

Karnataka Judiciary - Mains 2022

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Law Paper I

Q1. Write a short note on Any One of the following subjects by referring Relevant Provisions of Law 5x1=5 Marks

(a) Interpleader suit. An interpleader suit is a unique legal procedure used when multiple parties claim the same right against a single party, who is unsure about to whom the obligation is owed. This mechanism allows the party holding the property or subject matter (stakeholder) to ask the court to decide who among the claimants has the legitimate claim. In India, the interpleader suit is governed by the Civil Procedure Code, 1908 (CPC), under Section 88, and Order 35. This legal tool ensures that a stakeholder can protect themselves from multiple liabilities on the same matter. Section 88 of the CPC: It provides the basis for filing an interpleader suit. The section allows a person holding property not claimed by them but claimed by two or more other parties, to initiate a lawsuit asking the court to decide the rightful claimant. This prevents the stakeholder from facing multiple lawsuits over the same issue. Order 35 of the CPC: This Order details the procedure for the filing and conduct of an interpleader suit. It specifies conditions under which such a suit can be filed, including the requirement that the plaintiff (stakeholder) must not have any interest in the subject matter other than for charges or costs. The stakeholder must also acknowledge willingness to pay or deliver the subject matter to the rightful claimant as per the court's judgement. Conditions for Filing An interpleader suit can be filed when: Multiple Claims: Two or more parties make conflicting claims against the same property or amount, and such property or amount is in the possession of the stakeholder. No Interest: The stakeholder claims no interest in the subject matter other than for charges or fees. Uncertainty: The stakeholder is unable to determine the rightful claimant and fears multiple litigations or liabilities.

(b) Special Procedure for suits by and against Minors. In the Indian legal system, minors (individuals under the age of 18) are considered to be under a legal disability and thus cannot act for themselves in a court of law. This is primarily because they are deemed incapable of understanding and making decisions that affect their rights and interests. Therefore, the law provides a special procedure for minors to sue or be sued through a representative. These provisions ensure that minors' legal rights and interests are adequately protected. The procedures are outlined in the Civil Procedure Code, 1908 (CPC), particularly in Order XXXII. Key Provisions under Order XXXII: Appointment of a Next Friend or Guardian: A minor must be represented by a "next friend" when suing and by a "guardian" (also known as a guardian ad litem) when being sued. The court has the authority to appoint such representatives. Consent of the Court: The appointment of a next friend or guardian requires the court's approval, ensuring that the representative acts in the best interest of the minor. Security for Costs: The court may require the next friend or guardian to provide security for the costs of the litigation, to protect the interests of the opposing party. No Personal Liability for Representatives: The next friend or guardian is not personally liable for any of the costs associated with the lawsuit, provided they act in good faith. Settlements and Compromises: Any settlement or compromise involving a minor must be approved by the court. This is to ensure that the agreement is in the best interest of the minor.

Q2. Which specific provisions of the Code of Civil Procedure, 1908 have to be invoked under following circumstances? 5x1=5 Marks

i) To appoint the Court Commissioner to examine the witness who is outside India. ii) To serve the suit summons to the defendant by way of paper publication as substituted service. iii) To issue bailable warrant against a witness who failed to comply with summons. iv) To set aside the sale of immovable property in execution of decree on the ground of irregularity or fraud. v) To file appeal against the order granting temporary injunction under Order 39 Rules 1 and 2.

i) To appoint the Court Commissioner to examine the witness who is outside India: Section 75 and Order 26, Rule 5 of the CPC: These provisions empower the court to issue a commission to any proper person to examine or adjust accounts or to make a partition who may reside within the local limits of its jurisdiction or at any place within the Indian limits or elsewhere. ii) To serve the suit summons to the defendant by way of paper publication as substituted service: Order 5, Rule 20 of the CPC: This rule allows the court, upon being satisfied that the defendant is deliberately avoiding service or that for any other reason the summons cannot be served in the ordinary way, to order the summons to be served by affixing a copy in some conspicuous part of the house in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the court thinks fit. This may include publication in a newspaper. iii) To issue bailable warrant against a witness who failed to comply with summons: Order 16, Rule 10 of the CPC: If any person to whom a summons has been issued under Rule 1 or Rule 9, fails to appear or to stay in attendance according to the summons, the court can, upon being satisfied of the sufficiency of the summons and of the failure to attend, issue a warrant to bring him before the court at a time and place to be specified in the warrant. iv) To set aside the sale of immovable property in execution of decree on the ground of irregularity or fraud: Order 21, Rule 90 of the CPC: This provision allows any person whose interests are affected by the sale of immovable property in execution of a decree on account of any alleged irregularity or fraud in publishing or conducting the sale, to apply to the court to set aside the sale. v) To file appeal against the order granting temporary injunction under Order 39 Rules 1 and 2: Order 43, Rule 1(r) of the CPC: This rule states that an order under Rule 1, Rule 2, Rule 2A, Rule 4, or Rule 10 of Order 39 can be appealed. Therefore, an appeal against the order granting a temporary injunction under Order 39, Rules 1 and 2, can be made under this provision.

Q3. Answer Any Two of the following questions by referring Relevant Provisions of Law 10x2=20 Marks

(a) Draft a model plaint in respect of a suit for Recovery of Money based on Demand Promissory Note, by incorporating all the mandatory requirement of a plaint, as provided under Order 7 of the Code of Civil Procedure, 1908. IN THE COURT OF [Insert Court Name] [Insert Jurisdiction] Suit No. _____ of 20XX [Plaintiff's Name], [Plaintiff's Address], ... Plaintiff Versus [Defendant's Name], [Defendant's Address], ... Defendant PLAINT FOR RECOVERY OF MONEY Respectfully Sheweth: Particulars of the Suit: The plaintiff is filing this suit for the recovery of money amounting to INR [insert amount] along with interest at the rate of [insert interest rate]% per annum from the date of filing until the realisation of the amount, based on a demand promissory note executed by the defendant in favour of the plaintiff. Cause of Action: The cause of action arose on [insert date], when the defendant executed a demand promissory note in favour of the plaintiff, promising to pay INR [insert amount] upon demand. Despite repeated demands, the last of which was made on [insert last demand date], the defendant has failed to repay the said amount. Parties to the Suit: The plaintiff, [insert plaintiff's name], is a resident of [insert address], and the defendant, [insert defendant's name], is a resident of [insert address]. Jurisdiction: The suit is filed in this court as the promissory note was executed within its jurisdiction/[or as the defendant resides within the jurisdiction of this court]. Value of the Suit for the Purpose of Jurisdiction and Court Fees: The value of the suit for the purpose of jurisdiction and payment of court fees is INR [insert amount]. Prayer: The plaintiff prays for the following relief(s): a. A decree for the sum of INR [insert amount] along with interest at the rate of [insert interest rate]% per annum from the date of filing till the realisation of the amount. b. Costs of the suit. c. Any other relief that this Honourable Court may deem fit and proper in the circumstances of the case. Verification: I, [insert plaintiff's name], the plaintiff in the above-mentioned suit, do hereby declare that what is stated above is true to the best of my knowledge, information, and belief. Verified at [insert place] on this [insert date] day of [insert month], 20XX. Plaintiff [Signature of the Plaintiff] List of Documents: Demand promissory note dated [insert date]. Proof of demand made on [insert date(s)]. Any other relevant document. Advocate for the Plaintiff [Advocate's Name and Signature]

(b) Explain the mode of executing following decrees: i) Decree for payment of Money. ii) Decree for specific performance of contract. iii) Decree for an injunction. The execution of decrees in civil litigation is a critical phase, where the judgement of the court is implemented. Order XXI of the Code of Civil Procedure, 1908 (CPC) outlines various modes of executing different types of decrees. The execution method depends on the nature of the decree issued by the court. i) Decree for Payment of Money According to Rule 30 of Order XXI of CPC, Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgement-debtor, or by the attachment and sale of his property, or by both. ii) Decree for Specific Performance of Contract and Decree for an Injunction Rule 32 of Order XXI outlines the enforcement methods for decrees related to the specific performance of a contract, restitution of conjugal rights, or injunctions. If a party wilfully fails to comply with such a decree, enforcement can include attaching their property or detaining them in civil prison. In cases involving corporations, enforcement can extend to attaching corporate property or detaining directors or principal officers. If an attachment lasts for six months without compliance or a successful sale application by the decree-holder, the property can be sold, with proceeds used for compensation and any balance returned to the judgement-debtor. Attachments end if the decree is obeyed, costs are paid, six months pass without a sale application, or such an application is refused. Additionally, the court may authorise the decree-holder or an appointed person to perform the act required by the decree at the judgement-debtor's expense, with incurred expenses recoverable. (c) What are the factors to be considered by the Courts for allowing or refusing the request for amendment of pleadings? What are the guiding principles to be considered by the Courts under following circumstances? i) When the proposed amendment is to seek a new relief in the plaint, which is objected as barred by limitation. ii) When the proposed amendment to the plaint, if allowed, would oust the jurisdiction of the Court to try the said suit. iii) When the application seeking amendment is filed after commencement of trial. Amendment of pleadings is a procedural aspect governed by Order 6, Rule 17 of the Code of Civil

Procedure, 1908 (CPC). The courts have been vested with discretion to allow or refuse amendments to pleadings, and this discretion is to be exercised based on principles of justice, fairness, and the merits of each case. Amendments are usually sought for correcting mistakes, bringing in new facts, or altering the legal grounds of the case. The intention is to ensure that the real questions in controversy between the parties are brought before the court, and justice is administered effectively and efficiently. When courts evaluate requests for amendment of pleadings, several key factors come into play, guiding their decision to either allow or refuse such amendments. These considerations are based on the principles of fairness, justice, and the efficient administration of law. The objective is to ensure that all relevant matters and disputes between the parties are adequately addressed, while preventing unnecessary delays or prejudice.

Factors for Allowing or Refusing Amendment of Pleadings

Nature of Amendment: Amendments necessary for clarifying issues in dispute or for correcting errors are generally favoured. However, amendments that introduce a new cause of action or significantly alter the existing one might be subject to closer scrutiny.

Timing of the Request: The timing of the amendment request is crucial. Requests made without undue delay are more likely to be granted. Conversely, late amendments, particularly those that could have been made earlier, might be refused, especially if they cause prejudice to the opposing party.

Prejudice to the Opposing Party: An amendment will likely be refused if it causes undue prejudice to the other party that cannot be mitigated through costs or other adjustments to the proceedings.

Bad Faith: Requests made in bad faith, aiming to circumvent legal restrictions or to mislead the court or the opposing party, are generally not permitted.

Impact on Proceedings: Amendments that would lead to a multiplication of legal proceedings or unnecessarily complicate the matter are discouraged.

Guiding Principles Under Specific Circumstances

i) **Seeking New Relief Barred by Limitation Statute of Limitations:** A key consideration is whether the new relief sought is indeed barred by the applicable statute of limitations. The court will carefully assess the timing of the events leading to the claim and the date the amendment was sought.

Relation to Original Claim: If the new relief is closely connected to the original claim and arises from the same set of facts, the court might be more inclined to allow the amendment, especially if justice demands that the real dispute between the parties be adjudicated.

Avoidance of Multiplicity of Litigation: If allowing the amendment would avoid multiple lawsuits over the same issue, the court may consider this favourably.

ii) **Amendment Ousting the Court's Jurisdiction**

Jurisdictional Impact: The court will scrutinise whether the proposed amendment genuinely ousts its jurisdiction or merely alters the legal or factual framework of the case. If jurisdiction is clearly lost, the amendment is likely to be refused.

Substantial Connection: The court may consider whether the case still has a substantial connection to its jurisdiction despite the amendment. If the core of the dispute remains within the court's original purview, this may influence the decision.

iii) **Amendments After the Commencement of Trial**

Progress of the Trial: The stage of the trial and the nature of the proceedings already conducted are critical. Amendments sought at a very late stage are less likely to be allowed, especially if they would necessitate a significant reevaluation of evidence or re-opening of the case.

Prejudice and Delay: The potential for prejudice to the opposing party and the impact on the trial's timeline are paramount. If the amendment would cause substantial delays or affect the fairness of the trial, it might be refused.

Essential Justice: The overarching principle remains the achievement of substantial justice. If the amendment is crucial for addressing the real issues in dispute and can be accommodated without unduly prejudicing the trial's fairness or integrity, courts may allow it, possibly with conditions to offset any prejudice to the opposing party.

PART II The Code of Criminal Procedure, 1973

Q4. Write a short note on Any One of the following subjects by referring Relevant Provisions of Law: 5x1=5 Marks

(a) Procedure when accused is of unsound mind. In the context of the Criminal Procedure Code (CrPC), the procedure when an accused is found to be of unsound mind is detailed, aiming to balance the rights of the accused with the requirements of justice. This procedure ensures that an individual who is incapable of understanding the nature of the charges against them or of making a proper defense due to mental illness is treated fairly and justly, in line with principles of natural justice and human rights. The relevant provisions are found primarily in Sections 328 to 339 of the CrPC.

Initial Determination of Mental Health Section 328 CrPC: If at any stage of the investigation or trial it is observed that the accused appears to be of unsound mind, the court may order an examination by a medical expert. Based on the examination, if the court believes there is reasonable ground to conclude that the accused is of unsound mind and consequently incapable of making their defence, it may postpone the proceedings.

Procedure: The court will order the accused to be observed at a government mental health establishment or by a government-appointed medical officer. The observation period is to determine whether the accused is capable of understanding the proceedings and making a defence.

Proceedings During Unsound Mind Section 329 CrPC: If the accused is found to be of unsound mind and consequently incapable of making their defence, the court will postpone further proceedings. The accused may be released on bail if suitable. If not, the court may order their detention in a safe place, such as a mental health establishment.

Trial of Facts (Inquiry): In cases where the court finds the accused not capable of entering a defence due to unsoundness of mind, an inquiry into the facts may still proceed. This inquiry is not to determine guilt in the usual sense but rather to establish the factual basis of the offence charged.

(b) Irregularities which vitiate proceedings. The Code of Criminal Procedure (CrPC) delineates a framework for addressing irregularities within legal proceedings, distinguishing between those that do not vitiate (invalidate) the proceedings and those that do. This differentiation is crucial in maintaining the integrity of judicial processes while ensuring that justice is administered without undue emphasis on procedural technicalities that do not prejudice the parties involved.

Irregularities That Vitate Proceedings (Section 461 CrPC) Section 461 CrPC identifies irregularities that vitiate proceedings when performed by a magistrate not empowered to do so. These include serious procedural breaches such as improperly attaching and selling property, issuing search warrants in contravention of legal procedures, improperly demanding security, making orders for maintenance, addressing public nuisances without authority, and improperly taking cognizance of offences, among others. These actions are considered so fundamental to the fairness and legality of the proceedings that any breach invalidates the outcome.

Q5. Which specific provisions of the Code of Criminal Procedure 1973 have to be invoked under following circumstances? 1x5=5 Marks

- i) To attach the property of person absconding.**
- ii) To file the additional charge sheet.**
- iii) To recall the witness when charge is altered.**
- iv) To release the convict on bail by the Court, which convicted the accused.**
- v) To award compensation for rehabilitation of Victim**

i) To Attach the Property of Person Absconding Section 83 CrPC: This section provides the procedure for the attachment of the property of a person who has absconded or is concealing themselves to avoid the execution of a warrant. It allows the court to issue a written proclamation, requiring the person to appear at a specified place and time within thirty days. If the person does not comply, the court may order their property to be attached and, if necessary, sold.

ii) To File the Additional Charge Sheet Section 173(8) CrPC: This subsection allows the police to conduct further investigation, even after a report under subsection (2) has been forwarded to the magistrate, and to submit an additional report(s) or charge sheet based on the findings of such further investigation.

iii) To Recall the Witness When Charge is Altered Section 217 CrPC: This section stipulates that if a charge is altered or added to by the court after the commencement of the trial, the court may either direct the prosecution and the defence to recall or re-summon, and examine, any witness who may have been examined, with respect to the alteration or addition in the charge.

iv) To Release the Convict on Bail by the Court, Which Convicted the Accused Section 389 CrPC: This section provides the power to suspend the sentence or grant bail to a convict pending appeal. It specifically allows the appellate court, and in certain cases, the court which convicted the accused, to release the convict on bail or suspend their sentence pending the appeal, subject to conditions as deemed fit.

v) To Award Compensation for Rehabilitation of Victim Section 357 CrPC: This section empowers the court to order the accused to pay compensation to the victim for his/her rehabilitation. Upon convicting the accused, the court may order the accused to pay a certain sum as compensation to the victim. Additionally, Section 357A elaborates on the Victim Compensation Scheme, mandating every state government to coordinate with the Central Government to prepare a scheme for providing funds to compensate and rehabilitate victims or their dependents.

Q6. Answer Any Two of the following by referring Relevant Provision of Law. 10x2=20 Marks (a) What are the different kinds of bail, which can be granted under the Code of Criminal Procedure, 1973? Explain the guiding principles for granting the bail in non-bailable offences to the leading decisions. The Code of Criminal Procedure, 1973 (CrPC), delineates a comprehensive framework for the provision of bail, catering to different scenarios and ensuring that the rights of the accused are balanced with the interests of justice. This framework classifies bail into distinct categories, each governed by specific legal provisions and principles.

Bail in Bailable Offences For bailable offences, Section 436 of the CrPC is invoked. This provision ensures that any person accused of a bailable offence is entitled to bail as a matter of right. The court or police have the authority to release the accused on bail, provided the accused is ready to furnish bail and comply with the conditions set forth. This category underscores the principle that freedom should not be unduly restricted for offences of a less serious nature.

Bail in Non-Bailable Offences In the case of non-bailable offences, the scenario is more complex, as detailed in Section 437 of the CrPC. Bail is not a right but a discretion of the court, guided by several factors including the gravity of the offence, the character of the evidence, the history of the accused, and the potential for the accused to flee from justice. Special considerations are made for certain demographics, such as minors, women, or those with illnesses, highlighting a nuanced approach towards justice. The Supreme Court, in *Ravish Kumar v. State of Bihar, 2023*, emphasised the need for meticulous documentation in bail orders, ensuring clarity and transparency in judicial proceedings.

Anticipatory Bail Anticipatory bail, governed by Section 438 of the CrPC, is a provision allowing a person to seek bail in anticipation of arrest on accusation of having committed a non-bailable offence. This provision is pivotal in protecting individuals from the potential misuse of the legal process, allowing them to secure their freedom before arrest based on credible apprehension. The High Court or Court of Session assesses various factors, such as the nature of the accusation and the applicant's background, to determine the merit of granting anticipatory bail.

Special Powers Regarding Bail Section 439 of the CrPC bestows special powers upon the High Court and Court of Session concerning bail matters. This includes the authority to release an accused on bail for non-bailable offences, with or without conditions, and the ability to modify or annul conditions imposed by lower courts. This section ensures that higher judicial forums have the requisite oversight and flexibility to address bail matters comprehensively, reflecting the judiciary's role in balancing individual rights with societal interests.

Guiding Principles for Granting Bail in Non-Bailable Offences The guiding principles for granting bail in non-bailable offences are embedded within the legislative framework and judicial precedents. Courts are guided by considerations of the severity of the offence, the probability of the accused absconding, the potential threat to witnesses, and the likelihood of tampering with evidence. Judicial decisions, such as *Prasanta Kumar Sarkar v. Ashis Chatterjee And Another (2010) 14 SCC 496*, illustrate the dynamic nature of bail proceedings, acknowledging that the addition of serious charges post-bail grant necessitates a re-evaluation of bail conditions.

(b) Explain the procedures to be followed by the Magistrates while rendering judgement in warrant triable cases with special reference to the following:

i) Language and contents of judgement. ii) Order for payment of compensation. iii) Mandatory procedures when the accused is convicted.

i) Language and Contents of Judgement Language: As per Section 354 of the CrPC, every judgement must be written in the language of the court. If it's not practicable to write the entire judgement in the court's language due to any reason, such as the magistrate's unfamiliarity, summaries or parts of evidence or documents may be in another language, but the main judgement should be translated into the court's language. Contents: The judgement should contain specific details as mandated by Section 354 of the CrPC, including: The specific offence (with section of the law) for which the accused is convicted or acquitted. The facts leading to the conclusion and the decision reached. The precise reasons for such a conclusion. In the case of conviction, the nature and extent of the sentence or punishment imposed. ii) Order for Payment of Compensation Section 357 of the CrPC provides the magistrate with the authority to order the convicted person to pay compensation to the victim for any loss or injury. This can be ordered in addition to the punishment imposed on the convict. The purposes for ordering compensation include:

Compensating the victim for loss or injury. Paying to any person for expenses incurred in the prosecution. Compensating heirs of the victim in case of death or custodial crimes. The magistrate must consider the financial capacity of the convict and the extent of the damage or injury caused to the victim while deciding the compensation amount. iii) **Mandatory Procedures When the Accused is Convicted Upon** convicting the accused, the magistrate must follow certain mandatory procedures, including: **Pronouncement of Sentence:** After the conviction, the magistrate must pronounce the sentence or order against the accused, specifying the punishment awarded. **Rights to Appeal:** The magistrate must inform the convict about their right to appeal against the judgement, the time within which the appeal can be filed, and the court to which the appeal lies. **Warrant for Execution of Sentence:** If the sentence involves imprisonment, the magistrate must issue a warrant for the execution of the sentence unless the convict is released on bail pending appeal. **Compensation to Victim:** As mentioned, under Section 357, the magistrate may order the convict to pay compensation to the victim. The procedural requirements for such an order must be adhered to, ensuring that the decision is justified and reasonable. (c) **Explain the powers of police to investigate under Chapter XII of the Code of Criminal Procedure, 1973 with special reference to the following:** i) **Examination of witness by Police.** ii) **Procedure when Investigation cannot be completed in twenty-four hours.** iii) **Report of Police Officer on completion of investigation.** Chapter XII of the Code of Criminal Procedure, 1973, meticulously outlines the powers and procedures for police investigations into criminal offences. This framework ensures that investigations are conducted efficiently and judiciously, balancing the need for thorough inquiry with the rights of the accused and the witnesses. i) **Examination of Witnesses by Police (Section 161)** Section 161 of the CrPC empowers police officers conducting an investigation to orally examine any person believed to be acquainted with the facts and circumstances of the case. This examination is crucial for gathering evidence and understanding the sequence of events. Notably, when the witness is a woman and the offence involves specific sections of the IPC related to crimes against women, her statement must be recorded by a woman police officer or any woman officer, ensuring sensitivity and comfort for the victim or witness. The person being examined is obligated to truthfully answer all questions, barring those that may incriminate them, highlighting the balance between the necessity for information and the protection against self-incrimination. ii) **Procedure When Investigation Cannot be Completed in Twenty-four Hours (Section 167)** Section 167 addresses situations where the investigation extends beyond 24 hours. Recognizing the importance of liberty, this section mandates that the accused must be presented before a Judicial Magistrate along with the case diary entries if the investigation is not concluded within this timeframe. The Magistrate, then, has the discretion to authorise detention of the accused for a period not exceeding 15 days initially, and further extensions can lead to a maximum detention of 60 or 90 days depending on the gravity of the offence. Importantly, if charges are not filed within these periods, the accused gains an indefeasible right to "default bail." Recent judgments, such as **ENFORCEMENT DIRECTORATE vs. KAPIL WADHAWAN, 2023** and **State through CBI v. T. Gangi Reddy @ Yerra Gnagi Reddy, 2023**, clarify the nuances of this right, including its inviolability after the lapse of the stipulated period and conditions under which default bail may be cancelled. iii) **Report of Police Officer on Completion of Investigation (Section 173)** Upon concluding the investigation, the investigating officer is required to submit a detailed report to a Magistrate authorised to take cognizance of the offence. This report, often referred to as the charge sheet or final report, encapsulates the findings of the investigation, detailing the evidence collected, the involvement of the accused, and recommendations for prosecution. It serves as a basis for the Magistrate to decide on the commencement of judicial proceedings against the accused. **PART III The Indian Evidence Act, 1872**

Q7. Write a short note on Any One of the following subjects by referring Relevant Provisions of Law: 5x1=5 Marks (a) Privileged Communication. (b) Accomplice.

Q8. Which specific provisions of the Indian Evidence Act, 1872 have to be invoked under following circumstances? 1x5=5 Marks i) To make a plea of alibi. ii) To consider the opinion of examiner of Electronic evidence. iii) To consider the previous good character of accused in criminal cases. iv) To draw the presumption as to five years old electronic records. v) Burden of proof as to ownership.

Q9. Answer Any One of the following questions by referring Relevant Provision of Law. 10x1=10 Marks (a) Briefly explain the distinction between the followings: i) May presume, shall presume and conclusive proof. ii) Judicial confession and extra judicial confession. iii) Direct evidence and circumstantial evidence. (b) Briefly explain the presumptions under the Indian Evidence Act, 1872, in respect of followings documents: i) Public documents. ii) Gazettes and newspapers. iii) Power of attorney. iv) Thirty years old documents. PART IV The Constitution of India

Q10. Write a short note on Any One of the following subject: 5x1=5 Marks (a) Equal Justice and free legal aid. (b) Public Interest Litigations.

Q11. Which specific Article of the Constitution of India has to be invoked under following circumstances?? 1x5=5 Marks i) To make provision for reservation in appointments in the services under the State in favour of any backward class of citizens. ii) To appoint the Attorney - General for India. iii) To appoint the persons other than district judges to the judicial service of a State. iv) To promulgate the Ordinances by the Governor during recess of State Legislature. v) Proclamation of Financial Emergency in India.

Q12. Answer Any One of the following questions. 10x1=10 Marks (a) What is Basic Structure Doctrine? Explain the same by referring to the landmark decisions of the Supreme Court of India. (b) Briefly explain the legal principles involved in following landmark decisions: i) *Indra Sawhney vs Union of India*. (AIR 1993 SUPREME COURT 477) ii) *Gurubaksh Singh Sibbia vs State of Punjab*. (AIR 1980 SUPREME COURT 1632) iii) *National Legal Services Authority vs Union of India* (AIR 2014 SUPREME COURT 1863) iv) *D.K.Basu vs State of West Bengal* (AIR 1997 SUPREME COURT 610) v) *Smt. Selvi vs State of Karnataka* (2010) 7 SCC 263.

Law Paper II

Q1. Frame proper issues on the basis of following pleadings Marks: 10 GIST OF PLAINT The plaintiff entered into an agreement to sell with the defendant in respect of a residential house bearing House No.428/7, situated at Sadashiva Nagara, Belagavi, to purchase the same for Rs.50,00,000/- and paid the sale advance of Rs. 10,00,000/-to the defendant, vide sale agreement dated 10.09.2013. On 23.03.2015 plaintiff and defendant mutually agreed to cancel the said sale agreement and refund the sale advance. At the time of cancellation of sale agreement, defendant repaid a sum of Rs.7,40,000/- to the plaintiff, out of sale advance amount of Rs. 10,00,000/- and executed an acknowledgment of debt on 23.03.2015, by agreeing to repay the balance amount of Rs.2,60,000/- within one year with interest at the rate of 12% per annum. In spite of repeated request and issuance of legal notice, defendant failed to repay the said amount. On the date of filing the suit, a sum of Rs.4,45,000/- is due from the defendant, including the interest. With these pleadings, plaintiff claimed a decree for recovery of rs_4)45j000/- from the defendant with interest at the rate of 12% per annum from the date of suit till realisation of entire decretal amount. **GIST OF WRITTEN STATEMENT** The defendant, in his written statement, admitted the sale transaction between him and plaintiff, execution of sale agreement dated 10.09.2013 and receiving Rs.10,00,000/- from the plaintiff as sale advance. The defendant also admitted the mutual agreement between them to cancel the sale transaction. The defendant denied other plaint averment. According to the defendant, he has repaid entire sale advance amount of Rs. 10,00,000/ 23.03.2015 and not due to pay any amount. The defendant further contended that for cancellation of sale agreement, his signatures were obtained on blank papers and by fraud and misrepresentation acknowledgment of debt is created. As the cancellation of sale agreement is on 23.03.2015, suit filed in the year 2021 is barred by limitation. On all these grounds, defendant prayed for dismissal of the suit with costs.

Q2. Frame proper issues on the basis of following pleadings. Marks: 15 GIST OF PLAINT The plaintiff is the absolute owner of the suit 'A' schedule 2 acres 23 guntas in Sy.No.68 of Navile village of property, i.e. Channarayapatna Taluk, having purchased the same from the defendant vide registered sale deed dated 02.04.2005. After selling 2 acres 23 guntas in Sy.No.68, defendant retained 1 acre 17 guntas with him, which is on the southern side of the suit 'A' schedule property. Recently when the plaintiff got measured the suit 'A' schedule property, he came to know that the defendant has encroached 17 guntas of land on the southern side, which is described as the suit 'B' schedule property in the plaint. After encroachment of the suit 'B' schedule property, defendant has illegally put up the temporary shed and barbed wire fence. When the plaintiff requested the defendant to remove the encroachment and hand over the possession of the suit 'B' schedule property, defendant refused the same and denied the plaintiff's title over the suit 'A' schedule property, which made the plaintiff to file the present suit. On all these grounds, plaintiff claimed a decree to declare him as the absolute owner of the suit 'A' schedule property and for mandatory injunction directing the defendant to remove the temporary shed and barbed wire fence put up in the suit schedule property and for vacant possession of the suit 'B' schedule property from the defendant. **GIST OF WRITTEN STATEMENT** The defendant, in his written statement, denied all the plaintiff's averments, including the plaintiff's title and ownership suit 'A' schedule property, alleged encroachment of suit 'B' schedule property by the defendant and he illegally putting up the temporary shed and barbed fence. According to the defendant, he has sold 2 acres 06 guntas land, out of 4-00 acres in Sy.No.68 to the plaintiff and retained 2 acres 34 guntas with him. In the sale deed dated 02.04.2005, the plaintiff has wrongly shown the measurement of the property sold to him as 2 acres 23 guntas, instead of 2 acres 06 guntas. The suit 'C' schedule property was not sold to the plaintiff and it has been in possession and enjoyment of the defendant. In the alternative, defendant contended that he has acquired title over the suit 'B' schedule property by adverse possession, because of his continuous, uninterrupted and hostile possession. The defendant further contended that vide sale deed dated 17.07.2014, he has sold 2 acres 34 guntas in Sy.No.68 to one Joseph D Souza and handed over the possession to him. Hence, said Joseph D Souza is a necessary party to this suit. The defendant further contended that suit is not properly valued and requisite Court fee is not paid on the plaint. On all these grounds, defendant prayed for dismissal of the suit with costs.

Q3. Write a Judgement on the basis of following pleadings, oral and documentary evidence, by giving valid and cogent reasons: (Provision of law, which have been kept blank, shall be stated in the judgement) PLAINT The suit property described in the plaint schedule is 08 guntas of land with two storied residential house in Sy.No.24/5 of Navanagara, Bagalkot. The plaintiff is the married daughter of Late Ranganna and younger sister of the defendant No.1 and 2. The plaintiffs' marriage was performed on 17.06.2002. Their family was owning ancestral property measuring 3 acres in Mudhol Taluk and plaintiffs father Ranganna and these defendants have jointly sold vide sale deed dated 21-12-2002. From the said sale the same proceeds, the suit property was purchased by their father Ranganna, vide sale deed dated 25.07.2003 and the suit property is their joint family property. Father of the plaintiff and defendants Ranganna died on 31.10.2011. After the death of their father, defendants have entered their name in the revenue records of the suit property on the basis of the Will dated 27.09.2011. The alleged Will dated 27.09.2011 is created and concocted by the defendants, just few days before the death of their father, to grab the suit property. The plaintiff requested the defendants for partition and separate possession of her share over the suit property. The defendants have refused to allot the plaintiffs share, which made her to file the present suit On all these grounds, plaintiff claimed a decree for partition and separate possession of her 1/3rd share over the suit property. **WRITTEN STATEMENT** The defendant No.1 and 2, in their written statement, admitted the relationship between them and denied other plaintiff averments about the suit property as their joint family property and plaintiff having share over the-same. According to the defendants, to perform the marriage of this plaintiff in the year 2002, their father borrowed the hand loan from his friends and to repay the said loan, they have sold their ancestral property in Mudhol Taluk. The defendants father Ranganna was working as a primary school teacher and retired during April 2003. From his retirement benefits and from his own earnings, defendants father purchased the suit property vide sale deed dated 25.07.2003. The suit property was the self acquired property of father of plaintiff and defendants Ranganna. The defendants have looked after their father and out of his love and affection, he bequeathed the suit property in favour of the defendants vide registered Will dated 27.09.2011. After the death of their father, revenue records of the suit property changed in the names of these defendants on the basis of the Will dated 27.09.2011 and they are enjoying the suit property as its absolute owners. The plaintiff has no right, title, interest and share over the suit property. On all these grounds, defendants prayed for dismissal of the suit with costs. **ISSUES**

Q1. Whether the plaintiff proves that the suit property is their joint family property and that she has got right to claim share over the same?

Q2. Whether the defendants prove that the suit property is the self acquired and absolute property of their father, Ranganna?

Q3. Whether the defendants prove that their father, Ranganna has executed a registered will dated 27.09.2011 bequeathing the suit property in their favour and thereby, they became the absolute owners of the suit property?

Q4. Whether the plaintiff is entitled for a decree for partition and separate possession of her share over the suit property ?

Q5. What order or decree? EVIDENCE ON BEHALF THE PLAINTIFF: The plaintiff, who was examined as PW.1, deposed about the relationship between the parties and suit property is their joint family property, as their father, Ranganna purchased the same by selling the ancestral properties situated at Mudhol. PW.I further deposed that she has got legitimate share in the suit property as the daughter of Late Ranganna and defendants had refused to allot her share, in spite of repeated request and demands made by her. PW.I further deposed that the Will relied upon by the defendants said to have been executed by her their father Ranganna, was created and concocted by the defendants, in order to grab the suit property. PW.I further deposed that she was favourite of her father and there was no reason for her father to execute the will in favour of the defendants, by excluding her. During the course of her cross examination, PW1 admitted that to perform her marriage during the year 2002, her father had borrowed hand loan from their family friends. PW.I denied that for repayment of the said loan, their ancestral properties were sold. PW.I admitted that sale of ancestral property by her father and these defendants were not disputed and challenged by her at any point of time. PW.I admitted that her father was working a teacher in government primary school and retired during April 2003. PW.1 also admitted that, as her father has served as a teacher for more than 35 years, he received substantial amount as retirement denied that her father Ranganna was hale and healthy and had absolutely no ailments. PW1 admitted that her father was never hospitalised and his mental condition was stable till his death. PW1 denied the signature on Ex.DI Will of her father Ranganna. But, she admitted that her father used to sign in English. PW1 admitted that her father and these defendants have performed her marriage. PW.I admitted that after her marriage she stayed in her husband's house at Hungund and these defendants used to look after their father during her last days. PW1 denied the suggestion that her father late Ranganna has executed Ex.DI Will and bequeathed suit property in favour of defendant No. 1 and 2. The plaintiff produced the property extract of the suit property as per Ex.P. 1, which show that suit property was initially standing in the name of Late Ranganna and names of defendant No. 1 and 2 were entered as the owners of suit property on the basis of the registered Will dated 27.09.2011. **EVIDENCE ON BEHALF OF THE DEFENDANTS:** The defendant No.2, who was examined as DW.I, in his evidence admitted the relation between them and denied other plaint averments. DW.I further deposed that they have performed the marriage of the plaintiff and for meeting the marriage expenses, they have borrowed the hand loan from their family friends. DW.I further deposed that to repay the said loan they were constrained to sell their ancestral property at Mudhol Taluk. DW.I further deposed that his father has served as Primary school teacher for about 35 years and retired during the year 2003 and from his retirement benefits, he purchased the suit property just after his retirement. DW.I further deposed that he and defendant No.1 were looking after their father during his last days, where as plaintiff was staying at Hungund with her husband. DW.I further deposed that their father, Ranganna, when he was in a sound disposing state of mind, had executed the registered Will dated 27.09.2011 and bequeathed the suit property in their favour. DW.1 identified the signatures of his father and attesting witnesses found on the Ex.DI Will, by saying that he was personally present at the time of execution of the said Will. DW. 1 further deposed that on the basis of the said Will, they became the absolute owners of the suit property and plaintiff has no right to claim share over the suit property. During the course of his cross examination, DW1 admitted that their family owned ancestral property at Mudhol and it was sold during the year 2002. DW.I also admitted that suit property was purchased about six months after the sale of their ancestral property. DW.I said that he was not aware about the amount of loan borrowed for plaintiffs marriage and sale consideration amount for which their ancestral property was sold. DW.I also admitted that their father used to receive the agricultural income from the ancestral properties at Mudhol. DW.I also admitted that their father Ranganna had no ill will against the plaintiff and he was treating all his children equally and cordially. DW1 denied the suggestion that late Ranganna's health condition was not good about one and half years prior to his death. DW1 denied the suggestion that they have forged the signature of their father and created Ex.DI Will in order to grab the suit property and deprive the plaintiff of her legitimate share in the suit property. The defendants examined one Aruna, son of attesting witness to the Will, late Manjappa, as DW.2 and he deposed that, his father is no

more and he is familiar with his father's signature, but he did not find the signature of his father on Ex.DI Will. The defendants cross-examined DW.2 by treating him as a hostile witness and even' during the cross-examination, DW2 denied the suggestion that his father had signed on Ex.DI Will as an attesting witness, by saying that his father used to sign in Kannada. Counsel for the plaintiff submitted no cross examination to DW2. The defendants examined one Krishnamurthy, a document writer at Bagalkot as DW.3 and he deposed that he has been working as a document writer in Bagalkot since last 28 years and Ex.D.I Will was prepared by him as per the instructions of Ranganna. DW.3 further deposed than on 27.09.2011 Ranganna come to his office along with two witnesses by name Manjappa and Venkappa and in their presence Ex.D.I Will was read over to Ranganna and he put his signatures for the same. DW.3 identified the signatures of Late Ranganna and attesting witnesses and also his signature as a scribe on Ex.D.I Will. DW.3 during the course of his cross-examination, deposed that he was not present when Ex.D.1 Will was taken to the office of Sub-Registrar for Registration. DW.1 admitted that defendant No.1 and 2 were present when the Will was prepared. DW.3 said that he can not say as to who has brought attesting witnesses to his office. DW.3 admitted that Sri Venkappa, who has signed Ex.DI as an attesting witness, was running a petty shop near his office and he has put signature for many documents prepared by him as a witness. DW.3 denied the suggestion that Ranganna was not in a sound state of mind to give instruction to him to prepare the Will. DW.3 denied the suggestion that said Will was prepared by him as per the instruction of defendant No.1 and 2. The defendants produced registered Will dated 27.09.2011 as per Ex.DI, where in it is recited that suit property is the self acquired property of Ranganna and he was looked after by the defendants during his old age and they had performed the marriage of the plaintiff by borrowing the loan and gave her money and ornaments at the time of her marriage and she was staying comfortably in her husband's house and out of his free will, love and affection, he had bequeathed the suit property in favour of the defendants. Ex.D2 is the death certificates of Late Ranganna, which shows that he died on 31.10.2011. HIGHLIGHTS OF ARGUMENT FOR THE PLAINTIFF: There is no dispute about the relationship between the plaintiff and the defendants and their family having ancestral property at Mudhol. There is also no dispute about sale of ancestral property and purchase of suit property within few months. The defendant No.2/DWI admitted that their father Ranganna was getting agricultural income from the ancestral property at Mudhol till it was sold The plaintiff discharged the initial burden of proving the suit property as the property purchased from the sale proceeds of the ancestral property and onus shift upon the defendants to prove that the suit property was purchased from the self earning of their father. But, the defendants failed to let is any evidence to prove the same. The burden of proving the issue No.3 is on the defendants. Section _____ of the Indian Succession Act, 1925 describes as to how a Will has to be executed and Section _____ of the Indian Evidence Act, 1872 describes as to how execution of the will has to be proved. As per the above provisions Will shall be attested by at least two witnesses, each of whom has seen the testator signing the Will and the said Will has to be proved by examining at least one attesting witnesses. Both the attesting witnesses to Ex.DI Will were not examined by the defendants. Son of one of attesting witness, though examined as DW.2, has not identified his fathers signatures. Therefore, evidence of DW.2 will not help the defendants to prove Ex.D.I Will, as required under Section _____ of the Indian Evidence Act, 1872. Evidence of DW.3 can not be considered to prove the Ex.D.1 Will because he is only a scribe. When Section _____ of the Indian Evidence Act, 1872 mandates for examining at least one of the attesting witnesses to prove the Will,, evidence of scribe can not be considered to prove the execution of the Will. Ex.D.I Will is surrounded by suspicious circumstances and it is unnatural Will, as one of the natural heirs of Late Ranganna i.e. plaintiff has been excluded from inheriting the suit property, without any valid reason and also due to the presence of the beneficiaries of the Will at the time of its execution HIGHLIGHTS OF ARGUMENT FOR THE DEFENDANTS: The plaintiff/PW.1 admitted that to perform her marriage, her father borrowed the loan from his family friends. Sale of ancestral property by the defendants and their father Ranganna was few months after the plaintiffs marriage to repay the said loan. The plaintiff/PW.I admitted that her father retired during April 2003 and received substantial retirement benefits. Purchase of suit property was

few months after the retirement of Ranganna and from his retirement benefits. If the suit property is purchased from the sale of ancestral property, it would have been purchased jointly in the name of these defendants and their father Ranganna. When Ranganna having self acquired income is admitted and property was purchased in his name alone, the purchase of suit property by him presumed to be from his own earnings and burden is upon the plaintiff to prove that the suit property was purchased from the sale proceeds of ancestral property. The plaintiff has not let in any evidence to prove the same. As both the attesting witnesses are not available to prove Ex.D.1 Will, defendants are invoking Section _____ of the Indian Evidence Act, 1872. Even though DW.2 has not supported the defendants and failed to identify the signature of his father on Ex.D.I, there is evidence of DW.3 to prove the Ex.D.I Will. DW.3 has deposed about the execution of D1 Will by Ranganna and also identified his signatures and signatures of both the attesting witnesses. Therefore, evidence of DW.3 can be considered as evidence of a witness as required under Section _____ of the Indian Evidence Act, 1872. The recitals of the Ex.DI Will offer valid explanation for excluding the plaintiff and bequeathing the suit property only in favour of the defendants. Therefore, it is not an unnatural will. There are no suspicious circumstances surrounding the execution of Ex.D. 1 Will in favour of these defendants.