



Solved Paper of Haryana Judicial Services (Prelims)

## HARYANA CIVIL SERVICES (JUDICIAL BRANCH) PRELIMINARY EXAM – 2011

1. The Directive Principles of State Policy as embodied in Chapter IV of the Constitution were derived by us from:-

- The Constitution of Ireland
- The Constitution of U.S.S.R.
- The Constitution of Switzerland
- The Gandhian Constitution for Free India

*Ans: (a) – Indian Constitution is considered as a bag of borrowings. The Constitution of India is called a bag of borrowings because its provisions were taken from many other prominent Constitutions of the world.*

*The most influencing in the making of the Constitution was the Government of India Act 1935. The federal scheme, office of the Governor, power of federal judiciary, emergency powers etc were taken from this Act.*

*The British practice influenced law making procedures, system of single citizenship, and of course Parliamentary form of government.*

*Provisions related to independence of judiciary, judicial review, fundamental rights and the removal of Supreme Court and High Court judges were taken from the Constitution of USA.*

*The Irish Constitution was the source of the Directive principles, method of presidential elections and the nomination of members of Rajya Sabha and Lok Sabha by the President.*

*The idea of federation with a strong centre and placing residuary powers with the centre was adopted from the Canadian constitution.*

*The idea of concurrent list was taken from the Constitution of Australia and the provisions concerning the suspension of fundamental rights during emergency was taken from Germany. And lastly procedure for amendment of the Constitution was taken from the Constitution of South Africa.*

2. State which of the following statements is correct:

- Preamble is not part of the Constitution
- Preamble is part of the Constitution and relates to its basic structure.
- Preamble is not part of the Constitution but a sort of introduction to the Constitution.
- Preamble is like a prologue to the Constitution

*Ans: (b) - In Berubari Union and Exchange of Enclaves - the SC held that preamble is the key to open the minds of*

*the framers of the Constitution. In this case it was held by the apex court that Preamble is not a part of the constitution.*

*In Golak Nath v state of Punjab, the SC observed that 'the Preamble contains in nutshell, its ideals and aspirations.'*

*In Kesavanand Bharti v. State of Kerala, the SC rejected the view that preamble is not a part of the constitution. It was held that 'the preamble of our constitution is of extreme importance and the constitution should be read and interpreted in the light of the grand and noble vision expressed in the preamble. Preamble serves the following purposes:*

- It refers to the source of constitution*
- it embodies the enacting clause which brings in to force the constitution*
- It declares the fundamental rights and freedom which the people of India intended to secure. It also indicates the basic type of polity and govt. which is to be established.*
- The preamble is an epitome of broad elements of Indian constitution (Epitome: perfect example of something)*
- The scope of the significant chapter of directive principles and the*



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fundamental rights could only be understood in the light of the objectives enshrined in the Preamble. (*Bharti Chandra v State of Mysore*)

(vi) The preamble of our constitution is very much enacted and adopted in the same manner as the other enacting provisions. Thus the preamble of the constitution occupies the same position as other enacting words or provisions of the constitution.

3. State which of the following statements is correct:-

a. The American doctrine of waiver of fundamental rights is part of the Indian Constitution.

b. No person can waive his fundamental rights under the Indian Constitution as they are sacrosanct and no individual can tinker with them.

c. A non-citizen can waive his fundamental rights.

d. A citizen can waive his fundamental rights which are for his individual benefit.

*Ans: (b) - A right can be waived subject to the condition that no public interest is involved therein.*

*However, waiver with respect to Fundamental rights is different from other rights. It was discussed in the case of *Bheshhr Nath v. Income Tax commissioner*. The Court said that:*

*"we are not for the moment convinced that this Doctrine of waiver has any relevancy in construing the fundamental rights conferred by Part III of our Constitution. We think*

*that the rights described as fundamental rights are a necessary consequence of the declaration in the preamble that the people of India have solemnly resolved to constitute India into a sovereign democratic republic and to secure to all its citizens justice, social, economic and political; liberty, of thought, expression, belief, faith and worship; equality of status and of opportunity. These fundamental rights have not been put in the Constitution merely for the individual benefit though ultimately they come into operation in considering individual rights. They have been put there as a matter of public policy and the 'doctrine of waiver' can have no application to provisions of law which have been enacted as a matter of Constitutional policy. Reference to some of the Articles, inter alia, Articles 15(1) 20, 21, makes the proposition quite plain. A citizen cannot get discrimination by telling the State 'You can discriminate', or get convicted by waiving the protection given under Articles 20 and 21."*

4. The right to equality means that no person is above law. To this rule, certain exceptions are recognized. State which of the following come under the exception:

- President of India
- Ambassador of USA.
- Judges of the High Courts.
- All the above

*Ans: (a) - Article 361 provides for certain privileges to the President as under:*

(i) *the President shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purported to be done by him in the exercise and performance of those powers and duties. However, the conduct of the president may be brought under review by any court or tribunal or body which may be appointed or designated by the House of Parliament for the investigation of the charge against the President in the impeachment proceedings taken under article 61.*

(ii) *No criminal proceedings, whatsoever, shall be instituted or continued against the President in any court during the term of his office.*

(iii) *No process for the arrest or imprisonment of the President shall be issued from any court during the term of his office.*

(iv) *No civil proceedings in which the relief is claimed against the President shall be instituted during the term of his office in any court in respect of act done or purported to be done by him in his personal capacity, whether before or after he has entered upon his office as President, until a notice in writing has been given to the President and two months have elapsed since the service of that notice. The notice must state the nature of the*



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proceedings, the cause of action therefore, the name, residence, and description of the party conducting the proceedings and relief claimed.

5. Which one of the following writs can be issued only against the judicial or quasi-judicial authorities?

- Mandamus
- Habeas Corpus
- Certiorari
- Quo Warranto

**Ans: (c)** – Certiorari and prohibition are known as judicial writs as they are issued by higher courts to the lower courts.

The writ of certiorari is issued requiring that the record of the proceeding in some cause or matter, pending before an inferior court of person or persons upon whom a duty is cast by law to decide question judicially or quasi judicially shall be transferred to the High Court to be dealt with in order to ensure that the tribunal does not act in excess of legal authority and applicant for the writ may have sure and speedy justice. This writ can be issued where the act is judicial but also where it is quasi judicial.

In *Province of Bombay v K.S. Advani*, the Supreme Court held that two conditions must be satisfied before a writ of certiorari can be asked for. Firstly, the decision of the authority which is challenged – must be judicial or quasi judicial in nature. Secondly, the challenge must be in respect of excess or want of

jurisdiction of the deciding authority.

**Writ of prohibition:** This is a judicial writ issued by a court of superior jurisdiction and directed to an inferior court, for the purpose of preventing the inferior court from usurping a jurisdiction with which it is not legally vested, or in other words, to compel courts entrusted with judicial duties to keep within the limits of their jurisdiction. It orders the immediate stoppage of the trial in the lower court. A writ is issued against a judge of an inferior court if that judge is interested in the case, or is otherwise biased, or he has altered or cancelled his previous judgment.

6. State which of the following statements is incorrect:

- A writ can be issued against the High Court.
- Government of India and State Governments.
- Any authority under the power and control of the Government of India.
- Parliament or a State Legislature.

**Ans:** The question is ambiguous

7. The Directive Principles are:-

- Justiciable the same way as the fundamental rights.
- Justiciable though not the same way as the fundamental rights.
- Decorative portions of the Indian constitution.

d. Not justiciable, yet fundamental in the governance of the country

**Ans: (d)** – Article 37 provides three important characteristics of directive principles:

(i) The directive principles of state policy shall not be enforceable by any court.

(ii) Directive principles are fundamental in governance of the country.

(iii) State should apply these principles in making laws.

The directives are not enforceable by the courts, and if the government fails to carry out these directives, no court can compel the government to perform it. However, these principles have been declared to be fundamental in governance of the country and it shall be the duty of the state to apply these principles in making the laws. Dr. Ambedkar said that: "if any government ignores then they will certainly will have to answer for them before the electorate at the election time." In order to impose positive obligations, or welfare policies the State needs finances and making the directives enforceable might not have worked.

8. Which coin out of the following has been withdrawn by RBI in 2011:

- 20 Paisa
- 10 paisa
- 25 Paisa
- 5 paisa

**Ans: (c)** – The Government of India has decided to withdraw



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coins of denomination of 25 paise and below from circulation with effect from June 30, 2011 (RBI/2010-11/479 RPCD.CO.No RRB. 60 /03.05.33 /2010-11, dated 20 April 2011).

A further notification has been issued by the Ministry of Finance in exercise of the powers conferred by sub-section 15A of the Coinage Act, 1906 the Central Government hereby determines to call in from circulation the coins of the denomination of 25 paise and below, issued from time to time, with effect from June 30, 2011 and from this date these coins shall cease to be a legal tender for payment as well as on account. The procedure for call in shall be notified separately by the Reserve Bank of India.

9. The total number of Ministers, including the Prime Minister in the Council of Minister should not exceed:-

- 20% of the total number of members of Lok Sabha.
- 15% of the total number of members of Lok Sabha.
- 20% of the total number of members of Rajya Sabha.
- 15% of the total number of members of both the Houses.

**Ans: (b)** This question is based on Article 75 (1A) of the Constitution which states that - The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent of the total number of members of the House of the People.

10. Who has been conferred with Rajiv Gandhi Khel Ratna Award in the year 2011.

- Abhinav Bindra
- Gagan Narang
- Kapil Dev
- Sachin Tendulkar

**Ans: (b)** - Instituted in 1991-1992, it is the highest sporting honour of India. The award is named after former prime Minister of India, Sh. Rajiv Gandhi. It is awarded annually by the Ministry of Youth Affairs and Sports. The award comprises a medallion, a certificate, and a cash prize of ₹7.5 lakh. Badminton player P. V. Sindhu, gymnast Dipa Karmakar, shooter Jitu Rai, and wrestler Sakshi Malik were awarded with this honour in 2016.

11. Vast powers and functions vested in the Indian President make him:

- Almost a dictator
- A benevolent ruler
- Real head of the Government
- A nominal Constitution Head

**Ans: (d)** - The Constitution provides vast powers to the President but in effect these powers can only be exercised by him on the advice of the Council of Ministers headed by the Prime Minister. This makes President of India only a titular Head.

There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President

who shall, in the exercise of his functions, act in accordance with such advice: Provided that the President may require the council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration [Article 74 (1)].

The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court (Article 74(2))

12. Only that person can be appointed a judge of the Supreme Court who is a citizen of India and:

- Judge of the High Court for at least five years.
- Advocate of the Supreme Court for at least 10 years' standing.
- Judge of the High Court for at least ten years.
- Advocate of the High Court for at least fifteen years.

**Ans: (a)** - A person shall not be qualified for appointment as a judge of the Supreme Court unless he is-

(a) A citizen of India

(b) Either:

(i) a distinguished jurist  
(ii) has been a High court judge for at least 5 years or of two or more High Courts in succession

(iii) has been an advocate for at least 10 years or of two or more High Courts in succession.

Constitution does not prescribe any minimum age for appointment as a judge of



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the Supreme Court. Similarly no fixed period of office has been provided for the judges. However, a judge of the Supreme Court ceases to be so under the following three conditions:

- (i) on attaining the age of 65 years
- (ii) on resigning (in writing to the President)
- (iii) on impeachment

13. While a proclamation of emergency is in operation the State Government:-

- a. Cannot legislate.
- b. Can legislate only on subjects in the Concurrent List.
- c. Can legislate on the subject in the State List.
- d. Is suspended.

**Ans: (c)** - With the proclamation of emergency under Art 352, the states gets automatically converted in to a unitary one. The Union government can issue instructions to the states to with the regard to the exercise of their executive powers and can pass law on any subject in the state list. The States can make law but it is subject to the law making or overriding power of the Union.

**Consequences of National emergency:**

(i) During emergency, the Union parliament may give direction to any state regarding the manner in which the executive power is to be utilized.

(ii) Union parliament gets powers to frame laws in respect of matters enshrined in the state list.

(iii) The law made by the state legislature becomes subject to the law making power of the parliament.

(iv) Such laws made by the Parliament during proclamation of emergency concerning state matter shall cease to operate six months after the lapse of proclamation.

(v) Parliament may exercise power over matters given in the state list

(vi) During emergency, the President may by law alter the financial arrangement between the Union and the states. However it will be valid for the financial year only.

**State emergency:** During state emergency, the state legislative is dissolved or suspended and the entire administration of the state gets transferred to the centre.

14. 'What cannot be done directly cannot be done indirectly'. This statement epitomizes the doctrine of-

- a. Pith and substance.
- b. Ancillary powers.
- c. Implied powers.
- d. Colourable legislation.

**Ans: (d)** - the doctrine of colorable legislation signifies only a limitation of the law making power of the legislature. It comes into picture while the legislature purporting to act within its power but in reality it has transgressed those powers. So the doctrine becomes applicable whenever legislation seeks to do in an indirect manner what it cannot

do directly. If such legislation falls within the competence of legislature, the question of doing something indirectly which cannot be done directly does not arise. [K.C Gajapati v. State of Orissa]

15. Residuary powers are vested in:

- a. Executive
- b. Judiciary
- c. Parliament
- d. State legislatures

**Ans: (c)** - Article 248 vests residuary powers within the domain of the Parliament. From the Canadian Constitution was taken the idea of a federation with a strong Centre, and placing residuary powers with the Centre. Any subject which is not given under the three lists falls under residuary jurisdiction of the centre. The division of subjects contained in favor of centre because the Union list contains 98 subjects, besides these, the centre has supremacy over the concurrent list which has 52 subjects. The residuary subjects are also under the control of the centre

16. Who said that the Supreme Court in India has the highest powers which no other court in the world possesses?

- a. Mahatma Gandhi
- b. Sardar Vallabh Bhai Patel
- c. Jawahar Lal Nehru
- d. Alladi Krishna Swamy Iyyer

**Ans: (d)** - This statement was given by Sir Alladi Krishna Swamy Ayyar



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17. The Constitution of India is:-

- a. Highly federal
- b. Neither federal nor unitary
- c. Highly unitary
- d. Partly federal and partly unitary

*Ans: (d) - India is an indestructible union of destructible states. During normal times, Indian constitution provides for a federal system but during emergency it acquires a unitary character. Thus Indian constitution can be both federal and Unitary according to the requirement of time and circumstances. During*

*emergency union parliament is empowered to legislate even on the subject given in State List. Again union is empowered to give directions to states as to the manner in which state should exercise its executive power. During emergency, financial arrangement between the union and the state can also be altered. During normal times, the parliament can exercise power to legislate on state matters only if;*

*(i) a subject in the state list becomes a matter of national importance*

*(ii) it becomes necessary to give effect to international agreement*

*(iii) states request the parliament.*

18. Who amongst the following is not a 'public officer' within the meaning of Section 2 (17) of CPC.

- a. A Judge
- b. A person in service under the pay of Government
- c. Sarpanch of a Gram Panchayat
- d. All of the above

*Ans: (c) - A Sarpanch of a gram Panchayat cannot be considered as a Public Officer under 2(17) of the CPC.*

19. Give response to the statement

*Equality before law under Article 14 of the Constitution is with reference to-*

- a. Laws enacted by legislature
- b. Orders passed by the executive
- c. Notifications issued by the government only
- d. Laws enacted by legislature, executive order etc.

*Ans: (d) - Fundamental right of equality can be claimed against the State in cases of laws enacted by legislature as well as executive orders.*

20. A change of nature of obligation of a contract is known as-

- a. repudiation
- b. rescission
- c. alteration
- d. none of the above

*Ans: (c) - Any subsequent changes made to the nature of obligation of a contract is known as alteration.*

21. Indira Swatney v. Union of India is a case popularly known as:

- a. Ayodhya judgment
- b. Mandal judgment

- c. Suicide judgment
- d. Election Commission judgment

*Ans: (b) - It is popularly known as the Mandal case as one of the major questions involved was regarding the validity of the recommendations of the Mandal Commission for providing 27 % of reservation in govt. jobs to the other backward classes. The scope and extent of reservation under Article 16(4) was examined by the court in this case. It is considered as a landmark case.*

22. The Advisory opinion tendered by the Supreme Court:

- a. Is binding on the President
- b. Is not binding on the President
- c. Is binding on the President only if it is unanimously made
- d. Is not made public at all

*Ans: (b) - Article 143 of the Constitution of India with its two sub-clauses has cast twin obligations or duty upon the Supreme Court to advise the President on the question of law or fact, which has arisen or is likely to arise of such nature and of such public importance that the President feels it expedient to seek the opinion of the Supreme Court upon it. The President can seek the opinion of the Supreme Court on any question of law or fact which appears to him to be of such a nature and of such public importance that it is expedient*



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to obtain the Court's opinion. The Supreme Court cannot be asked to reconsider its earlier decisions by making reference under Article 143(1) of the Constitution. The Supreme Court cannot travel beyond the reference made by the President under Article 143(1) of the Constitution.

However the SC is not bound to give its opinion and the President is also not bound by the advice given by the SC.

23. Among the following States, which one sends the highest number of members to Lok-Sabha?

- a. Andhra Pradesh
- b. Karnataka
- c. Bihar
- d. Madhya Pradesh

Ans: (c) - Among the given states Bihar sends the highest number of legislators to the Lok Sabha with 33 members. Prior to the division of Andhra Pradesh, there used to be 34 members to Lok Sabha from Andhra Pradesh. Uttar Pradesh tops the list with 63 followed by Maharashtra with 41, Bihar with 33 and Tamilnadu and West Bengal with 32 each.

24. A contract, which is formed without the free consent of the parties, is

- a. Void ab initio
- b. Void
- c. Illegal
- d. Voidable at the instance of the party whose consent was not free.

Ans: (d) - Section 10 of the Indian Contract Act lays down that free consent is an essential

requirement of contract. For a valid contract, it is essential that both the parties should have agreed to all stipulation in the contract with their own free will.

Contract not entered in to by free will is not void but voidable at the option of the party whose consent has been obtained by undue means like coercion, fraud, misrepresentation etc. (Section 19) Further when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

However if consent is caused by mistake, the agreement is void. In the case of *Central Bank of India v United Industrial bank*, it was held that: (i) Absence of consent would make a contract void (ii) Consent which is not free would render a contract voidable.

25. Which of the following legal pleas need not be pleaded?

- a. Estoppel
- b. Limitation
- c. Res-judicata
- d. None of the above

Ans: (d) - Estoppel and res judicata in all cases needs to be pleaded. However, limitation is a duty imposed on the courts as well. Even if the parties do not plead limitation the court shall not admit a claim barred by limitation.

Section 3 of the Limitation Act lay down that - Subject to the provisions contained

in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

26. At present the Vice President of India is:-

- a. Meira Kumari
- b. Bhairon Singh Shekhawat
- c. Dr. Karan Singh
- d. A.H. Ansari

Ans: (d) - He is the 12<sup>th</sup> and present vice President of India.

27. The smallest military outfit is called a

- a. Division
- b. Brigade
- c. Section
- d. Platoon

Ans: (c) - In the ascending hierarchy it is - section - Squad - Platoon - Company - Battalion - Regiment - Brigade - Division - Corps - Army.

28. India's largest and most sophisticated indigenously built warship which was commissioned in 1994-95 is:

- a. INS Delhi
- b. INS Mysore
- c. INS Satpura
- d. INS Kulish

Ans: (a) - The indigenously built warship commissioned in 1994-95 is INS Delhi.

29. The Battle of Longewala took place in the year:

- a. 1965
- b. 1967
- c. 1969



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d. 1971

*Ans: (d) - The Battle of Longewala was one of the first major engagements in the Western Sector during the Indo - Pakistani War of 1971, fought between assaulting Pakistani forces and Indian defenders at the Indian border post of Longewala, in the Thar desert of Rajasthan.*

30. The National Anthem was first sung at this session of the Indian National Congress in 1911:-

- a. Pune
- b. Lucknow
- c. Calcutta
- d. Ahmedabad

*Ans: (c) - It was first sung in the Calcutta Session of the Indian National Congress on 27 December 1911. "Jana Gana Mana" was officially adopted by the Constituent Assembly as the Indian national anthem on 24 January 1950.*

31. Goodwill of a partnership business is the property of the partnership

- a. Under Section 14
- b. Under Section 13
- c. Under Section 12
- d. Under Section 11

*Ans: (a) - Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of business of the firm, and includes also the goodwill of the business.*

*(Section 14, Indian Partnership Act)*

32. The State with the highest population density in India is:

- a. Uttar Pradesh
- b. West Bengal
- c. Gujarat
- d. Maharashtra

*Ans: (b) West Bengal is the state with highest population density among the above states with a density of 1030 as per the 2011 census. The records of population density 2011 of India state that the density 2011 has increased from a figure of 324 to that of 382 per square kilometre, which is considerably higher than the average population density of the world 2011, which are 46 per square kilometre. National Capital Region area of Delhi possesses the highest of the population density 2011 among the states of India having a statistics of 11,297 per square kilometre, the state of Arunachal Pradesh has the lowest record of population density having just 17 per square kilometre.*

33. The Indian State with the highest female sex ratio is:

- a. Punjab
- b. Madhya Pradesh
- c. Maharashtra
- d. Kerala

*Ans: (d) - Kerala is the Indian State with highest sex ratio. It is 1084 for 1000 males in Kerala as per 2011 census. Haryana features the lowest sex ratio in India with just 879 women per 1000 males. The national sex ratio is 943.*

34. The first recipient of the Bharat Ratna after it was revived in 1980 was:

- a. Acharya Vinoba Shave
- b. Mother Teresa
- c. M.G. Ramachandran
- d. V.V. Giri

*Ans: (b) - The first recipient of Bharat Ratna after it was revived in the year 1980 is Mother Teresa. The award remained suspended from 1977 to 1980 as it was abolished by the Janata Party government on the ground that it is worthless and politicized.*

35. Compulsory dissolution of a firm has been provided under

- a. Section 39 of the Act
- b. Section 41 of the Act
- c. Section 40 of the Act
- d. Section 44 of the Act

*Ans: (b) - According to section 41, compulsory dissolution occurs under the following circumstances:*

*(i) when all the partners or all except one are adjudicated insolvent, the firm is compulsorily dissolved. When a partner is adjudged as insolvent, such member ceases to be a member.*

*(ii) If the business of the firm though lawful when the firm came in to existence, subsequently becomes unlawful, there has to be dissolution of the firm.*

*This provision is based on Section 23 of Indian Contract Act. For a valid contract, the object, and consideration have to be lawful as defined in section 23. Again Section 56 of the contract Act, further*





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provides that when the contract to do an act becomes unlawful after making the contract, such a contract becomes void.

However if the firm is carrying on more than one activities or undertakings, the illegality of one or more of them shall not of itself result in the dissolution of the firm in respect of those adventures or undertakings which are still lawful.

36. An act done by a partner on behalf of the firm beyond the implied authority

- a. Can be ratified expressly
- b. Can be ratified impliedly by conduct
- c. Either(a) or (b)
- d. Neither (a) nor (b)

*Ans: (c) - Even if a partner has acted without the authority of other partners, they can ratify the act subsequently, and in such a case the act will be binding on them. Such ratification may be made expressly or impliedly. (Section 20, Partnership Act)*

*In the absence of any usage or custom of trade, the following restrictions are applicable on implied authority of a partner and such acts cannot be ratified by others.*

- (i) submit a dispute relating to the business of the firm to arbitration
- (ii) open a banking account on behalf of the firm in his own name
- (iii) compromise or relinquish any claim or portion of a claim by the firm

(iv) withdraw a suit or proceeding filed on behalf of the firm

(v) admit any liability in a suit or proceeding against the firm

(vi) acquire immovable property on behalf of the firm

(vii) transfer immovable property belonging to the firm

(ix) enter in to partnership on behalf of the firm.

37. After dismissal of a complaint under Section 203, a fresh similar complaint on the same facts.

- a. Is banned
- b. Is not banned but will be entertained only in exceptional circumstances
- c. Is not banned and will be entertained in all circumstances
- d. Either (a) or (c)

*Ans: (b) - There is no bar on filing a second complaint on the same facts. However, a second complaint on the same facts could be entertained in exceptional cases like where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd or new facts emerged.*

38. A new person can be introduced into a firm as a partner under Section 31 of the Act by

- a. Unanimous consent of all the partners
- b. Majority consent amongst the partners
- c. With the consent of the managing partner
- d. None of the above

*Ans: (a) - A new partner can be introduced in to the firm in the following ways:*

- (i) With the consent of all the existing partners
- (ii) In accordance with a contract between the partners
- (iii) In accordance with the provisions of Section 30.

39. Complaint may relate to:

- a. A cognizable offence
- b. A non cognizable offence
- c. Both (a) & (b) are correct
- d. Must be for a non-cognizable investigate such an offence as the police has no power to

*Ans: (c) - Complaint means any allegation made orally or in writing to a magistrate with a view to his taking action under this Code, that some person known or unknown has committed an offence but does not include police report. [Section 2(d)]*

*Explanation: A report made by a police officer in a case which discloses, after investigation the commission of a non cognizable offence shall be deemed to be complaint and police officer by whom such report is made shall be deemed to be a complainant.*

40. If the, person who is competent to compound offence is dead, the compounding

- a. Cannot be done.
- b. Can be done by the legal representative of the deceased without the permission of the court
- c. Can be done by the legal representative of the deceased



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only with the permission of the court.

d. Both (b) & (c)

*Ans: (c) - When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 of such person may, with the consent of the Court compound such offence. [Section 320 (4) (b)].*

41. In bailable offence:

a. Conditions can be imposed while granting bail by the police officer

b. Condition can be imposed while granting bail by the court

c. No condition can be imposed while granting bail by the police officer or by the court

d. Only mild conditions can be imposed by the court only

*Ans: (c) A person accused of a bailable offence can demand to be released on bail as a matter of right.*

*When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such court to give bail, such person shall be released on bail. [Section 436].*

*Further, such officer or court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on*

*his executing a bond without sureties for his appearance.*

42. In case where an inquiry, trial or other proceedings have been conducted in a wrong place:

a. The inquiry, trial or other proceedings shall be void *ab initio*.

b. The inquiry, trial or other proceedings cannot be set aside as void unless it has occasioned in failure of justice

c. The inquiry, trial or other proceedings, cannot be set aside even if it has occasioned in failure of justice

d. Either (a) or (c)

*Ans: (b) - The question is based on section 462 of the Criminal procedure Code which provides that - No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.*

43. In computing the period of limitation the time during which -

a. The accused avoided arrest by absconding has to be excluded.

b. The accused remained absent from India has to be excluded.

c. Both (a) & (b)

d. Neither (a) nor (b)

*Ans: (c) - In computing the period of limitation under*

*section 470 Cr PC, the following will be excluded.*

1. The time during which any person has been prosecuting with due diligence another prosecution.

2. The period where the institution of the prosecution in respect of an offence has been stayed by an injunction or order.

3. The time taken to obtain the previous sanction of the govt.

4. The period during which the accused has been out of India.

5. The period during which the accused has avoided arrest by absconding or concealing himself.

44. Irregularities which do not vitiate trial have been stated in

a. Section 460 of Cr.P.C

b. Section 461 of Cr.P.C

c. Section 462 of Cr.P.C

d. Section 466 of Cr.P.C

*Ans: (a) - Section 460 deals with irregularities that does not vitiate trial whereas 461 deals with irregularities that vitiate trials.*

*A magistrate cannot be indifferent on the question of jurisdiction simply because of Section 462, is there to save decisions of courts which had no territorial jurisdictions to try the case. If the question of jurisdiction is raised, the trial can be commenced only after deciding that question. [Abhay Lalan v. Yogendra Madhav Lal 1981 Cri LJ 1667]*

45. Objection as to the lack of territorial jurisdiction of the criminal court:



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- a. Can be taken before or at the time of commencement of trial
- b. Can be taken at any time after the commencement of trial
- c. Can be taken in appeal for the first time
- d. All the above.

**Ans: (a)** - It is a fundamental rule that a decree of a court without jurisdiction is a nullity. This however does not apply to territorial or pecuniary jurisdiction, in as much as objections to such jurisdiction are regarded by the Code as merely technical and, unless raised at the earliest possible opportunity, they will not be entertained in appeal or revision for the first time.

Under Section 21 (1), no objection as to the place of suing will be allowed by the appellate or revisional court unless the following three conditions are satisfied:

- (i) The objection was taken in the court of first instance
- (ii) It was taken at the earliest possible opportunity and in cases where issues are settled at or before settlement of issues are settled or before settlement of issues; and
- (iii) There has been a consequent failure of justice. All the three conditions must co-exist. The reason is obvious, neither consent, nor waiver nor acquiescence can confer jurisdiction upon a court otherwise incompetent to try a suit.

46. Power to recall any witness(es) under Section 311 of Cr.P.C. can be exercised:

- a. even after the evidence of both the sides is closed
- b. after the evidence of the prosecution is closed, but before the evidence of defence is closed
- c. before the evidence of the prosecution is closed, if the witness is to be called on the motion of the prosecution
- d. after the evidence of the prosecution is closed if the witness is called on the motion of the defence.

**Ans: (a)** - Objections regarding territorial jurisdiction can be taken before or at the time of commencement of trial.

47. Words 'competent jurisdiction' under Section 39 of CPC refers to

- a. Pecuniary jurisdiction of transferee court
- b. Territorial jurisdiction of the transferee court
- c. Pecuniary and territorial jurisdiction of the transferee court
- d. None of the above

**Ans: (c)** - A court shall be deemed to be a court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such court would have jurisdiction to try the suit in which such decree was passed. (Section 39 (3))

48. Section 428 Cr.P.C provides for concession to the effect that period of detention

undergone by accused be set off

- a. Against the substantive period of imprisonment awarded;
- b. Against the period of imprisonment in default of payment of fine.
- c. A & b above.
- d. None of the above.

**Ans: (a)** - Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him. Provided that in cases referred to in section 433-A, such period of detention shall be set off against the period of fourteen years referred to in that section.

49. Under Section 167 of Cr.P.C, the Magistrate can authorize detention for a total period of 90 days during investigation, in cases of offences punishable.

- a. With death
- b. With imprisonment for life
- c. With imprisonment for a term not less than 10 years



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d. All the above

*Ans: (d) Magistrate usually can detain a person for a period of 15 days only. However in offences punishable with death, imprisonment for life or imprisonment for a term not less than 10 years, such detention can extend to 90 days. In all cases of imprisonment up to 10 years such detention cannot exceed 60 days.*

*On the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail.*

*Further no Magistrate shall authorize detention in any custody under this section unless the accused is produced before him.*

50. Under Section 216 of Cr.P.C, the Court has the power to:

- Add to the charge(s) already framed
- Alter the charge(s) already framed
- Neither to alter nor to add to the charge already framed
- Add to and alter the charge both.

*Ans: (d) – Under Section 216 (1) of CrPC, any court may alter or add to any charge at any time before judgment is pronounced. The section invests a comprehensive power to remedy the defects in the framing or non-framing of a charge, whether discovered at the initial stage of the trial or at any*

*subsequent stage prior to the judgment.*

*Provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about that charge or in not giving a full opportunity of meeting it & putting forward any defence open to him, on the charge finally preferred against him*

51. Under Order VI, Rule 17 of CPC, an application for amendment of pleadings can be allowed.

- Before the commencement of trial
- After the commencement of trial
- Either before or after the commencement of trial
- None of the above

*Ans: (a) According to Order VI, Rule 17, the court may allow the amendment at any stage of the proceedings and for such purpose it may impose conditions in the form of cost or any other conditions. The proviso to Order VI Rule 17 of the Code of civil procedure puts a mandate upon the court not to allow such amendment after the trial has begun (if issues have been settled), if it finds that the party could have raised the pleadings by due diligence at an earlier point of time. However, the proviso need not be given a very rigid effect in all cases as the same is subject to the discretion of the court. The main object of the legislation is to enable the court to allow amendment at any stage.*

*Further, it was held by the Honble SC in Salem Advocate Case (AIR 2005 SC 3553) that by the 2002 amendment, which added the proviso to Order VI Rule 17, the burden of proof has been shifted upon the applicant who makes the application for amendment after the trial has commenced, to prove that despite due diligence he could not have raised the issue before the commencement of trial.*

52. Under Section 315 of Cr.PC

- An accused cannot be a witness
- An accused can be compelled to give his own evidence generally
- An accused can be called as a witness only on his own request in writing
- Either (a) or (b)

*Ans: (c) – Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial: Provided that-*  
*i) he shall not be called as a witness except on his own request in writing;*  
*ii) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.*



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53. Under Section 439 of Cr.PC, the jurisdiction to cancel the bail vests with:

- a. The Court of Sessions
- b. The High Court
- c. The Court of Magistrate
- d. Only (a) & (b)

*Ans: (d) - Section 439 of the new Code confers special powers on High Court or Court of Session regarding bail. That is to say, even if a Magistrate refuses to grant to bail to an accused person, the High Court or the Court of Session may order for grant of bail in appropriate cases. Similarly under Section 439(2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody.*

54. With reference to Crime response the following:

- a. It is a state wrong
- b. It is a civil wrong
- c. It is a private wrong
- d. None of the above

*Ans: (a) - Crime is not a private wrong like tort or breach of contract etc. It is a public wrong, crime against the society at large.*

55. Actus Reus includes:

- a. Positive (intentional doing) as well as negative (intentional non-doing, i.e. omission) acts.
- b. only positive acts.
- c. external (bodily) as well as internal (mind) acts
- d. both (a) and (c)

*Ans: (d) - actus reus includes both act as well as illegal omission. The actus reus of*

*omission is well illustrated in the English case of Gibbins v. Procter - where a man and a woman with whom he was living were held guilty of murder of the man's child when the woman with the connivance of the man withheld food from the child, intending its death or grievous bodily harm. What is essential that there must be a legal duty to act. If the neighbor is thirsty and I do not offer water to him and he die of thirst, I am not liable as law does not impose duty on me to give water to my neighbors'*

56. Section 34 of IPC

- a. Creates a substantive offence
- b. Is a rule of evidence
- c. Both (a) and (b)
- d. Neither (a) nor (b)

*Ans: (b) - S.34 recognises the principle of vicarious liability in criminal jurisprudence. It is a rule of evidence and does not create substantive offence. (Suresh vs. State of UP AIR 2001 SC 1344)*

57. Preparation and attempt are two stages of commission of crime. Preparation is not punishable generally but attempt is. One basic reason as to why preparation is not punishable is that there:

- a. Is no nexus between preparation and attempt.
- b. Can be chances of change of mind before commission of offence
- c. Is absence of intention.
- d. Is absence of attempt.

*Ans: (b)- In preparation no direct movement or attempt towards commission was made. The accused is still weighing the options and he may have a change of mind and abandon his intention.*

58. Illegal signifies:

- a. Everything which is an offence
- b. Everything which is prohibited by law
- c. Everything which furnishes ground for civil action
- d. All the above

*Ans: (d) - The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit. (Section 43 IPC)*

59. How many types of punishments have been prescribed under the Indian Penal Code:

- a. Three
- b. Six
- c. Five
- d. Four

*Ans: (c) - Section 53 of IPC lays down punishments as under:*

1. Death penalty
2. Life imprisonment
3. Imprisonment which is:
  - (i) rigorous
  - (ii) simple
4. forfeiture of property
5. fine

*Sentence may be given / extended for failure to pay fine. But such sentence cannot*



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exceed a period of six months in any case.

60. Second appeal under Section 100 of CPC lies

- On question of facts
- On substantial questions of law
- On mixed question of law & fact
- None of the above

**Ans: (b)** - Section 100 says that a second appeal shall lie if in the opinion of the High Court it involves a substantial question of law. Existence of substantial question of law is the requisite of a second appeal. Moreover no second appeal lies from an order but it lies only from a decree. The word substantial as qualifying questions of law means - of having substance, essential, real, of sound worth, important, or considerable. However the legislature has chosen not to qualify the scope substantial law by suffixing the words of general importance as has been done in many other provisions.

61. The maxim 'ignorantia juris non excusat' means:

- Ignorance of law is no excuse
- Ignorance of fact is no excuse
- Ignorance of law is an excuse
- Ignorance of fact is an excuse

**Ans: (a)** - It means ignorance of law is no excuse. It cannot be pleaded by even a foreigner present in India. It means a mistake as to the existence or otherwise of any law on a

relevant subject as well as a mistake as to what the law is. A mistake or ignorance of law, whether civil or criminal is no defence in law, howsoever, genuine it might be. If ignorance of law were a defence, it would be open to an accused charged of a crime to allege that he was not aware of the law on the point; and it would be quite impossible for the prosecution to prove that the accused was cognizant of the law in question.

62. Section 76 & Section 79 of IPC provide the general exception of

- Mistake of law
- Mistake of fact
- Both mistake of law and fact
- Either mistake of law or of fact

**Ans: (b)** - Mistake of fact or ignorance of fact is under section 76 is generally a defence. The justification for exemption on the ground of mistake of fact and ignorance of fact is based on the principle that a man who is mistaken or ignorant about the existence of a fact cannot form the necessary mens rea (intention) to constitute a crime and is therefore he is not responsible in law for his deeds.

Section 79 is complimentary to section 76. It exempts a person from criminal liability in those cases where by reason of mistake (or ignorance) of fact in good faith, and not by reason of mistake of law, a man

considers himself justified by law to do an act in a particular way

63. A hangman who hangs the prisoners pursuant to the order of the court is exempt from criminal liability by virtue of

- Section 76 of IPC
- Section 80 of IPC
- Section 77 of IPC
- Section 78 of IPC

**Ans: (d)** - Nothing which is done in pursuance of, or which is warranted by the judgment or order of a court of justice, if done whilst such judgment or order remains in force is an offence notwithstanding the court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the court had such jurisdiction. (Section 78, IPC).

Thus section 78 grants immunity to ministerial officers acting in pursuance of the judgment or direction issued under the authority or order of a court of law. Under this section:

(i) an officer is exempted from criminal prosecution provided the act is done in good faith.

(ii) belief in the legality of the order.

If the above conditions are satisfied, an officer will not be liable for prosecution even if the court issuing the order had no jurisdiction or the order happened to be erroneous.



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64. "A", with the intention to kill, shoots aiming at "B", instead "c" gets killed. The principle for holding "A" liable is known as

- The doctrine of intention
- The doctrine of transferred malice
- The doctrine that no one can escape
- None of these.

**Ans: (b)** - Section 301 embodies the principle of transfer of malice. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

if the accused shoots at a particular person with the intention of killing him, though under a misapprehension of his identity, the ingredients of section 299 and 300 of IPC, are satisfied. Similarly, there will be no difference when the injury intended for one falls on another by accident if A makes a thrust at B, meaning to kill, and C throws himself between, receives the thrust and dies, A will be liable for killing C as though intended to kill C. (Shankarlal Kachrabhai v. State of Gujarat AIR 1965 SC 1260)

65. The right to private defence is based on the natural instinct of

- Self-preservation
- Self-respect
- Self-sufficiency
- Self-reliance

**Ans: (a)** - Self help is the first rule of criminal law. The right of private defence is absolutely necessary for the protection of one's life, liberty and property. There may be situations in life wherein help from state authorities cannot be obtained in order to repel an unlawful aggression, either because there is no time to ask for such help, or for any other reason. To meet such exigencies the law has given the right of private defence of body and property to every individual. It is subject to further conditions as under 97 to 106 of IPC.

66. Section 511 does not apply in the case of

- Attempt of riot
- Attempt of murder
- Attempt of theft
- Attempt of affray

**Ans: (b)** - Attempt to murder is a specific offence under section 307 of the IPC and as such is not covered under Section 511. Attempts are punishable under section 511 but which are not covered under any specific sections of the IPC only.

67. The essence of sedition is:

- Intention
- Result
- Benefits or gains of the accused
- Both intention and result.

**Ans: (d)** - Sedition under section 124 A is the communication with the intention of exciting disaffection, hatred or contempt against the government established by law. It involves - Bringing or attempting to bring in to hatred; or exciting or attempting to excite disaffection against the government of India, And such act or attempt may be done by words, either spoken or written, or by signs or by visible representation. The act must be intentional. Criticism of the government or policies and administrative and other actions of the government, if done without exciting or attempting to excite hatred, contempt, or disaffection towards the government established by law is not sedition.

Mere exciting disaffection without incitement to violence does not amount to sedition. (Kedarnath Singh v. State of Bihar)

The essence of the crime of sedition is the intention of the writer, speaker as the case may be of the seditious matter. However intention alone is not punishable in crime, it should be followed by some act or omission.

68. A mental pain is

- Also covered under the offence of simple hurt.
- Not covered under the offence of simple hurt.
- Sometimes covered under the offence of simple hurt.
- None of the above.



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*Ans: (a) - Hurt is usually caused by bodily pain, disease or infirmity. Thus a person causing bodily pain, or communicating a disease or causes temporary mental impairment, hysteria, or terror to another is liable for hurt under section 319 of the IPC. Mental pain is included in causing infirmity.*

69. Under Indian Penal Code, there can be abetment to

- a. A person of unsound mind
- b. An infant
- c. Both (a) & (b)
- d. Neither (a) nor (b)

*Ans: (c) - If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine. (Section 305, IPC)*

Further It is not necessary that:

- i) the person abetted should be capable committing an offence
- ii) the person abetted should have the same guilty intention or knowledge of the abettor. OR
- iii) any guilty intention or knowledge. {Explanation -3 to section 108}

70. In which of the following cases, the punishment must be 'simple'

- a. Refusing to take oath.

- b. Disobedience to an order duly promulgated by a public servant.
- c. Wrongful restraint.
- d. All of the above.

*Ans: (d)- All these offences are punishable with simple imprisonment under section 178, 188 and 341 of the IPC respectively.*

71. Fight under Section 159 of IPC signifies:

- a. Two opposite parties actively involved
- b. Two parties one of which is passive
- c. Two parties both of which are passive
- d. None of the above

*Ans: (a) - Fight is a contest or struggle in which two or more persons participate. It means and implies actual exchange of blows between two or more persons, each of whom is trying to obtain mastery over the other.*

*But the difficulty arises because the courts are not unanimous about the definition of the term and have construed the word fight very divergently in various cases. In some cases the courts in absence of an actual fight refused to hold the public disturbance as an affray. In another case while upholding actual exchange of blows necessary for a fight, the court considered it sufficient that blows were aimed regardless of whether proved that successful contact was made or otherwise.*

*In yet another case wherein one party attacked and the other simply defended and*

*still another wherein one party attacked and the other tried only to escape, the courts refused to constitute the attack as a fight.*

72. Misconduct in public by a drunken person is

- a. Public mischief.
- b. Annoyance
- c. Intentional insult
- d. All of the above

*Ans: (b) - provides punishment to a person who in intoxication appears in any place and causes annoyance to any person. Annoyance may be caused by the drunken man by refusing leave a place when asked. No mens rea is required for an offence under this section. Mere intoxication is not an offence. It is only when a person appears in a state of intoxication in a public place, as in a street, or goes to a public place where he has no right to go, and causes annoyance to the people, then he becomes liable under this section. The punishment is simple imprisonment for a term which may extent to twenty four hours or with fine which may extent to rupees ten or with both.*

73. Which of the following is defamation:

- a. X says, "Y is an honest man, he never stole Z's watch," intending to cause it to be believed that Y did steal Z's watch.
- b. X is asked, "who stole Z's watch?" X points to Y.
- c. X draws a picture of Y running away with Z's watch.





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d. All of the above.

**Ans: (d)** – Under section 99 IPC, Defamation is publication of a statement without justification or excuse of what which is calculated to injure the reputation of another, tending to bring him to hatred, ridicule or contempt in the estimate of right thinking members of the society.

The definition of the offence contains three important elements, viz - (i) the person (ii) his reputation (iii) the harm to reputation of the person with necessary mens rea and subject to exception 1-10 of 499.

Thus if the above statements are made without justification or excuse it can amount to defamation.

74. Assault can be caused by:

- a. Gestures
- b. Preparations
- c. Both (a) & (b)
- d. Neither (a) nor (b)

**Ans: (c)** - Assault consists of an overt act, or making gestures, or a preparation intending, or knowing it to be likely that such gestures or preparations are with reference to the use of criminal force against the person. To constitute an assault, there must be some threatening physical act or by which the offender intentionally causes another to apprehend that criminal force is about to be used against him. The most important thing about this offence lies in the effect which the threat creates in the mind of the victim.

75. Trespass being made in a surreptitious manner (concealment) is called

- a. House-trespass
- b. House-breaking
- c. Lurking house-trespass
- d. None of the above

**Ans: (c)** - As per Section 443 of Indian Penal code. Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".

76. The word 'takes' in Section 361 of IPC signifies

- a. Taking by force
- b. Taking by fraud
- c. Physical taking
- d. All the above

**Ans: (c)** - The word takes in section 361 means 'to cause to go', 'to escort' or 'to get in to possession' There is no need that the taking or enticing must be done by using force, what is important is the minor or a person of unsound mind has been taken away without the consent of the guardian. Persuasion of the accused person which creates willingness on the part of the minor to be taken out of the keeping of lawful guardian would be sufficient to attract the section.

77. The expression 'harm' is used in Section 81 of the

Indian Penal Code in the sense of

- a. Hurt
- b. Injury or damage
- c. Physical injury
- d. Moral wrong or evil

**Ans: (b)** - Section 81 of the Code grants immunity to a man from criminal liability with respect to acts committed under compelling circumstances forced by necessity. In some cases law has recognized necessity as an excuse. Harm here includes both injury or damage.

78. Which one of the following is not a "Public Servant":-

- a. Liquidator
- b. A civil judge
- c. Member of a panchayat assisting a court of justice
- d. Secretary of a co-operative society

**Ans: (d)** - Public servant is defined under section 21 of the IPC. Liquidator, civil judge, or member of a Panchayat is included in this definition whereas secretary of a co-operative Society as such is not covered.

79. The causing of death of child in the mother's womb is not homicide under

- a. Indian law only
- b. English law only
- c. Both English and Indian law
- d. neither in Indian law nor in English law

**Ans: (c)** - The causing of death of a child in mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child



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has been brought forth, though the child may not have breathed or been completely born. (Explanation III to Section 299) Indian and English laws are more or less same on this with minor variations.

80. The difference between Section 34 and Section 149 of Indian Penal Code is

a. That whereas in Section 34 there must at least be five persons, Section 149 requires only two persons

b. That Section 149 is only a rule of evidence whereas Section 34 creates a specific offence and provides for its punishment.

c. That Section 34 requires active participation in action whereas Section 149 requires mere passive membership of the unlawful assembly

d. That Section 34 need not be joined with the principle offence, whereas Section 149 must be combined with the principle offence.

*Ans: (c) - The principle element in section 34 IPC is the common intention to commit a crime. In furtherance of the common intention several acts may be done by several persons resulting in the commission of that crime. In such a situation Section 34 provides that each one of them would be liable for that crime in the same manner as if all the acts resulting in that crime had been done by him alone. There is no question of common intention in Section 149 as*

*offence may be committed by members of unlawful assembly and the other members will be liable for that offence although there was no common intention between that person and other members of the unlawful assembly to commit that offence provided that condition laid down in the section are fulfilled. Thus if the offence is committed by that person is in persecution of the common object of the unlawful assembly, or such as the members of that assembly knew to be likely to be committed in persecution of the common object, every member of that unlawful assembly would be guilty of the offence, although there may be no common intention and no participation by the other members in the actual commission of that offence. (Nanak Chand v. State of Punjab)*

81. A confession made by a person while in police custody is inadmissible under:

- a. Section 29 of Evidence Act
- b. Section 26 of Evidence Act
- c. Section 25 of Evidence Act
- d. Section 27 of Evidence Act

*Ans: (b) - No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person (Section 26, Indian Evidence Act).*

*However, this is subject to two exceptions: Firstly, if the confessional statements is made in the*

*immediate presence of a Magistrate, and secondly if the confessional statement relates to a discovery of any fact, then, so much of such information as relates distinctly to the fact thereby discovered.*

*In Emperor v. Kangal Mall it has been held that statements by an accused to police officers pointing out the place where the offence was committed by others or where he concealed himself thereafter, and the house to which he went for assistance were regard as information leading to discovery or as statement made by him as part of his defense, are admissible in evidence as admissions.*

82. A co-defendant in a case

- a. Cannot be cross-examined by another co-defendant under any circumstance
- b. Can be cross-examined by another co-defendant if their interests are identical
- c. Can be cross-examined by another co-defendant when their interests adverse to each other
- d. Can be cross-examined by another co-defendant as a matter of right.

*Ans: (c) - A Co-defendant in a case can be cross-examined by another co-defendant when their interests are adverse to each other.*

83. A dying declaration:

- a. Can form the sole basis of conviction without any corroboration by independent evidence!
- b. Can form the basis of conviction only on



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corroboration by independent witness

c. Cannot form the sole basis of conviction unless corroborated by independent witness

d. Is not a substantive piece of evidence

*Ans: (a) - There is no absolute rule of law that a dying declaration cannot be the sole basis of conviction unless corroborated. If the declaration is coherent, consistent, and trustworthy and appears to have been made voluntarily, conviction can be based on it, even if there is no corroboration.*

84. A husband or wife is permitted to disclose any communication between them during marriage:

a. In civil proceedings between the parties

b. In criminal proceedings between the parties

c. In matrimonial proceedings between the parties

d. All the above

*Ans: (d) - As per Section 120, in all civil proceedings, the parties to the suit, and the husband or wife of, any party to the suit, shall be competent witnesses. Further, in criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.*

*Husband and wife are both competent witness against each other in civil and criminal cases (Shyam Singh v. Shaiwalini Ghosh)*

85. Admissions:

a. Are conclusive proof of the matters admitted

b. Are not conclusive proof of the matters admitted but operate as estoppel

c. Are conclusive proof of the matter and also operate as estoppel.

d. None of the above

*Ans: (b) - The evidentiary value of admissions is as under:*

*(i) It constitutes a substantive piece of evidence and for that reason can be relied upon for proving the truth of the facts in a case.*

*(ii) An admission has the effect of shifting the onus of proving to the contrary on the party against whom it is produced with the result that it casts an imperative duty on the party to explain it. In the absence of satisfactory explanation, it is presumed to be true.*

*(iii) An admission in order to be competent and to have the value and effect referred to above should be clear, certain and definite and not vague.*

*It is true that admissions are not conclusive proof of facts admitted and be explained or shown to be wrong, but they do raise an estoppel and the burden of proof to the person making them or his representative -in-interest. (Oud Kishore v. Ram Gopal AIR 1979 SC 861)*

86. Alibi is governed by

a. Section 9 of Evidence Act

b. Section 10 of Evidence Act

c. Section 12 of Evidence Act

d. Section 11 of Evidence Act

*Ans: (d) - Section 11 of the Indian Evidence Act deals with*

*the plea of alibi. Which says that evidence can be given of facts which have no other connection with the main facts of a case except this that they are inconsistent with a fact in issue or a relevant fact. Their inconsistency with the main facts of the case is sufficient to warrant their relevancy. Thus this section enables a person charged with a crime to take what is commonly known as the plea of alibi, which means the presence elsewhere at the time of crime. This plea establishes the impossibility of crime and the presence of the accused at the scene of the offence.*

87. Burden of introducing evidence under Section 102 of Evidence Act

a. Never shifts

b. Occasionally shifts

c. Constantly shifts

d. Only(a) and not (b) or (c)

*Ans: (c) - Section 102 try to locate the party on whom the burden of proof lies. The burden of proof lies upon the party whose case would fail if no evidence were given on either side. This may shift during trial.*

*In criminal cases the burden of proof is on the prosecution (except in cases of general exceptions, 304B, 376, 498A). In civil litigation, the burden of proof is initially on the plaintiff. However, there are a number of technical situations in which the burden shifts to the defendant. For example, when the plaintiff has made a prima facie case, the burden shifts to the*



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*defendant to refute or rebut the plaintiff's evidence.*

88. Burden of proof is lightened by

- a. Presumption
- b. Admissions
- c. Estoppels
- d. All of the above

*Ans: (d) - All the above has the capacity to lighten burden of proof in a case.*

89. Contents of a document under Section 59 of Evidence Act

- a. Can be proved by oral evidence
- b. Cannot be proved by oral evidence
- c. May or may not be proved by oral evidence
- d. Can only be proved by oral evidence under the order of the court

*Ans: (b) - Section 59 states that all facts except the contents of documents or electronic records may be proved by oral evidence.*

*The contents of documents must be proved either by the production of the document which is called primary evidence, or by copies or oral accounts of the contents, which are called secondary evidence. Where there is documentary evidence, oral evidence is not entitled to any weight. [Section 61]*

*Thus in the absence of original document or a certified copy, evidence regarding the contents of the document can be given by a person who has read the document, and has knowledge of the contents.*

90. Estoppel

- a. Is a cause of action in itself
- b. Creates a cause of action
- c. Both (a) & (b) are correct
- d. Neither (a) nor (b) is correct

*Ans: (d) - Estoppels proceeds from the doctrine of equity that - he who, by his conduct has induced another to alter his position to his disadvantage, cannot turn round and take advantage of such alteration of the others position. Estoppels as defined under section 115 of the Indian Evidence Act is only a rule of evidence and shuts the mouth of a party. It prevents a party from saying one thing at one time and the opposite at another. It only binds that party who made the previous statement or showed the previous conduct.*

91. In criminal trials, the accused has to establish his plea of mitigation or justification of an offence -

- a. Beyond reasonable doubt
- b. Prima facie
- c. Substantially has to establish his plea mitigation or
- d. Partially

*Ans: (b) - It is sufficient if the accused establish a fact or raise a presumption unless disproved or rebutted. However from the side of the prosecution in criminal cases the guilt of the accused must be proved beyond reasonable doubt.*

92. Necessity rule as to the admissibility of evidence is applicable, when the maker of a statement

- a. Is dead or has become incapable of giving evidence
- b. Is a person who can be found but his attendance cannot be procured without Unreasonable delay or expenses
- c. Is a person who cannot be found
- d. All of the above

*Ans: (d) - Statements written or verbal or relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be produced without an amount of delay or expense which, under the circumstances of the case appears to the court as unreasonable, are themselves relevant facts in the following cases:*

- i) when it relates to cause of death
- ii) Or is made in course of the business
- iii) Or against interest of maker
- iv) Or relates to existence of relationship
- v) Or relates to existence of relationship
- vi) Or is made in deed or will relating to family affairs.
- vii) Or in document relating to transaction mentioned in Section 13, Clause (a).
- viii) Or is made by several persons and express feelings relevant to matter in question: When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to matter in question.

93. Re-examination of a witness



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a. Can be for the purposes of filling what is left-over in examination-in-chief

b. Can be for the purposes of explaining the matters referred to in cross examination.

c. Can be for the purposes of explaining the matters referred to in the examination-in-chief.

d. All the above

*Ans: (d) - The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in-re-examination, the adverse party may further cross-examine upon that matter.*

*In civil cases, the advocate or counsel narrates the facts of the case and this is known as the opening of the pleading. In criminal cases, one of the officers of the court reads out the summary of charge levelled against the accused as well as his plea. (Section 137 Indian Evidence Act)*

94. Section 105 of Evidence Act applies to:

a. Criminal trials

b. Civil trials

c. Both (a) &(b)

d) Neither (a) nor (b)

*Ans: (a) - Section 105 is intended to apply only to criminal cases. The general principles relating to burden of proof in criminal cases are:*

*(i) the court presumes that the accused is innocent and, therefore, prosecution must prove that he is guilty*

*(ii) Once the prosecution has proved the guilt of the accused beyond a reasonable doubt, and the accused takes the plea of insanity etc, the burden is on the accused to prove it.*

*Thus if the accused claims that his case comes under any of the exceptions, the burden of proving it lies on him.*

95. Testimony of an accomplice before it is accepted & acted upon-

a. Must be corroborated from the testimony of another accomplice.

b. Must be corroborated from an independent source

c. Need not be corroborated at all

d. Either (a) or (c)

*Ans: (c) - An accomplice is allowed to give evidence. As per Section 133, he is a competent witness against the accused and a conviction based on his evidence is not illegal merely because his evidence has not been corroborated. At the same time, Section 114 (b) contains a provision that allows the Court to presume that an accomplice is unworthy of credit, unless he is corroborated in material particular. The idea is that since such a witness is not very reliable, his statements should be or verified by some independent witness. This is interpreted as a rule of caution to avoid mindless usage of evidence of accomplice for producing a conviction.*

*In the case of R v. Baskerville, it was held that:*

*1. It is not necessary that there should be an independent confirmation of every detail of the crime related by the accomplice. It is sufficient if there is a confirmation as to a material circumstance of the crime.*

*2. There must at least be confirmation of some particulars which show that the accused committed the crime.*

*3. The corroboration must be an independent testimony. i.e one accomplice cannot corroborate other.*

*4. The corroboration need not be by direct evidence. It may be through circumstantial evidence.*

*(This rule has been confirmed by the Supreme Court in Rameshwar v. State of Rajasthan, 1952).*

96. The term "character" as explained in Section 55 of the Indian Evidence Act, 1872, means:

a. Good and bad character

b. Reputation and disposition of general nature.

c. Reputation formed on the basis of particular disposition.

d. Character in a criminal act

*Ans: (b) - In Sections 52, 53, 54, and 55 the word "character" includes both reputation and disposition but (except as provided by Section 54), evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.*



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97. Under the law of evidence, as a general rule

- a. Opinion on a matter of fact is relevant but not on a matter of law
- b. Opinion on a matter of law is relevant but not on a matter of fact
- c. Opinion on a matter of fact and law both are relevant
- d. Opinion whether on a matter of fact or law, is irrelevant

*Ans: (c) – Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant. (Section 46)*

*When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons especially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. (Section 45)*

98. A post-marriage agreement to live separately in future is -

- a. Void
- b. Voidable
- c. Valid
- d. Invalid

*Ans: (a) – A pre-marriage as well as post marriage agreement to live separately in future is void.*

99. After the passing of a decree for judicial separation, co-habitation is -

- a. Obligatory

- b. Not obligatory
- c. Directory
- d. Either(a)or (c)

*Ans: (b) – Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so. (Section 10(2), HMA).*

100. Degrees of prohibited relationship include

- a. full blood
- b. half or uterine blood
- c. adoption
- d. all the above

*Ans: (d) – Two persons are said to be within the "degrees of prohibited relationship" –*

- (i) if one is a lineal ascendant of the other; or
- (ii) if one was the wife or husband of a lineal ascendant or descendant of the other; or
- (iii) if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or

*(iv) if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters;*

*Explanation – For the purposes of sapinda and prohibited degrees relationship includes:—*

*(i) relationship by half or uterine blood as well as by full blood;*

*(ii) illegitimate blood relationship as well as legitimate;*

*(iii) relationship by adoption as well as by blood; and all terms of relationship in those clauses shall be construed accordingly. (Section 3 Hindu Marriage Act).*

101. Insanity is a ground for

- a. Getting the marriage annulled as voidable
- b. Judicial separation
- c. Divorce
- d. All the above

*Ans: (d) – Insanity is a ground for dissolution of marriage under section 13 of the Hindu Marriage Act. It can be a ground for judicial separation under section 10 and a ground for getting the marriage annulled as voidable under section 12 of the Hindu Marriage Act.*

102. Remedy (of restitution of conjugal rights) is aimed at-

- a. Dissolving the marriage
- b. Preserving the marriage
- c. Both(a) &(b)
- d. Either (a) or (b)

*Ans: (b) – According to section 9 of the Act, when either husband or wife has withdrawn from the society of the other, the aggrieved party may apply by petition to the district court for restitution of conjugal rights. The very purpose of restitution is to work out a compromise.*



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103. Under Muslim Law, the only natural guardian is

- a. Father
- b. Mother
- c. Grand-father
- d. Grand-mother

*Ans: (a) – Father is the natural guardian of a minor in Islamic laws. However Muslim law makes a distinction between guardian of the person, guardian of the property and guardian for purposes of marriage in case of minors.*

104. The renunciation of Islam by a married Muslim women or her conversion to a faith other than Islam -

- a. Shall not by itself dissolve marriage
- b. May by itself dissolve marriage
- c. Shall by itself dissolve marriage
- d. None of the above

*Ans: (a) – The renunciation of Islam by a married Muslim woman or her conversion to another religion does not by itself dissolve the marriage. Where the husband becomes apostate, the marriage relationship is severed and he ceases to be the husband of his Muslim wife irrespective of the fact which religion he adopts.*

105. Mother's right to have the custody of minor child is known as

- a. Hizamat
- b. Hazina
- c. Khula
- d. Ahula

*Ans: (a) – It is the mothers right to have custody of minor child. Under Hanafi school,*

*mother is guardian of her minor till he attains age of 7 years and of her daughter till she reaches puberty. Under Shia school, mother is guardian of her son till he attains the age of 2 years and of her daughter till she attains the age of 7 years.*

*An illegitimate child is left in the charge of mother till the age of 7 years but legally belongs to neither of his parents.*

*However, the right of hizanat of the mother and other female relations is lost if she leads an immoral life or, neglects to take proper care of the child or, marries a person not related to the child within prohibited degrees or, if during the subsistence of marriage, she goes and resides at a distance from the father's place.*

106. A decision on issue of law

- a. Shall always operate as res-judicata
- b. Shall never operate as res-judicata
- c. Mayor may not operate as res-judicata
- d. None of the above

*Ans: (c) - No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties.*

*But the doctrine of res judicata belongs to the domain of procedure: it cannot be exalted to the status of a legislative direction between the parties so as to determine*

*the question relating to the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby.*

*A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the court holds that it has no jurisdiction, the decision will not, operate as res judicata. (Mathura Prasad Bajoo Jaiswal & Ors vs Dossibai N. B. Jeejeebhoy)*

107. A defendant under Order V, Rule 1(1) of CPC is required to appear, answer the claim and to file the written statement.

- a. Within 90 days from the date of service of summons
- b. Within 60 days from the date of service of summons
- c. Within 30 days from the date of service of summons
- d. Within 15 days from the date of service of summons

*Ans: (c) – A defendant has to file written statement within thirty days of from the service of summons on him. The said period can be further extended up to 90 days by the courts.*

*It is not mandatory and only directory [Rule 1 O.VIII]. It is for speedy disposal of cases but speedy disposal does not amount to compromise with justice. Thus in deserving cases*



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court can extend the period of 90 days. {Kailash v. Nankhu}.

108. A party filing affidavit in reply to interrogatories

- a. Can be cross-examined upon it
- b. The other party can adduce evidence to contradict it
- c. Can neither cross-examine nor adduce any evidence to contradict it, as it is a conclusive proof
- d. None of the above

*Ans: (c) - Such party can neither cross-examine nor adduce any evidence to contradict it, as filing affidavit in reply to interrogatory is a conclusive proof.*

109. A person arrested & detained in civil imprisonment in execution can be released

- a. On payment of the outstanding amount
- b. On the ground of illness of self
- c. On the ground of illness of a member of his family
- d. Both (a) and (b) of a decree

*Ans: (d) - Where the decree in execution of which a judgment debtor is arrested, is a decree for the payment of money and the judgment debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him. (Section 55)*

110. A plaint can be rejected

- a. Under Order 8, Rule 10 of CPC
- b. Under Order 8, Rule 10A of CPC

c. Under Order 7, Rule 11 of CPC

d. None of the above

*Ans: (c) - The plaint shall be rejected in the following cases:— {O. VII Rule 11}*

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provision of Rule 9.

111. A suit filed on behalf of a minor can be

- a. Withdrawn at any time as a matter of right
- b. Cannot be withdrawn
- c. Withdrawn only with the leave of the court
- d. None of the above

*Ans: (c) - Agreement or compromise by next friend or guardian for the suit-*

*No next friend or guardian for the suit shall, without the leave of the court, expressly recorded in the proceeding, enter into any agreement or*

*compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.*

*An application for leave as above shall be accompanied by an affidavit of the next friend or the guardian for the suit, as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor. Provided that the opinion so expressed, whether in the affidavit or in the certificate shall not preclude the court from examining whether the agreement or compromise proposed is for the benefit of the minor. Further any such agreement or compromise entered into without the leave of the court so recorded shall be voidable against all parties other than the minor. (Order 32 Rule 7)*

112. A witness who has already been examined can be recalled under Order 18, Rule 17 of CPC

- a. By the party calling the witness
- b. By the opposite party
- c. By the court
- d. None of the above

*Ans: (c) - The court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the court thinks fit.*





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113. After dismissal of suit under Order 9, Rule 8 of CPC, a fresh suit on the same cause of action, under Order 9 Rule 9 of CPC

- a. Is barred
- b. Is not barred under any circumstances
- c. Is not barred subject to law of limitation
- d. None of the above

*Ans: (a) - Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action, But he may apply for an Order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his non appearance when the suit was called on for hearing, the court shall make an Order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit. (Order IX Rule 9, CPC)*

114. An executing court can go behind the decree where:

- a. The decree has been passed without jurisdiction-pecuniary, territorial, or subject-matter.
- b. The decree is a nullity having been passed against a dead person without bringing his legal representatives on the record.
- c. Where the decree is ambiguous
- d. None of the above

*Ans: (d) - Section 47 of the Code of Civil Procedure confers wide powers on the executing Court to decide all*

*questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree. Such questions must be decided by the executing Court and no separate suit is maintainable for the purpose.*

*However, an executing Court cannot go behind the decree or question the jurisdiction of the Court which passed it. Its function is to execute the decree as it stands. It may, however, refer to the judgment to ascertain its meaning when the terms of the decree are ambiguous.*

115. Compromise under Order XXIII, Rule 3 of CPC

- a. Must be in writing and signed by the parties.
- b. Must be in writing but need not be signed by the parties
- c. Must be in writing but need not be lawful
- d. None of the above:

*Ans: (a) - The compromise should be in writing and signed by the parties according to Oder 23 Rule 3. Such compromise may be in respect of the whole or any part of the subject matter of the suit.*

116. For the application of the principle of res-sub-judice, which of the following is essential

- a. Suits between the same parties or litigating under the same title
- b. The two suits must be pending disposal in a court

c. The matters in issue in the two suits must be directly and substantially the same

d. None of the above

*Ans: (?) - The following are the conditions required for the application of the principle for res sub-judice:*

*i) The matter in issue in both the cases are to be substantially the same*

*ii) Previously instituted suit must be pending in the same or any other court competent to grant:*

*a) Relief claimed in the suit.*

*b) Relief claimed in subsequent the suit.*

*iii) Suits to the parties are to be the same or between parties under whom they or any of them claim, litigating under the same title.*

*iv) Pendency of suit in Foreign Court doesn't activate S. 10 CPC.*

*v) If suit is pending before a Court and subsequently an application is filed before a non judicial authority, it doesn't invoke S. 10 as such authority is not a "Court"*

*vi) For purpose of institution, the date of presentation of plaint and not the date of admission is considered.*

*vii) The term suit includes appeal.*

*The rule of sub judice applies to the trial of a of a suit and not to its institution - It is the trial of the suit that is not to be proceeded with under res sub-judice (Indian Bank v. Maharashtra State Co-operative Marketing Federation Ltd (1998))*



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117. If a document, which ought to be produced in the court along with the pleadings, is not produced, under Order VII, Rule 14(3) of CPC at the hearing of the suit

- The same shall not be received in evidence on behalf of the plaintiff
- The same shall not be received in evidence on behalf of the defendant
- The same shall not be received in evidence on behalf of third party
- None of the above

*Ans: (a) - A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.*

*However, it shall apply to documents produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.*

118. Inherent powers under Section 151 of CPC are

- Discretionary in nature
- In addition to the power conferred under the other provision of the code
- Both(a)& (b)
- None of the above

*Ans: (c) - The inherent powers of the court are in addition to the powers specifically conferred on the court by the code. They are complementary to those powers and the court*

*is free to exercise them for the ends of justice or to prevent the abuse of the process of the court.*

119. Legal representative under Section 2(11) of CPC means a person who is a

- Relative of parties to the suit
- co-sharer of the benefits assuming to the parties to the suit
- who in law represents the estate of the deceased
- none of the above

*Ans: (c) - According to Section 2 (11) of CPC, legal representative means a person:*

- Who in law represents the estate of a deceased person,
- Who intermeddles with the estate of a deceased person.
- Where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued; (A representative of a legal representative)

*Thus Legal Representative includes even a stranger who may be in actual possession of the deceased's estate without claiming any title thereof.*

*However, there is difference between legal representative and a legal heir - legal representative is the person who administers an estate, and a legal heir is someone designated by the law by a will as one who is to receive something from the estate. A legal heir inherits the estate of a person who died by relationship, descent, will or*

*legal process. A legatee on the other hand is any entity or person who receives an inheritance from a will. A legatee is also called a Devisee.*

120. Lodging of caveat under Section 148-A of CPC

- Entitles the caveat or to receive notice of the application
- Makes the caveat or a party to the suit
- Both (a) & (b)
- None of the above

*Ans: (a)- A caveat protects the caveator's interest. The caveator is already ready to face the suit or proceedings which are expected to be instituted by his opponent. Hence no ex-parte order shall be passed against the caveator. The caveat avoids multiplicity of proceedings. Thus it saves the expenses costs and conveniences of the Courts. If any person thinks that any adverse order will be passed against him then he can file a caveat u/s 148-A of CPC. The court will not pass any order without serving a notice on the caveator except in case of emergency in which the court may pass any order. Normally the caveat may be filed in civil cases and not in criminal cases.*

*The caveator has to serve the notice to the opposite party. The caveat is valid for three months.*

121. On default in filing of written statement under Order 8, pronouncement of judgment



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- a. Is mandatory
- b. Discretionary
- c. Directory rule 10 of cpc,
- d. None of the above

*Ans: (b) - A defendant needs to submit the written statement within 30 days of from the service of summons on him or such extended time as allowed by the court. (Can be extended by the court up to a period of 90 days) (O.VIII Rule 10). However this is discretionary in nature.*

*Where any party from whom a written statement is so required fails to present the same within the time fixed by the court, the court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit. (Govind Ram Agarwala v. Harsukhrai Doshi and Ors, 1969 (17) BLJR 367).*

122. Parties by their consent/agreement

- a. Can confer jurisdiction on a court, where there is none in law
- b. Can oust the jurisdiction of the court where there is one in law
- c. Can oust the jurisdiction of one of the courts when there are two simultaneously having jurisdiction in law.
- d. None of the above.

*Ans: (c) - The parties cannot by their consent confer jurisdiction on a court which has no jurisdiction neither the parties can take away the jurisdiction of a court by agreement. However when two courts have concurrent jurisdiction, the parties by an*

*agreement can oust the jurisdiction of one court.*

123. Provisions of Section 10 of CPC are

- a. directory
- b. mandatory
- c. discretionary
- d. none of the above

*Ans: (b) - It is mandatory. The object of S-10 is to prevent Courts of concurrent jurisdiction from simultaneously; trying two parallel cases, in respect of same matter in issue leading to conflicting decisions and avoids wastage of time.*

*It has no universal application like res judicata and as such pendency of cases in a foreign court is not a bar to institution of cases in India. Section 10 also does not apply to criminal cases and interim or preliminary orders.*

*Section 10 applies to suits and appeals only. Appeals are a continuation of suit. If the previous case is instituted on an application or petition etc, res sub judice will not be applicable. (Harish Chander Bajpai v. Triloki Singh- 1979)*

*The rule of sub-judice is only a rule of procedure and a decree passed in contravention of it is not a nullity and cannot be disregarded in execution proceedings - (Sheopat Ravi v. Warak Chandji).*

124. Provisions of Section 80 of CPC are binding on

- a. The court of a Civil Judge
- b. The court of District Judge
- c. The High Court
- d. All of the above

*Ans: (d) - Section 80 of the Code, declares that no suit shall be instituted against the government or against a public Officer in respect of any act done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to or left at the office of Secretary in case of central government, general Manager in case of Railway, Chief Secretary in case of Govt. of Jammu & Kashmir and Secretary in case of other States. This is a mandatory provision.*

125. Review is maintainable

- a. When an appeal is provided, but no appeal preferred
- b. When no appeal is provided
- c. Both(a)& (b)
- d. Neither(a) nor (b)

*Ans: (c) - A review petition lies in the following cases:*

*(i) Cases in which no appeal lies - A decree or order from which no appeal lies is open to review.*

*(ii) Cases in which appeal lies but not preferred - A review petition is also maintainable in cases where appeal is provided but no such appeal is preferred by the aggrieved party.*

*(iii) Decisions on reference from Court of small causes - CPC allow a review of a judgment on a reference from a court of Small Causes. (Section 115, CPC)*