be given to the public servant by the concerned government/competent authority?
9. Discuss the various legal implications in case of an offence relating to bribing a public servant by a commercial organization.

**(20 marks x 2 = 40 marks)**

### PART-III

Attempt **any four** out of the following six questions:

10. 1. On 12.06.2016 R (PW-1), widow of the deceased J, lodged an FIR no. 250 in the PS Clean Town. She alleged that once prior to the date of incident i.e. 12.06.2016, the accused C, ~~FR~~ and S along with two associates had come to their residence in search of her son V, who they alleged was involved in the murder of the son of C. As V was not there, they went back. They came again on the date of the incident at about 11 AM in a jeep bearing No. UP 015 5330, when she along with her husband and daughters B and M was present in the house. C again enquired about V and as he was not in the house, they took away her husband J with them in the said jeep forcibly. She expressed apprehension that due to the impression of the accused persons that her son V was involved in the murder of the son of C, they would eliminate her husband. She mentioned that at the time of the incident, she and her daughters raised alarm, but the people of the locality did not intervene.
2. During the investigation, on 15.06.2016 at about 1400 hours, one Amar Singh informed the nearby PS Chandpur that a decomposed dead body was found in a jungle near Village Cehla. C was arrested on 03.07.2016, who led the police to the said jungle, from where a rope, as shown by him, was recovered from bamboo bushes. C also showed to the police the place in the jungle where J was killed by hanging him by that rope from a tree. The rope was seized and the site plan was prepared.
3. After submitting of the Charge-sheet the Court of ASJ framed charges u/s 302/364 r/w Section 149 IPC, to which the accused persons pleaded "not guilty" and claimed trial. The prosecution examined ten witnesses. All accused stood by their denial in their statements u/s 313 Cr. PC.

#### **Defence's arguments:**

1. A letter dated 15.04.2016, addressed by one H, a detenue in the District Jail to the SP, hinting at a plot to kill C who is a witness in the case of the murder of his son.

2. Confusion as to type of the vehicle in which the accused visited PW-1's house.
3. Omission to examine the constable who recorded the said FIR.
4. The discrepancy in description of the rope allegedly recovered, being led thereto by C and the one produced in the court. PW-4, Const. Nardev, recovery memo witness, who identified the rope to be made of plastic whereas the IO PW-10 deposed that the seized rope was made of jute and not a nylon rope.
5. The dead body was decomposed and part of the abdomen and lower half were missing, no visible injury was noticed particularly on the neck and the prosecution version of death by asphyxia, as opined by the doctor, effected by the rope recovered, was wholly untrustworthy.
6. No endeavour by the family members to resist the alleged abduction of J and the non-intervention by the neighbours.
7. The factum of the identification of the dead body to be of J, as made by his son PW-5 V, had not been put to the accused persons, in the course of their statements u/s 313 CrPC.

**State's arguments:**

1. PW-1 R and PW-2 M were steadfast in identifying the three accused, at the time of abduction and also in the court and supported the prosecution case, however, instead of 'Jeep', they said 'Car' in their deposition. PW-1 R also stated that she along with B & ~~N~~ identified the dead body of her husband J. M
2. PW-5 V, son of the deceased deposed that he recognised the dead body of his father at District Hospital Mortuary before the post-mortem examination.
3. J had met a homicidal death immediately after his abduction on 12.06.2016 when his dead body was found on 15.06.2016. The accused persons failed to offer any explanation, as to how they had dealt with J

while he was in their custody.

4. The FIR was lodged with due promptness.
5. The motive is discernible in the facts of the case.
6. PW-4 Const. Nardev deposed that C led the police to recover the rope from the bush in the jungle whereby J was hung from the tree and identified the tree. He identified the rope in the court to be one of plastic. In cross-examination, he clarified that the jungle was not on a thoroughfare.
7. IO PW-10 narrated the investigation conducted by him and providing of information of the rope by C while in police custody and led them to recover the jute rope.
8. PW-6 Dr. Kaul, who performed the autopsy, testified that the dead body was in an advanced stage of decomposition, maggots were present on it, some body parts like middle stomach and left thigh were missing, appeared to be nibbled by animals, no apparent injuries on the dead body, the cause of death might be asphyxia, and no mark of rope on the body but added that the bronchial tube was broken and death had occurred between 12.06.2016 to 15.06.2016.

**Discuss the criminality of the accused persons.**

11.
  1. CBI after registering an FIR and completing investigation, filed a charge-sheet on 01.11.2011 before the Court of Special Judge, New Delhi. The Special Judge, on 25.03.2013, after hearing the prosecution as well as the defence counsel, framed charges against the accused persons under Section 120-B read with Sections 467, 471 and 420 IPC and also under Sections 13(1)(d) and 13(2) of the PC Act and substantive offences against the accused persons under Sections 420, 467 and 471 IPC and also substantive offences under Sections 13(1)(d) and 13(2) of the PC Act against A-1. All the accused persons pleaded not guilty and claimed trial.
  2. The facts of the case as per the charge sheet are that the accused PKS (A-1), Chief Manager, SBI during 2006-07, was a party to a criminal

conspiracy with JKS (A-2) Director, MIS Ltd, Delhi, Ms. R Singh (A-3), Director MIS Ltd and DKS (A-4) Proprietor, M/s R Refractory, Delhi with the object of cheating IDBI, Mumbai and in pursuance thereof, A-1 abused his official position to cause undue pecuniary advantage to the accused persons A-2 and A-3 and corresponding loss to IDBI, to the tune of Rs. 4 crores by negotiating forged/fictitious invoices purportedly of M/s Refractories, Calcutta, against LCs opened by SBI, Jaipur Road and committed offences as mentioned above.

3. The Special Judge recorded 8 prosecution witnesses. Meanwhile, on 20.06.2013, the sole public servant A-1 died. A-2 to A-4 then filed an application for their discharge.
4. As noticed above, charges were framed against the public servant as well as non-public servants by the Special Judge in respect of the PC offences as well as non-PC offences on 25.03.2013 and the sole public servant A-1 died on 20.06.2013.

**Give answer to the following Questions with reasons:**

- (i) **On the death of the sole public servant, whether the charges against all the accused abate or only against the public servant who had died and can the Special Judge stand divested of its jurisdiction against all the accused no. 2 to 4 due to the death of the sole public servant?**
- (ii) **What would have been the position if the sole public servant had died before framing of the charges?**

12.
  1. The marriage of the accused S and deceased W was solemnized on 17-06-2015. They were residing adjacent to parental house of W in a rented house, since one month prior to the incident. Both of them were earning their livelihood by doing daily-wage work.
  2. On 04.09.2015 at about 6.00 a.m., the deceased W went to answer nature's call and on her return, the deceased was questioned by the accused as to why she returned late and the accused suspected her fidelity. In spite of the deceased trying to convince the accused, the accused started assaulting her with fists and kicks and poured

kerosene from the Can and lighted matchstick on the deceased to set her ablaze. The saree of the deceased caught fire and the deceased ran towards the accused in an attempt to catch him, thereby burning the hands of the accused. When the deceased started screaming for help, the accused, in order to save her, poured water on the deceased. In the meanwhile, the neighbours and the parents of the deceased gathered and the deceased was taken to the hospital. On the way to the hospital, the deceased narrated the incident to her mother Ganga PW-2 and sister-in-law Sunny PW-3 and neighbour Raju PW-1.

3. On receipt of information about the occurrence, Police officer PW-9 went to the Govt Hospital, verified the condition of the deceased through the CMO. PW-9, then recorded the statement of the deceased Ext. 24, on the basis of which an FIR was registered for the offence u/s 307 IPC. On requisition, PW-7, the Exe Magistrate came to the hospital, who, after satisfying about the fit mental condition of the deceased through Dr. V, PW-6, recorded the dying declaration of deceased Ex. 1. The deceased<sup>w</sup>~~8~~ succumbed to burn injuries on 12.09.2015. On the death of ~~8~~<sup>u</sup>, the FIR was altered to Section 302 IPC. Dr. Satish PW-8 conducted autopsy on the body of deceased and issued the post-mortem report. After filing of the charge-sheet the Court of the Sessions Judge framed charges against the accused u/s 302 IPC.
4. The prosecution examined all ten witnesses. The accused denied all the questions u/s 313 Cr. PC and pleaded that the fire was accidental and filed written defence Ext. 34, wherein he explained that on the date of incident, he went out to answer nature's call and when he returned, he saw his wife coming out of the house ablaze and he immediately rushed and tried to extinguish the fire due to which his hands also got burnt.
5. PW-6, Dr. V stated that the deceased was in a fit mental condition to make the statement and PW-7, the Exe Magistrate proved the dying declaration Ext. 1. In the said dying declaration, the deceased had categorically stated that on the date of incident, the accused poured kerosene over her person and set her on fire. PW-2 and PW-3 stated that the deceased narrated to them on the way to hospital that the accused poured kerosene on her and set her on fire. PW 1 Raju had only stated that the deceased told him that the accused beat her and also kicked her. PW-1 had not supported the statement of the deceased that the accused poured kerosene on her and set her on fire. PW-7 proved the Dying declaration wherein the deceased blamed the accused. PW-8

proved the PM report and stated that the deceased died due to shock and septicaemia caused by 60% burn injuries.

6. The accused pleaded that there was no premeditation and there was no intention on his part to kill his wife and the facts and circumstances show that he could not have intended to cause the death of the deceased. He also pleaded that he tried to extinguish the fire by pouring water on her in order to save her and in that process, he also suffered burn injuries.
7. The facts proved the guilt of the accused.

**Give answer with reasons whether accused is required to be convicted u/s 302 or 304 IPC.**

13.
  1. An encounter took place on the night of 01.01.2016, at a particular place in which firearms and other weapons were used and persons were injured. The details of the incident are not relevant and hence skipped. Two rival versions reached the police station regarding the above incident and two FIRs were registered upon those rival versions by the officer in charge of the police station. FIR No. 1 of 2016 was registered against 24 persons arrayed in it as accused (“the first case”) and FIR No. 2 of 2016 was registered against six persons (“the second case”). Both cases were investigated together by the IO and ultimately challans were filed in both cases alleging offences under Section 307 read with Section 149 besides some other offences of the IPC. The Magistrate committed both cases to the Sessions Court for trial.
  2. The Court of Sessions Judge after hearing the arguments u/s 227 Cr.PC in the first case framed the charges against the accused for offences u/s 307 read with Sections 149, 147 and 427 IPC. When the preliminary arguments in the second case were heard u/s 227 of the Cr.PC, the Sessions Judge found that no offence triable exclusively by a Court of Session need be included in the charge and hence, framed a charge as envisaged in Section 228(1) (a) of the Cr.PC for the offence u/s 324 read with Section 149 of the IPC.
  3. As a court of Sessions, would you retain both the cases in your court or transfer the second case to the court of CJM?

**Give your answer with reasons.**

14. 1. By an Agreement in December 2005, the Petitioner no. 1, a Ltd company ('A') appointed the Respondent, a private Ltd company ('B') as its dealer to sell its products in Delhi. B lodged a complaint on 18.01.2015 u/s 420/465/467/468/471/120B IPC, with the PS, Delhi against A and its directors (Petitioners) and alleged that at the time of its appointment as dealer, A assured them to disburse incentives, cash discounts, price supports, commission etc. for the purchase of products, achievement of targets yearly, quarterly as well as monthly. Based on above representations and assurances they had agreed for the dealership of A's products in Delhi. In the year 2012-13 there were various outstanding in the account in respect of cash discounts, defective products, obsolete models, price dropping, quantity schemes, monthly, quarterly and annual schemes for which the petitioners assured them to issue credit notes. B alleged that as per its accounts, they are yet to receive Rs. 44 lacs from the petitioners as in August 2014 but they are lingering and not paying their dues. B alleged that in the business transactions, they had issued a number of blank cheques to the petitioner no. 1 which were all filled up by the petitioners and encashed except cheque no. 608977 which was reported to be lost by them. For the cheque alleged to be lost, B alleged to have issued cheque no. 610291 in lieu thereof which was encashed. B alleged that they intimated its banker on 02.5.2012, regarding misplacement of 7 cheques including the cheque no. 608977 for stop payment. It is further stated that the petitioners had not paid the entire benefits to the respondent as assured on account of various schemes to which they were entitled to. B alleged that when they demanded the aforesaid amount from the petitioners they instead of paying the same, filled up the cheque no. 608977 which was reportedly lost and got it encashed on 25.04.2012. This cheque was lying with the petitioners and they filled it with some fictitious amount and presented for payment with a view to cheat B and pressurize B to forgo its claim of Rs. 44 lacs. On 11.10.2014 they got issued a legal notice, but with no results. B alleged that the petitioners have dishonestly committed fraud, cheating manipulation, fabrication, falsification and criminal conspiracy to harm the reputation, business and financial losses.
2. When the police did not take any action, on 22.01.2015 B through its Director filed a criminal complaint before the Ld. ACMM Shahdara. On the same day, the court of Ld. MM, Shahdara, Delhi after taking the cognizance asked B to lead evidence to conduct an inquiry u/s 200 and

202 of Cr.PC. B instead of leading evidence, withdrew the complaint on the next date and lodged another complaint on the same ground with another PS. Finding no action being taken by the police, B filed similar criminal complaint against the petitioners before the Ld. ACMM East Distt. B in the second complaint dated 28.02.2015 to the other PS and in the second criminal complaint did not mention the factum of the earlier complaint filed before the Ld. ACMM, Shahdara, Delhi and the orders passed by the Ld. MM to produce the evidence. On the basis of the second criminal complaint the Court of Ld. MM East Distt, on 28.02.2015 directed the SHO to register an FIR and investigate the allegations made in the complaint. As a consequence, the police registered an FIR No.214/2015 u/s 420/465/467/468/471/120B IPC against the directors of A.

3. A and its Directors filed a petition before the High Court u/s 482 for quashing of the FIR and brought on the record the copy of the previous complaint and order u/s 200 and 202 passed by the court of Ld. MM, copy of the Civil Suit of recovery which A had filed against B which is pending before the Court of Ld. ADJ and copy of the complaint u/s 138 of NI Act filed by A against B and its Director which is pending in the Court of MM, East.

**Are the petitioners entitled to relief of quashing of the FIR? Give your answer with reasons.**

15. A private person observed that a public servant, who has been residing in his neighborhood and whose salary was about Rs.1 Lac per month, dishonestly enriched himself and amassed wealth disproportionate to his known sources of income during the last one year for which the public servant cannot explain. He obtained copies of the documents regarding the assets of the said public servant acquired dishonestly. He lodged complaints with the Distt. Collector, the SP and Anti-Corruption Cell of the police but no action was taken. He filed a complaint u/s 13 the Prevention of Corruption Act, 1988 against such public servant for his prosecution for criminal misconduct before the court of Special Judge.

**Explain the power of the court of Special Judge to deal with the complaint.**

**(30 marks x 4 = 120 marks)**

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