

District Judge (Entry Level) Competitive Mains Examination, 2015

Theory Paper-I

12.07.2015

Maximum Time : 3 hours

Total Marks: 125 Pass Marks : 45% in each Paper. Qualifying Marks: 55 % over all

In all 15 questions out of total 24 questions in all parts together have to be answered as indicated in each part. Individual marks of each question is indicated in the respective Parts.

Part-A (Indian Evidence Act, 1872)

Answer any **two** questions out of **three** questions. Each question carries 9 (niné) marks.

1. 'A' contracts in writing with 'B', for the delivery of wheat upon certain terms. The contract mentions the fact that 'B' had paid 'A' the price of other wheat contracted for verbally on another occasion. Oral evidence is offered that no payment was made for the other wheat. Is the evidence admissible? Give reasons for your answer.
2. (i) Can a retracted extra-judicial confession be made the basis of conviction? If the answer is in the affirmative, under what circumstances?
(ii) A confession is induced by the following expression. 'Do not run your soul into more sin but tell the truth'. Is this confession relevant?
(iii) The accused was admitted in a hospital for treatment. He made a confession of guilt to the medical officer. The doctor told him that it would be better if he tells the truth as to how he received the wounds/injuries. Explain whether the confession made to the medical officer is admissible in evidence or not?
3. "Witness not excused from answering on the ground that answer will incriminate." Do you agree with the proposition? Elucidate.

Part-B (Code of Criminal Procedure)

Answer any **two** questions out of **three** questions. Each question carries 9 (nine) marks.

4. 'A', a sub-inspector of the police in the course of holding an investigation in a murder case examines some of the prosecution witness and reduces their statements in writing and obtains their signatures on each statements:
 - (i) Is the procedure in the above case correct?
 - (ii) Can the prosecution make use of such statements in the trial of the accused?
5. (A) Can a Magistrate stop investigation? If so, in what cases and under which provision of the Code of Criminal Procedure?

- (B) Is a Magistrate trying a summons case, bound to stop investigation in all cases, if the investigation of such a case is not concluded within six months from the date on which the accused person was arrested? Is there any exception to aforesaid rule? Mention the relevant provision on this point.
6. A man was charged under Arms Act for possessing revolver without licence. On possession of revolver not being proved by the prosecution, he was acquitted. In subsequent trial for murder using the revolver arising from the same transaction, he pleads "issue estoppels" to preclude prosecution from leading evidence of possession and use of revolver for the said crime. Decide with reference to statute and case law.

Part-C (Negotiable Instruments Act)

Answer one question out of two questions. Question carries 9 (nine) marks.

7. Discuss and distinguish between "right to sue" and "cause of action" with reference to dishonor of cheque under the Negotiable Instruments Act.
- A cheque being dishonoured no action is taken. It is again presented for payment. It is again dishonoured. Notice about bouncing of cheque and demand of payment made. No response being there complaint filed immediately. Is the complaint maintainable?
8. A registered partnership firm consists of four partners. Two of them signed a cheque towards payment for goods purchased by the firm. The cheque is dishonoured for insufficiency of funds. Payee files a complaint in respect of offence under Section-138 N.I. Act against all four partners. With reference to statute and case law give reasons when and under what circumstances all four partners can be proceeded against in the complaint and is there any possibility of the two partners who had not signed the cheque to escape the trial.

Part-D (Contract Act)

Answer two questions out of three questions. Each question carries 8 (eight) marks.

9. 'A' at Mumbai has a house. He writes to 'B' at Kolkata offering to sell him the house for Rs.50 lacs. On the same day, 'B' at Kolkata writes to 'A' offering to buy the house for Rs.50 lacs. The two letters are delivered to each other by Speed Post two days later. In the meantime, 'A' had received an offer from 'C' for the said house for Rs.75 lacs and he entered into agreement for sale with 'C'. 'B' insists that there was a contract between 'A' and 'B' and agreement with 'C' cannot be allowed to proceed. Decide.
10. 'A' borrows Rs. 1 lac from 'B'. In an IPL cricket match 'A' uses this money to bet for a team to win with 'C'. The team does not win. 'A' does not return the money to 'B' nor pay 'C' for the lost bet. 'A' and 'C' separately sue 'B' for their money. Decide.
11. 'A' sees a good book displayed in a shop. It is labeled as Rs.150 MRP. The bookseller refuses to sell and demands Rs.250 on the plea that MRP was wrongly printed by mistake. Can the buyer be expected to pay Rs.250? Decide with legal reasoning.

Part-E (Sales of Goods Act)

Answer **two** questions out of **three** questions. Each question carries **8** (eight) marks.

12. A car is sold with a warranty in respect of parts. Purchaser finds its breaks are not functioning properly. On complaint, dealer agrees to replace the breaks. Purchaser insists on replacement of the car itself as he had bargained for a new defect free car. Decide conflicting stands.
13. 'A' agrees to sell 10 tons of fertilizers to 'B'. 'A' draws the delivery challan and bill and hands it to the Bank to give the same to 'B' on receiving payment. 'B' pays the Bank and takes the delivery challan and the bill but when he goes to the transporter to take delivery of fertilizers, there is fire in the godown and fertilizer is destroyed. 'B' not having got the goods and having paid for it sues 'A' for refund. Decide.
14. 'A' steals the cow of 'B'. He takes it to a cattle fair and sells it to 'C' as his cow. 'B' on discovering this wants his cow back from 'C'. 'C' asks 'B' to pay the money and take the cow. Can 'B' get back the cow and does he have to pay the money for it. Decide.

Part-F (Specific Relief Act)

Answer **two** questions out of **three** questions. Each question carries **8** (eight) marks.

15. Plaintiff's suit for specific performance of an agreement for sale of a house for a consideration of Rs.10 lacs for which he had allegedly paid earnest money of Rs.10,000 was decreed. In appeal, defendant shows from records of trial court that the plaintiff had taken several adjournments totaling to over 2 years to pay deficit court fee. It is urged that the plaintiff had no capacity to pay the consideration as such the decree be reserved and suit dismissed. Decide with reference to statute.
16. 'A' is wife of 'B'. Both are Hindus. 'A' files a suit for grant of injunction against 'B' restraining him from marrying a second wife. Is suit of 'A' for injunction maintainable? Would it make any difference if the parties are Muslim? Decide.
17. A professional singer agrees to sing in a Hotel during Xmas to New Year week. Having got a better offer from another Hotel, he agrees to perform there during that period. Can the first Hotel sue for specific performance and what all relief they are entitled to? Decide.

Part-G (Limitation Act)

Answer **two** questions out of **three** questions. Each question carries **8** (eight) marks.

18. 'A' borrowed a sum of money from 'B'. The last date for filing the suit fell on Sunday. On Monday, the next day, 'A' gives a written acknowledgment to 'B'. Advise 'B' whether he should file the suit immediately or he can do so after sometime. Give reasons.

19. Income Tax Act provides for an appeal to the High Court from an order passed by the Income Tax Appellate Tribunal within 90 days of the order provided that if the aggrieved party thinks he needs more time he should apply to the Tribunal within those 90 days for extra time and appeal filed in the High Court within such extended time would be valid. Income Tax Department files an appeal to the High Court after 90 days with a condonation application under Section-5 of the Limitation Act stating that Departmental Authorities took time to decide whether to file appeal or not. Will the High Court be justified in entertaining the appeal after condoning the delay? Decide.
20. A money decree was passed on 01.08.2000. The appellate court affirmed it on 05.10.2008. There was no stay of trial court decree. Execution was filed on 30.07.2013. Judgment debtor contends, there being no stay, the execution proceeding are barred being 12 years after the trial court decree dated 01.08.2000. Decide with reference to statute and reasons whether or not execution is barred.

Part-G (Prevention of Corruption Act)

Answer one question out of two questions. Question carries 8 (eight) marks.

21. An Officer of the Central Government on deputation to State Government is caught taking bribe for passing bills for payment to a contractor. A case under P.C. Act is instituted. By the time charge-sheet is filed his deputation is over and he is back with Central Government. Who will be the authority to sanction prosecution and why?
22. A member of the State Legislature is to be prosecuted for demanding illegal gratification for using his position to secure government job for a person. He is charge-sheeted under Section-13 and other sections of P.C. Act. He contends that no court can take cognizance against him for an offence under the P.C. Act as he is not an employee of either Central Government or State Government nor there is any competent authority who can remove him from his position as a Legislature as such he cannot be tried. Decide.

Part-H [Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act]

Answer one question out of two questions. Question carries 8 (eight) marks.

23. A.D.J. 1st court is the designated court under the SC & ST Act. A complaint is filed before it. Being designated court, he takes cognizance and proceeds with trial. Is it valid procedure? Decide with reasons and reference to provisions of the statute.
24. A higher caste girl 'A' marries 'B' a scheduled caste boy. They live in a village. While 'B' goes to town for service, 'A' looks after agricultural lands. 'A' has an altercation with 'D', an adjacent landlord. He abuses her with derogatory words relating to caste of her husband. On complaint of 'A', can 'D' be prosecuted under the provisions of SC & ST Act? Justify your answer.

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Theory Paper-II

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In all 15 questions out of total 23 questions in all parts together have to be answered as indicated in each part. Individual marks of each question is indicated in the respective Parts.

Part-A (Code of Civil Procedure)

Answer any three questions out of four questions. Each question carries 9 (nine) marks.

1. Distinguish between a decree passed by a Court lacking territorial or pecuniary jurisdiction and a decree passed by the Court lacking jurisdiction in respect of subject matter.
2. 'A' sues 'B' for a declaration of title to land and obtains a decree. 'A' then sues 'C' for possession in respect of the same land. 'C' contends that 'B' is the owner and 'C' is his tenant. Decide giving reasons whether second suit by 'A' is barred by res judicata as also whether the defence of 'C' is barred by res judicata. What will be the fate of the case?
3. 'A' obtained a decree ex parte against 'B', and in execution of the decree brought the properties of 'B' to sale and himself became the purchaser. On appeal by 'B', the appellate court set aside the decree and remanded the suit for re-hearing. Then 'B' applied for restitution. While that application was pending, the suit was heard and again decreed. 'A' then contended that as the suit had been decreed, no restitution could be granted. Is 'B' entitled to restitution? Decide giving reasons.
4. 'A' alleging that he is the adopted son of 'X' sues 'B' to recover certain property granted to him by 'X' under a deed and forming part of the estate of 'X'. The Court finds that 'A' is not the adopted son of 'X', but that he is entitled to the property under the deed and a decree is passed in favour of 'A'. Will the finding that 'A' is not the adopted son of 'X' operate as res judicata in a subsequent suit between 'A' and 'B' in which the question of adoption is again put in issue?

Part-B Personal Laws (Hindu, Muslim and Christian)

Answer any two questions out of three questions. Each question carries 9 (nine) marks.

5. A girl 16 years of age elopes with a 20 years old boy. The couple is detained by police and produced before Magistrate. The boy is remanded to judicial custody even though both of them agreed that they have married in temple. The girl wants to go and live not with her parents but with her in-laws. The couple being Hindus, decide about custody of the minor girl. Will it make any difference if the couple were Muslim?

6. A Hindu working boy is married. After one year of marriage, the wife goes to her 'Maikhe'. Husband files a suit for restitution of conjugal right. The girl states that she is not ready to live in joint family of her husband. Husband files an application for divorce on ground of cruelty. Decide.
7. A Muslim wife claims divorce on ground of cruelty by reason of her husband marrying a second time. Husband pleads that he is entitled in law to polygamy and the plea of cruelty cannot be taken. Decide.

Part-C (Constitution of India)

Answer any two questions out of three questions. Each question carries 8 (eight) marks.

8. The State sales tax statute provided for compulsory registration of dealers having turn of more than Rs.15 lacs a year. There was no penalty for non-registration. Realising that in absence of penalty, dealers were avoiding registration thus facilitating evasion of tax, provisions were made imposing penalty for non-registration and it was made effective retrospectively from 5 years back. In view of Article-20 (1) of the Constitution, is the State law valid? Decide giving reasons.
9. An employee of Sudha Dairy Private Limited, a wholly owned State Government undertaking, is dismissed from service without enquiry. He challenges it being violative of Article-311 (2) of the Constitution. Management seeks to justify the action in view of second proviso to the said Article. Decide whether they are correct with reasons.
10. Offence under Section 498-A IPC is cognizable, non-bailable and non-compoundable by virtue of provisions of Cr.P.C. Seeing its rampant abuse, State of Bihar amends Cr.P.C. to make it bailable and compoundable. On women's organization making a nationwide protest, Parliament passes a law that no offence alleged to be committed against women shall be bailable or compoundable. What will be the resultant effect in the State of Bihar? Decide.

Part-D (Partnership Act)

Answer any two questions out of three questions. Each question carries 8 (eight) marks.

11. Discuss and distinguish between concept of a proprietorship firm, a partnership firm, HUF business firm and a limited liability partnership firm.
12. 'A' 'B' and 'C' join to do business in partnership with firm name 'ABC' & Company. It is provided in the partnership deed that 'A' will exclusively look after purchases, 'B' will look after sales and 'C' will manage the accounts. In due course 'X' sues the firm and its partners for recovery of money in respect of goods supplied to the firm on orders of 'C' and later sold by 'C'. The defence of 'A' and 'B' is that neither the firm nor the two of them are liable as according to the partnership deed 'C' acted unauthorisedly beyond his authority and could not bind them or the firm. Will 'X' succeed? Decide with reasons.
13. In a partnership firm, can (i) a partner receive monthly salary and (ii) can any partner be absolved from sharing losses though has a right in sharing profits. Elucidate.

Part-E (Transfer of Property Act)

Answer any **two** questions out of **three** questions. Each question carries **8** (eight) marks.

14. What is the effect of the following terms and conditions in a sale deed in respect of a land:
- (i) Transferee will not sell the land to a particular community;
 - (ii) Transferee, if wanting to sell the land will sell it only to the transferor or his nominee;
 - (iii) Transferee shall not transfer the land by way of gift; and
 - (iv) Transferee shall only establish a Petrol Pump on the land.
15. 'A' the only son, representing that his father 'B' is dead, sells and delivers his father's lands to 'C' for valid consideration. Father 'B' sues for recovery. 'A' accepts he had no authority to sell and the sale was a nullity. Court orders restoration. 'C' prefers appeal. While the appeal is pending 'B' dies. What is the effect on the case?
16. Explain and differentiate between mortgage, hypothecation, pledge and charge.

Part-F (Arbitration and Conciliation Act)

Answer any **two** questions out of **three** questions. Each question carries **8** (eight) marks.

17. An application to refer to arbitration a dispute arising out of a contract is filed before the Chief Justice. The other side appears on notice and objects before the Court that there is no valid arbitration agreement and the Court cannot refer the matter for arbitration. The applicant contends that under the Act, the arbitrator being competent to decide upon his jurisdiction and the Court referring the matter acting in administrative capacity cannot go into this issue. It must refer the matter and leave it to the arbitrator to decide. With reference to statutory provision and case law decide the right course of action for the Court.
18. On a petition of 'A', a dispute is referred to arbitration. The arbitrator directs filing of statement of claim. The applicant fails to do so within the time stipulated. The arbitrator terminates the proceeding. Can a second application for arbitration lie on the ground that there was no decision in the earlier proceedings. What are the remedies available to the applicant? Decide.
19. 'A' and 'B' enter into contract for doing mining work. Contract contains arbitration clause. 'A' gets another mining lease. He requests 'B' to join in this activity as well. 'B' e-mails 'A' that if remuneration of 'B' is increased by 10% then on the same terms and conditions as the earlier contract he would work together with 'A'. 'A' asks 'B' to bring his machines and start work at the new site. 'B' fails to start work. 'A' seeking damages sought arbitration. 'B' pleads that there is no written agreement much less for arbitration. Decide whether dispute can be referred to arbitration.