



BAR COUNCIL OF INDIA

SEPTEMBER 2019

15TH QUALIFYING EXAMINATION
FOR INDIAN NATIONALS HOLDING FOREIGN LAW DEGREES

PAPER – 1 CONSTITUTION OF INDIA

MAX MARKS: 100
MAX TIME 03 HOURS

PART – A

WRITE SHORT NOTES ON ANY FIVE OF THE FOLLOWING:

[5 x 5 = 25 marks]

1. Right to environment under Article 21
2. Concept of Secularism
3. Colourable Legislation
4. Doctrine of Eclipse
5. Fundamental Duties
6. Difference between Article 32 and 226

PART – B

ANSWER ANY THREE OF THE FOLLOWING:

[15 x 3 = 45 marks]

1. Mr. X has filed a writ petition in the Supreme Court of India against Government of India for providing toilet facilities to the residents of slum areas. The Hon'ble Supreme Court asked Mr. X under what authority has he filed the writ petition on behalf of others and asked him to approach the High

Court because similar jurisdiction is available with the High Court. Petitioner argued that he has the *locus standi* and writ jurisdiction is not a bar to approach Apex Court for the violation of fundamental rights. Decide with the help of relevant provisions of Constitution and case laws.

2. On what matters can Parliament of India and Legislature of a state both make Laws? If Parliament of India has made a law and on the same subject matter now legislature of a state has made the law that is repugnant to the law made by the parliament. If President of India has given his assent to the law made by the legislature of the state, Can the law made by the legislature of the state be implemented in that state even if it is repugnant to the law made by the Parliament of India?
3. Mr. Ravi, producer and director of cinematograph films produced a documentary film in which he purported to picture contrasting lives of prostitutes. He applied to the Board of Film Censors seeking “U” Certificate i.e. unrestricted exhibition of the film under Section 11 of the Cinematograph Act, 1952. But the Board of Film Censors issued “A” Certificate i.e. only for Adults. It was challenged by Mr. Ravi on the ground that prior censorship of film amounts to violation of his right to freedom of speech and expression. Decide the case with the help of constitutional provisions and principle laid down by the Supreme Court of India. \
4. On 26th August 2015, President rule was imposed by the Union Government on the State of Uttam Nagar, the Chief Minister of Uttam Nagar filed a petition in the Supreme Court questioning the sanctity of the President rule imposed on the state on the pretext of ‘failure of state functionary’. The Chief Minister

questioned on what grounds did the President reached the satisfaction that it was required to impose an emergency? The Chief Minister has availed your services for representing him in the Court, now you being the counsel prepare the legal argument keeping the Indian Constitution in mind.

PART – C

ANSWER ANY ONE OF THE FOLLOWING:

[30 x 1 = 30 marks]

1. Is the Governor's post dependent on the Pleasure of the President of India? Discuss. What exactly constitutes the "discretion" of the Governor while exercising numerous powers? A person has been awarded death penalty for murder under section 302 of I.P.C. The decision was upheld by the High Court and the Supreme Court as well. Later Governor of the state, to which accused belongs, pardons his capital punishment. Can Governor pardon such punishment? Explain with reference to statutory provisions and relevant case laws.
2. (a) "No individual should be forcibly subject to Lie Detector Test in the context of investigation in criminal cases or otherwise". Discuss with the help of decided cases.

(b.) State H enacted a legislation by which all the hill districts of the state are declared as socially and educationally backwards for the purpose of admission to educational institutions and for jobs from year to year. Discuss the constitutional validity of the legislation.



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PAPER – 2 LAW OF CONTRACTS & NEGOTIABLE INSTRUMENTS ACT

MAX MARKS: 100
MAX TIME 03 HOURS

PART – A

ANSWER ANY FIVE OF THE FOLLOWING:

[5 x 5 = 25 marks]

1. “A contract without consideration is void.” Give the exceptions to this rule?
2. Distinguish between Offer and invitation to offer.
3. Time is an essence of contract.
4. Define cheque and bill of exchange.
5. Write a short note on Privity of Contract.
6. Write a short note on Doctrine of frustration

PART – B

ANSWER ANY THREE OF THE FOLLOWING:

[15 x 3 = 45 marks]

1. Rani a famous singer agrees to sing for “Vedika” theatre for 2 nights in every week during the next 6 weeks. The theatre Manager and Rani enter into an agreement on the basis of Rs. 5000/- for a night’s performance. She performs as per agreement for 3 weeks. Later on, she does not perform the 4th week and starts performing in another theatre namely “The Rock”. Manager of Vedika

theatre approaches you for legal advice. Give him the appropriate legal remedies available against Rani with sound reasons.

2. Government of Goa invited tenders for construction of a community hall. A, B, and C submitted the tenders. A's tender is the lowest. C's tender is highest. Answer the following
 - (a) Can the Government accept C's tender?
 - (b) Can the government refuse all tenders and call fresh tenders?
 - (c) If in the tender notice a condition was mentioned that the lowest tender would be accepted, is government bound by such condition.
3. Kripto Co Ltd is a leading company in garment manufacturing. Workers of the company asked the management for a pay hike. The management refused to increase the salaries. Workers knew that the Company had committed to supply large number of garments to its customers as Ganesh Festival is nearby. Therefore, workers threatened the management that if the company does not increase the salaries they will go for strike. As Company is going to suffer huge loss due to strike, the management agreed to hike the salaries and requested the workers to continue to work. As a result, workers agreed to work. Management refused to pay the increased salary in the next month as their obligation for Ganesh festival already fulfilled. Workers filed a case against management for breach of contract. Management argued that the agreement is voidable due to coercion. Decide whether the Company is liable to pay the increased salary to the workers.
4. A,B,C stands as sureties to D for Rs.60,000/-. D failed to pay the amount to the creditor. Who are liable to pay to the creditor and how much? Can the creditor claim entire money from one surety? Can A, B, C insist that the

creditor file a case against D first and if he fails to pay only then they would pay?

PART – C

ANSWER ANY ONE OF THE FOLLOWING:

[30 x 1 = 30 marks]

1. (a) Parties to the contract must be competent. Discuss how far a minor is competent to enter into an agreement.

(b) Ramesh a minor requested Harish to supply food on his 17th birthday for a party. The cost of food is Rs. 5000/- Ramesh agree to pay the amount with 10% interest when he became a major. After attaining majority, he promised in writing to pay the amount to Harish. Is Ramesh liable to pay the amount after attaining the majority? If Harish again supplied food for the 18th birthday of Ramesh and Ramesh agreed to pay total 12000/- including the Rs. 5000/- of 17th birthday party food, is Ramesh Liable for entire amount?
2. (a) Quasi contract though not contracts in a strict sense but they create contractual obligations. Explain various quasi contractual relationships enumerated by the Indian Contract Act.

(b) Ms. Nitya Menon was selected for the post of Assistant Public Prosecutor through a written test and a viva. Accordingly, she was posted in the post. After two months of her appointment, it was realized that her qualifications were not proper and accordingly she was removed from the service. The State wants to recover the two months' salary that was paid to Nitya. She contended that the salary was paid for her services. Can the state recover the salary? Explain with reasons.



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PAPER – 3 COMPANY LAW

MAX MARKS: 100
MAX TIME 03 HOURS

PART – A

ANSWER ANY FIVE OF THE FOLLOWING:

[5 x 5 = 25 marks]

1. Examine the requisites of valid meetings.
2. Write a note on Corporate Social Responsibility.
3. Write a short note on National Company Law Tribunal.
4. Examine the circumstances under which corporate veil can be lifted.
5. Differentiate between Limited Liability Partnership (LLP) and a Company.
6. Explain the doctrine of indoor management.

PART – B

ANSWER ANY THREE OF THE FOLLOWING:

[15 x 3 = 45 marks]

1. Discuss the circumstances and power of the Government to interfere in the affairs of a company in case of mismanagement.
2. In light of various corporate scams and frauds, it is important to hold auditors accountable in case of corporate frauds. Analyse the powers and position of auditors in a company.

3. Examine the distinction between memorandum of association and articles of association. Also discuss the legal effect of both these major documents of the company.
4. “A company is a democratic institution in which the majority have a right to control the Company”. Discuss your views on this statement in the light of case law.

PART – C

ANSWER ANY ONE OF THE FOLLOWING:

[30 x 1 = 30 marks]

1. “The company was formed by the assessee purely and simply as a means of avoiding super tax and the company was nothing more than the assessee himself. It did no business, but was created simply as a legal entity to ostensibly receive the dividends and interests and to hand them over to the assessee as pretended loans”. Critically examine this statement in the light of increasing sham/shell companies in India and the role played by legislature and judiciary to curb this issue under the shelter of corporate veil.
2. “Winding up brings about an end to the legal existence of a company. It affects not only the status of the company, but also the rights of the shareholders, contributories, creditors and employees of the company, and all those having dealings with the company.” Discuss the different modes of winding up and also examine the correctness of the above statement with regards to the rights and liabilities of the above parties, in event of a winding up order.



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PAPER – 4 CIVIL PROCEDURE CODE & LIMITATION ACT

MAX MARKS: 100
MAX TIME 03 HOURS

PART – A

WRITE A SHORT NOTE ON ANY FIVE OF THE FOLLOWING:

[5 x 5 = 25 marks]

1. Binding nature of foreign judgments.
2. 'Mesne Profits' under Code of Civil Procedure
3. Fundamental rules of Pleadings
4. Jurisdiction and Cause of action
5. Differences between Substantial question of law and Law of general importance.
6. Differences between 'Set-off' and 'Counter claim'

PART – B

ANSWER ANY THREE OF THE FOLLOWING:

[15 x 3 = 45 marks]

1. Sridhar resides at Simla, Venu at Calcutta and Mohan at Delhi. Sridhar, Venu and Mohan being together at Hyderabad, make a joint promissory note on September 3, 2010 payable on demand to Sridhar and delivered it to him. In the year of 2012, Sridhar insisted both the Venu and Mohan to repay the money and issued notice. They defaulted to pay the money back. What is the

remedy available to Sridhar and trace out the jurisdictional facts to institute a suit?

2. Mr. Swamy obtained a money decree for Rs.75,000/- against Paravathi. Even after passing of the decree, the defendant Parvathi (judgment debtor) did not pay the decretal amount. Then, Paravathi filed an execution petition for arrest of the judgment debtor in execution of the decree. Can the Court issue an arrest warrant against Parvathi, the judgment debtor?
3. Amar filed a suit for recovery of possession and declaration of title against Rakesh. Suit was dismissed with costs in the lower court. Amar's father died out of shock after knowing the decision in the suit. After completing all funeral rites Amar preferred an Appeal before District Court with a delay of 28 days after the period of Limitation. Explain the maintainability of Appeal filed by Amar after the Limitation period.
4. Ajit, owner and possessor of property situated at Tarnaka, Secunderabad resides in Mumbai. When he came to Hyderabad on official work, he visited his property and came to know that his property got wrongfully encroached by one Mastan. Mastan had already got an exparte decree over the property. Now Ajit wants to set aside the Exparte decree and claim the suit scheduled property. Explain to him the legal recourses available against the Exparte decree.

PART – C

ANSWER ANY ONE OF THE FOLLOWING:

[30 x 1 = 30 marks]

1. Write down the essentials of Res Judicata with relevant case Laws.

2. (a) 'Any matter which might and ought to have been made ground of defence or attack in former suit shall be deemed to have been a matter directly and substantially in issue in such suit'. Explain.
- (b) A is the tenant to B and owes rent for three years 2013, 2014 and 2015. B files a case for recovery of rent for the year 2013 and 14 and succeed in getting the rent. Later he files another suit for recovery of rent for the year 2015. Discuss his chances of success with reasons.



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PAPER – 5 CRIMINAL PROCEDURE CODE

MAX MARKS: 100
MAX TIME 03 HOURS

PART – A

WRITE SHORT NOTES ON ANY FIVE OF THE FOLLOWING:

[5 x 5 = 25 marks]

1. Rights of an arrested person.
2. Examination of witnesses by the Police.
3. Order of Custody and disposal of property pending trial.
4. Dismissal of complaint, discharge and acquittal.
5. Inherent powers of Court as provided under Section 482, CrPC .
6. Compounding of offences.

PART – B

ANSWER ANY THREE OF THE FOLLOWING:

[15 x 3 = 45 marks]

1. Mr Ali was upset with the hawkers in Ameerpet lane who are creating nuisance by using mikes announcing the products and discounts which they sell every day. He complained to the police officer but the police officer never took action against the Hawkers. In the light of the facts, advice Ali as whom to approach for filing a complaint with relevant procedure prescribed under Code of Criminal Procedure 1973.

2. Mr Surfira who was staying in India committed a theft in a Bank where he was working. He later flew to UK and was hiding in London. The Court in India having jurisdiction desires that person to be arrested and brought to India. Discuss the procedure prescribed under Code of Criminal Procedure 1973 to arrest Mr Surfira.
3. Phulwa is accused of committing an offence of extortion and dacoit. The police arrested him, and produced before Magistrate. Charge sheet was filed by the police. Magistrate framed charges against the accused. The case is pending for trial and the defence lawyer suggested Phulwa to apply for Plea bargaining. What is plea bargaining? What are the provisions available under under CrPC with relevant case laws?
4. “A” committed an offence at Kolkata, he then came to Prayagraj. Police arrested him at Prayagraj on the basis of a warrant issued by a court of Kolkata. Can “A” be granted bail at Prayagraj? if so, by whom?

PART – C

ANSWER ANY ONE OF THE FOLLOWING:

[30 x 1 = 30 marks]

1. Although the Criminal Procedure Code is a procedural enactment, it also confers substantive rights, the right of maintenance being one of the most important of such rights. Provisions given in Sections 125 to 128, is therefore, not a punitive measure; it is preventive rather than remedial. Elucidate.
2. What is the scope and nature of “Case Diary” to be maintained under Section 172, CrPC and the limitation imposed on its use, if any, may be indicated?



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PAPER – 6 INDIAN LEGAL PROFESSION & CODE OF ETHICS

MAX MARKS: 100
MAX TIME 03 HOURS

PART – A

ANSWER ANY FIVE OF THE FOLLOWING:

[5 x 5 = 25 marks]

1. What are the different classifications of Advocates under the Supreme Court Rules of Practice? What qualifications are required for an advocate to become an 'Advocate on Record'?
2. What is meant by professional misconduct?
3. List down the powers of the Disciplinary Committee.
4. What do you think is the rationale behind the rule prohibiting advocates from advertising? Discuss its pros and cons.
5. Write short note *on* restrictions imposed on advocate regarding confidential communication obtained from the client.
6. What is meant by advocate's etiquette? Is there any prescribed etiquette?

PART – B

ANSWER ANY THREE OF THE FOLLOWING:

[15 x 3 = 45 marks]

1. Advocate, Raj Malhotra, recently set-up a new office at his residence. Outside his residence, he put up a sign board of the dimensions 4ft x 3ft, which read as follows:

ADV. RAJ MALHOTRA

B.A, LLB, University of Delhi

LLM, University of Edinburgh

Contact no.: 22308; Whatsapp no. 22309

Email: rajmalhotra.bestlawyer@gmail.com

Former, Chairman of the Bar Council of India

Former, Advocate General, State of Chattisgarh

Former, Member, Special Tribunal on Water Dispute, Chattisgarh

Recipient of Lok Samman Award, 2019

- As per the law governing advocates, decide, citing reasons and relevant provisions, whether the abovementioned sign-board is permissible or not?
2. Ram Kumar lodged a case under section 380 r/w section 411 of Indian Penal Code, 1860 against Mohan and Naresh.
- On November 3, 2018 an Advocate Nishant appeared on behalf of Mohan & Naresh when they were presented before the court and moved an application for bail. Thereafter on November 13, 2018 Nishant moved an application and memorandum of appearance on behalf of Ram Kumar in the same matter. Learned Judge hearing the matter made a complaint against Nishant to Disciplinary Committee of the State Bar Council praying that Nishant

committed Professional Misconduct and his name should be stuck off from the roll of the State Bar Council.

Explain with reference to relevant legal provisions regarding Professional Misconduct and case laws as to whether an Advocate can represent both sides in different phases of the same matter.

3. In Kalahandi, lawyer-police confrontation started on 03.03.2019 evening, when advocate K P Gill, while driving his car hit a small girl near Barabazar. The police were called to the spot and a scuffle ensued between Mr. Gill and the policemen. The advocate was taken to the local *thana*. Soon word spread that the advocate had been brutally assaulted by the policemen, which triggered rage amongst city lawyers, who rushed to the police station and *gheraoed* it till late night. Police Commissioner informed that cases have been registered in connection with the incident and also one pertaining to the torching of the police vehicle. He promised, that investigations shall be impartial. The State Bar Council gave a call to all advocates of the State to abstain from their Court activities and demanded that the policemen be immediately suspended and arrested. The High Court Bar Association also gave similar call. People seeking legal help suffered a lot in the course of the ongoing situation as the lawyers did not attend any judicial proceedings. Work suffered in executive and district magistrate courts as the agitating lawyers picketed in front of them and burnt tyres. This situation has been continuing for more than 2 months now. In the light of the abovementioned circumstances, as per the law governing advocates, is this behaviour and conduct by practicing advocates permissible. Justify with reasons and relevant cases.

4. “Advocacy is an art.” Explain with reference to role, functions and qualities required for a lawyer.

PART – C

ANSWER ANY ONE OF THE FOLLOWING:

[30 x 1 = 30 marks]

1. a) “Professional misconduct is of infinite variety, and it is of utmost importance in administration of justice that proved professional lapses, which shake the confidence of litigants should be punished.” Elucidate on the concept of ‘Professional Misconduct’, citing minimum 6 instances of the same, with the support of decisions of the Apex Court.
- b) Mr. T. T. Rajasundar, an advocate enrolled with the Bar Council of Tamil Nadu, in an appearance before the Court of Civil Judge (Senior Division), Vellore, started shouting in a state of highly agitated mind. He said, *“How did you pass an order against my client, P. Chinnappa? How did you dare pass such an order against my client? Chinnappa is my relative and how was this order passed against my relative? No Judicial Officer has, ever, dared pass an order against me. Then, how did you dare do so? When any Judicial officer passes an order on my file against my client, I set him right. I shall make a complaint against you to Hon'ble High Court. I will not let you remain in Vellore in future, I can do anything against you. I have relations with highly notorious persons and I can get you harmed by such notorious persons to the extent I want to do, and I myself am capable of doing any deed as I wish, and I am not afraid of any one. In the Court compound, even my shoes are worshipped and I was prosecuted in two murder cases. And I have made murderous assaults on people and about 15 to 20 cases are going on*

against me. If you, in future, dare pass an order on the file against my client in which I am a counsel, it will not be good for you."

In light of the given facts, critically analyse the conduct of the Advocate.

2. Explain the ethical standards required of an advocate as mandated by Bar Council of India regarding the duty towards client and duty towards the court. Explain how these mandates can promote the ethical standards of the legal profession in India taking into account the debates surrounding falling standards in ethics in legal profession?
