

# DELHI HIGHER JUDICIAL SERVICE MAIN EXAMINATION 2018

## GENERAL KNOWLEDGE AND ENGLISH

**Duration: 2 hours**

**Maximum Marks: 100**

### **Instructions:**

1. Please read the questions carefully and answer them as directed.
2. All questions are compulsory, unless specified.
3. You are allowed 15 minutes time before the examination begins, during which you should read the question paper and, if you wish, highlight and/or make notes on the question paper. However, you are not allowed, under any circumstances, to open the answer sheet and start writing during this time.
4. This paper is to test the candidate's awareness of current affairs, general knowledge and English language. Credit will be given for substance, cohesive and concise presentation and articulation of views and ideas, employment of vocabulary and expression. Conversely, deduction will be made for lack of knowledge, bad expression, faults of grammar and misuse of words etc.

1. Write in about 200 words on any four of the following:

- i. Personal ideologies and historical discourse
- ii. Climate change as an undeniable reality
- iii. Judiciary in the age of Media-Trials
- iv. Creative freedom and Censorship
- v. Live streaming of court proceedings
- vi. "Sunlight is the best disinfectant". Examine the appropriateness and applicability of this principle in the Indian context.

(15 marks x 4 = 60 marks)

2. Prepare a précis of the following passage in about 150 words:

"At one time we had truth and lies. Now we have truth, lies, and statements that may not be true but we consider too benign to call false. Euphemisms

abound. We're "economical with the truth," we "sweeten it," or tell "the truth improved". The term deceive gives way to spin. At worst we admit to "misspeaking," or "exercising poor judgment." Nor do we want to accuse others of lying. We say they're in denial. A liar is "ethically challenged," someone for whom "the truth is temporarily unavailable."

This is post-truth. In the post-truth era, borders blur between truth and lies, honesty and dishonesty, fiction and nonfiction. Deceiving others becomes a challenge, a game, and ultimately a habit. Research suggests that the average person tells lies on a daily basis. These fibs run the gamut from "I like sushi," to "I love you."

As the volume of strangers and acquaintances in our lives rises, so do opportunities to improve on the truth. The result is a widespread sense that much of what we're told can't be trusted. From potential mates to prospective employees, we're no longer sure whom exactly we're dealing with. Deception has become a routine part of the mating dance. Personnel officers take for granted that the resumes they read are padded. No wonder private investigation is a growth sector of the economy.

What motivates the casual dishonesty that's become pandemic? Why do so many, even those with no apparent need to do so, feel a need to embellish their personal history? This question arises every time prominent figures are unmasked as fabulists. ----- Branches are grafted onto their family trees. Unearned degrees show up on their resumes. Purchased medals appear in their display cases. Thousands of non-veterans say they fought for freedom of thought, speech and worship. Scores more passed themselves off as Ground Zero workers.

We can only understand the motives of such dissemblers by examining the sea in which they swim. Trends ranging from the postmodern disdain for "truth" to therapeutic non-judgment encourage deception. There is much incentive and little penalty for improving the "narrative" of one's life. The increasing influence of therapists, entertainers, politicians, academics, and lawyers, with their flexible code of ethics, contribute to the post-truth era. So do ethical relativism, Boomer narcissism, the decline of community, and rise of the internet.

Post-truthfulness builds a fragile social edifice based on wariness. It erodes the foundation of trust that underlies any healthy civilization. When enough of us peddle fantasy as fact, society loses its grounding in reality. Society would crumble altogether if we assumed others were as likely to dissemble as tell the truth. We are perilously close to that point.”

(20 marks)

3. Write in less than 50 words on any four of the following:

- i. What is the standard set by the Supreme Court to reduce automobile emissions? How is it superior to the existing standard?
- ii. What restrictions has the Supreme Court imposed on sale, purchase and usage of firecrackers in Delhi during Diwali?
- iii. What is the constitution of the Committee which has taken over the Medical Council of India?
- iv. Name the world’s longest sea bridge. How long is it and what does it link?
- v. What is the Mullaperiyar dam issue?
- vi. What is the Ayushman Bharat scheme and what are its key features?
- vii. What does “NITI” stand for in “Niti Ayog”? What are its aims and objectives? Who is its CEO?
- viii. Please set out, in brief, the contents of the order passed by the Supreme Court in October 2018 on the petition filed by the Director of the Central Bureau of Investigation.

(20 marks)

## DELHI HIGHER JUDICIAL SERVICE MAIN EXAMINATION 2018

**Duration: 3 hours**

**Maximum Marks: 250**

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4. Support each of your answers with reasons, relevant legal provisions and legal principles. Length of the answer would not determine the marks.
5. The paper is not only to test knowledge of law but also analytical skills of the candidate.

### **CIVIL LAW**

1. 'A' a contractor while submitting his bid pursuant to notice inviting tenders had furnished earnest money of Rs. 5 Lacs with the bid documents to 'B Ltd.', a Government of India corporation. Subsequently, before the last date for submission of bids, 'A' wrote a letter withdrawing his bid and for being excluded from consideration. 'A' had also prayed for refund of earnest money of Rs. 5 Lacs. Corporation 'B Ltd.' informed 'A' that their bid would not be considered. However, the prayer for refund of earnest money was rejected stating that the same stands forfeited.

'A' thereupon files a suit for recovery of Rs. 5 Lacs from 'B Ltd.' taking the following pleas in the alternative:

- (i) There was no contract as the bid was withdrawn before acceptance. Hence earnest money cannot be forfeited.
- (ii) Forfeiture clause in the notice inviting tenders is a penalty clause. Hence, earnest money cannot be forfeited, as there was no loss. Tender was awarded to a third party.
- (iii) Forfeiture of earnest money of Rs. 5 Lacs in the notice inviting tender document cannot be equated with liquidated damages.

Even if they are liquidated damages, only a reasonable amount can be forfeited and not the entire amount.

- (iv) Earnest money had to be refunded to all unsuccessful bidders. 'A' should be treated as an unsuccessful bidder.

Corporation 'B Ltd.' in the written statement submits that the forfeiture was justified and as per condition No. 1 of the Special Conditions of the Contract earnest money could be forfeited:

- (i) On revocation of tender bid;
- (ii) Refusal to enter into contract forwarded to the bidder;
- (iii) If the work was not commenced after the work was awarded.

The Corporation 'B Ltd.' had also pleaded that the forfeiture clause was not a penalty clause but a reasonable estimate of damages.

Decide the contentions after framing issues. Refer to the relevant provisions of the Indian Contract Act and whether or not 'A' would be entitled to relief, if any.

(50 Marks)

2. 'A' files a suit for specific performance of sale of immovable property against 'B' stating that under an agreement to sell, he has paid Rs. 10 Lacs out of the total sale consideration of Rs. 1 Crore. 'A' also files an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure for interim stay. Notice is issued on the suit and the application. 'B' in the written statement states that he has sold the property to 'C' for Rs. 1 Crore. 'A' thereupon moves an application and impleads 'C' as a defendant. The Court ultimately finds that 'A' is entitled to specific performance of sale of the immovable property.

As a court, what would be the nature and form of decree which you would pass? Will you direct cancellation of the sale deed executed by 'B' in favour of 'C'? Will you direct 'B' or 'C' to execute the sale deed? To whom would you direct 'A' should pay the balance consideration of Rs. 90 Lacs? What order, if any, will you pass in respect of Rs. 10 Lacs paid by 'A' and received by 'B'? Discuss giving reasons.

(40 marks)

3. Article 13 of the Constitution of India reads as under:

“13. (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,-

(a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) *Nothing in this article shall apply to any amendment of this Constitution made under article 368”*

Answer the following:

- (a) What is the difference between clauses (1) and (2) of Article 13?
- (b) Whether clause (1) of Article 13 is retrospective?
- (c) Is “personal law” covered by the expression “laws in force” for the purpose of Article 13(1)?
- (d) What is the *Doctrine of Eclipse*?

(30 marks)

4. ‘A’, the landlord, files a suit against ‘B’, his tenant for ejection and recovery of possession of the immovable property in Delhi.

‘B’ in his written statement submits that he was a month to month tenant of ‘A’ as there was no registered lease deed and the monthly rent was Rs. 10,000/-, and accordingly he was entitled to sublet the property.

Therefore, he had sublet the property to 'C'. 'B' also submits that the suit was defective as 'C' had not been impleaded as a party; 'A' was not the owner and landlord of the property as the property was owned by 'D' (brother of 'A'); and the notice for termination of the tenancy was not in terms of Section 106 of the Transfer of Property Act.

'A' after three months of filing of the written statement, files an application for judgment on admission under Order XII Rule 6 of the Code of Civil Procedure.

'B' files a reply stating that issues should be framed on the defences raised by him.

Decide giving reasons.

(30 marks)

5. Answer all questions in about 50 to 100 words:

- (i) Can a Hindu make an oral Will?
- (ii) Is there any limitation period for filing a petition for grant of probate in respect of a Will?
- (iii) If and when can a donor revoke a registered gift deed of an immoveable property?
- (iv) Is the currency note of Rs. 100/- a negotiable instrument, as per the Negotiable Instruments Act?
- (v) Is a written application and permission of the Court required for leading secondary evidence?
- (vi) Are arbitration proceedings covered by the expression "other proceedings" in sub-section (3) to Section 69 of the Indian Partnership Act, 1932<sup>1</sup>?

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<sup>1</sup> Section 69 of the Indian Partnership Act, 1932 reads as under:

69. Effect of non-registration- (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect,-

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.

- (vii) What is the scope and ambit of the courts' power to examine a party on oath before issues are framed under Order X of the Code of Civil Procedure?
- (viii) Does an order of attachment before judgment under Order XXXVIII Rule 5 of the Code of Civil Procedure create a charge on the immoveable property in favour of the plaintiff?
- (ix) Can a court, which has passed preliminary decree of partition of the immoveable property, grant mesne profits even if no prayer to the said effect is made in the plaint?
- (x) Can a party execute an award for money passed in 2013, if an application under Section 34 of the Arbitration and Conciliation Act, 1996 is pending before the High Court?

(7 marks x 10 = 70 marks)

6. Answer any three questions out of six:

- a. 'A' had filed a suit for recovery of Rs. 10 Lacs against 'B' based upon *hundis*. The suit is dismissed on the ground of tampering and interpolation in the *hundis*. However, the issue and plea of 'B' that the claim was barred by limitation has been decided in favour of 'A' and against 'B'. 'A' files an appeal and notice is issued to 'B'.

Is it necessary and required that 'B' should file a cross appeal or a cross objection to challenge the finding of the trial court on the issue that the suit was not barred by limitation? Give reasons in support of your answer.

- b. 'A' had purchased a car from a car dealer for Rs. 1 Lac. As the car had mechanical defects and required repairs, 'A' had to incur further expenditure of Rs. 50,000/-.

'B' files a suit against 'A' claiming possession of the car stating that the car belonged to him and was stolen by someone who had sold it to the car dealer.

'A' while not disputing the title of 'B' in the written statement, claims and states that he is a bonafide purchaser of the car for value. In the alternative, he makes a counter claim that 'B' is liable to pay him Rs.50,000/- being the amount spent on repairs.

Decide the suit and the counter claim after referring to the relevant provisions of Law.



- c. Can a defendant in a written statement set up an alternative plea of ownership/legal title to an immovable property and also adverse possession? Whether as the Court, you would frame an issue in view of the plea raised in the alternative. Give reasons for your answer.
- d. 'A' presents a general crossed cheque of Rs. 1 Lac issued by 'B' to its Bank 'C'. The cheque is encashed and credited to the account of 'A'. 'B' files a suit against both 'A' and 'C' stating that the cheque was tampered with and was not issued to 'A' but to 'D'. The contention of 'B' is factually correct.  
Examine and decide whether Bank 'C' would be liable to pay the amount demanded by 'B'.
- e. What is the period of limitation for filing a suit for specific performance of a registered agreement to sell of an immovable property where the plaintiff is in possession of the immovable property in terms of Section 53A of the Transfer of Property Act?
- f. Whether in the absence of any contrary direction in the arbitral award, interest payable under clause (b) to sub-Section (7) of Section 31 of the Arbitration and Conciliation Act, 1996<sup>2</sup> means the principal sum or the principal sum plus interest *pendente lite*?

(10 marks x 3 = 30 marks)

<sup>2</sup>Section 31(7) of the Arbitration and Conciliation Act, 1996 reads as under:

31. Form and contents of arbitral award –

(1)	xxx	xxx	xxx
(2)	xxx	xxx	xxx
(3)	xxx	xxx	xxx
(4)	xxx	xxx	xxx
(5)	xxx	xxx	xxx
(6)	xxx	xxx	xxx

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent, higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation – The expression “current rate of interest” shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).

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### **CRIMINAL LAW**

1. Accused 'A' was employed and posted as a security guard in a Bank with a licensed gun. 'A' was standing on duty outside the main exit and entrance door. (ii) Person 'B', aged about 30-35 years, entered the Bank and presented a self bearer cheque of Rs. 2,00,000/- to the counter clerk for encashment. 'B' was issued a token to enable him to collect the money from the cash counter. (iii) The counter clerk noticed that the signature on the cheque did not tally with and were different from the specimen signatures. 'B' was asked to put his signature on the backside of the cheque. The signature did not match and were completely different from the specimen signatures. The counter clerk thereupon confronted 'B', on which 'B' ran from the spot. The counter clerk shouted "catch-catch, thief-thief". (iv) 'B' while running crashed into the glass entrance door, broke it and came outside. (v) Accused 'A', who was standing outside did not know what had happened inside, but heard the shouts "catch-catch, thief-thief". He confronted 'B', who had a small bag in his hand. 'A' was not aware of the contents of the bag. (vi) 'B' picked up a piece of glass and waived it, shouting at 'A' to allow him to go. (vii) Accused 'A' thereupon fired from his licensed gun and killed 'B'.

Decide whether accused 'A' is guilty for culpable homicide amounting to murder or culpable homicide not amounting to murder including whether 'A' is entitled to the benefit of the right to private defence.

(50 marks)

2. This question has two parts; both parts have to be answered.

Part A

'A' and 'B', who do not know each other, with an intent to kill 'C', enter his house from two separate doors and shoot with their pistols. The shot fired by 'A' hits 'C' and 'C' falls down and dies. The shot fired by 'B' misses 'C' as he was a moment earlier hit by the shot fired by 'A'.

'A' and 'B' are tried in the case.

Decide whether 'B' is vicariously liable under Section 34 of the Indian Penal Code for murder or for any other offence under the Indian Penal Code.

(15 marks)

Part B

In addition to Section 34 of the Indian Penal Code, what are the other forms of vicarious liability recognized and accepted under the Indian Penal Code. Elucidate with examples.

(15 marks)

3. As an investigator and as a public prosecutor, elucidate the precautions you would take to procure, collect, store and lead evidence of "Call Detail Records" obtained from a mobile phone service provider and photographs and SMSs recovered and printed from the mobile phone of an accused in a criminal trial. How would you differentiate between primary and secondary evidence in the case of electronic evidence?

(30 marks)

4. Answer both questions:

(a) Is a First Information Report (FIR) a "substantive piece of evidence"? What is its value in a trial for an offence under Section 307 of the Indian Penal Code? Elaborate and discuss the legal position.

(b) Entries in the case diary of the Police Officer were relied upon by the prosecution to bring home the charge of an attempt to murder. What would be the value of such a piece of evidence? Discuss in the light of the statutory law and precedents.

(15 marks x 2 = 30 marks)

5. Discuss the import and effect of "same transaction" in the context of

- a. Relevancy of evidence
- b. Joinder of charges
- c. Joinder of trial

(30 marks)

6. Elucidate the exceptions to the general rule that every offence is to be tried by a Court within whose jurisdiction it was committed.

(20 marks)

7. Can admission of complicity in a crime by one accused be used against another charged with conspiracy to commit the same offence? If so, what are the pre-requisites?

(30 marks)

8. A First Information Report (FIR) was registered against 'X' and some other persons for the offence under Sections 307 and 323 read with Section 34 of the Indian Penal Code. After investigation, the police submitted report under Section 173 of the Code of Criminal Procedure (Cr.P.C.) to the Magistrate sending only 'X' for trial. Names of the two other persons 'Y' and 'Z' mentioned in the FIR are shown in column no. 12 [*Particulars of accused persons not charge sheeted (suspect)*] of the report. On objections being taken by the complainant, the Magistrate takes cognizance against 'Y' and 'Z' as well and commits the case to the Court of Sessions. The questions to be answered are:

- (i) Whether the Magistrate was competent to take cognizance against 'Y' and 'Z' named in the FIR but not sent for trial?
- (ii) Before taking cognizance against the persons mentioned in column no. 12, is the Magistrate required to follow the procedure of a complaint case and to take evidence before committing the case to the Court of Sessions.
- (iii) If the Magistrate had not taken cognizance against the persons mentioned in column no. 12, can the Sessions Judge issue summons under Section 193 Cr.P.C. as a Court of original jurisdiction or would the Sessions Judge have to wait to decide till the stage under Section 319 Cr.P.C. is reached.

(30 marks)