

DELHI HIGHER JUDICIAL SERVICE MAIN EXAMINATION
(DESCRIPTIVE), 2015

PAPER-I

Roll No. _____

Duration : 150 Minutes

Maximum Marks : 250

Important Instructions:

1. Please write your Roll no. in the box given above.
2. All questions are compulsory. Maximum marks of questions are indicated against each.
3. The candidates are allowed 15 minutes of reading time (i.e. from 09.45 am to 10 am) before the examination begins. During this period, the candidates may only read, highlight and make notes/jottings on the question paper but not open, or start writing inside, the answer booklet(s).
4. The question paper is in two parts (Part-A and Part-B), each to be answered in separate answer booklet made available. If answer of question in Part-A is attempted in Part-B answer booklet, or vice versa, the same shall not be evaluated. The answer to each question should begin on a fresh page.
5. Support your answers with relevant provisions of law, legal principles and case law.
6. English writing skills would also be tested in the answers given.
7. General Knowledge and Current Affairs knowledge would be tested with reference to Question no.1 (Part-A).

PART-A

1. Commercial surrogacy or ethical altruistic surrogacy – which is the better option? Analyse this issue in the light of the provisions of the Surrogacy Regulation Bill 2016 while also discussing the rights of the surrogate mother, commissioning couple and surrogate child; implementation of the recommendations of the 228th Report of the Law Commission of India and need for an effective Institutional framework for proper implementation of the law and anticipated problems in its implementation.

(125 Marks)

PART-B

1. On 02.01.2015 at 6 A.M on receiving information from the PCR, Insp Hansraj reached the Defence Colony drain and found the body of a man with blunt injuries on his body. The body was of Dr. Mishra who lived in the house near the drain. The body was sent for post-mortem. Crime team was summoned. Insp. Hansraj met Shobit the son of the deceased who informed in his statement that the deceased lived alone in the ground floor while he lived in the first floor; the deceased went for morning walks from 5 A.M to 7 A.M; one **Sanjay**, engaged as the deceased's driver was removed when found stealing petrol on 28.12.2014 and he was since working in the adjoining house of Mr. Mehta; Sanjay while leaving threatened the deceased in his presence that he would kill him; he (Shobit) had received an SMS on 29.12.2014 from an unknown number threatening that he would be killed shortly; Sanjay who was staying in the room on the garage of Mr. Mehta was not seen by him since the night before and; the expensive watch which the deceased was wearing was missing from his person. Shobit gave the print out of the screen shot of the SMS (of threat), taken from his laptop to Insp. Hansraj. Sanjay was not found in his room that morning and his belongings were missing. **Omveer** who ran the cigarette kiosk in the colony market, told Insp. Hansraj that one **Kishore** an electrician frequented the house of the deceased and he had seen him talking to Sanjay nearly every night including on the night of 01.01.2014 at his pan shop and that they both talked in hushed voices. Insp. Hansraj on inquiry was told by one **Mahesh** the neighbour of Kishore that one **Ramu** an auto driver frequented the jhuggi of Kishore and was seen by him talking secretly with Kishore on the night of 01.01.2015. On 12.01.2015 Insp. Hansraj apprehended Sanjay and Kishore. Sanjay and Kishore confessed to the crime. Sanjay disclosed that he gave the lathi with which he beat the deceased to Kishore. Kishore confessed that he had put the lathi under the bench in the colony Park and he gave the watch of the deceased to one **Bunty**. Kishore took Insp. Hansraj to the colony Park where he got recovered the lathi and then to Bunty's jhuggi where Bunty was found wearing the said watch. **Sanjay, Kishore, Ramu and Bunty were charged for the offences of entering into a conspiracy and in furtherance of the conspiracy murdering Dr. Mishra with the intention to take revenge so also robbery and criminal intimidation.**

Shobit during his deposition identified the watch; he identified Sanjay as the driver who was sacked by the deceased and who had threatened the deceased and; he identified Kishore as the electrician who frequented the house of the deceased. He deposed that the SMS in the printout was received by him on 29.12.2014. **Omveer** identified Kishore as the person whom he saw talking secretly with Sanjay at his shop nearly every night including on the night of 01.01.2015. **Ram Ratan** and **Babu Ram** the neighbours of Kishore

deposed that Ramu frequented the jhuggi of Kishore and they had seen the 2 discuss something secretly on the night of 01.01.2015. **Radha** the domestic help of Mr. Mishra deposed that in the morning of 02.01.2015 at around 6:30 A.M she saw Sanjay walking out of the gate of Mr. Mehta in a perturbed condition while two other men whom she identified in court as Kishore and Ramu were waiting outside on the road. **Dr. Rashid** the autopsy surgeon deposed that the likely time of death of the deceased was around 5 A.M on 02.01.2015; there were 16 injuries on his body out of which 13 were bruises and contusions on the back and forearms, there were 3 depressed injuries on his right occipital region found to be grievous and that the injuries were cumulatively sufficient to cause death in the ordinary course of nature. He opined that the injuries could have been caused with the lathi. Blood group of the blood found on the lathi matched with deceased. The print outs of the CDRs of the mobile phone numbers of Sanjay, Kishore and Ramu showed exchange of calls between 4-5 A.M on 02.01.2015. **Mr. Handa** Nodal Officer Airtel proved their CDRs and the mobile tower location chart which showed presence of Sanjay and Ramu in Defence Colony and of Kishore in neighbouring Lajpat Nagar during the said time. The CDR of Bunty showed that an SMS was sent from his mobile number to Shobit on 29.12.2014.

- (i) What is the nature of evidence given by Shobit? Is the evidence produced by him to prove the charge of criminal intimidation admissible in evidence?
- (ii) Can Sanjay, Kishore, Ramu and Bunty be convicted for the offences with which they have been charged? Is the defence raised that the case is covered under Section 304 Part II IPC and not under Section 302 IPC plausible? Decide.

(75 Marks)

2. Ruby and Ramesh were married on 03.01.2012. They both lived together happily for about a year after which they started having differences over various issues including the issue of Ruby's employment in a BPO. On 04.02.2013 Ruby left her matrimonial home and started residing separately in a rented accommodation in Saket. They both did not get in touch with each other thereafter. On 04.06.2013 Ramesh came to her rented flat at about 9 P.M. Ramesh asked her to leave her job and come back to the matrimonial home, but she refused. He tried to get physically intimate with her but she pushed him back and told him to leave her flat. Ramesh in anger caught hold of her neck and hit her head against the wall three times thereafter he forcibly disrobed her completely, threw her on the bed shouting that he would rape her to teach her a lesson. He removed his undergarments and lay on the top of her however, only then the door bell rang and hearing the door bell ring he got up, wore his clothes and ran out of the flat through the back door. Ruby covered herself with the bedsheet and ran and opened the door and found her

neighbour Seema standing at the door. Ruby while weeping told everything to Seema. Ruby lodged her complaint in the police station Saket. On 05.06.2013 Ramesh sent an email to her threatening her to withdraw her complaint otherwise he would put on the internet and send to her office colleagues her semi-nude photographs taken by him. He sent to her as an attachment with the email her 5 semi-nude photographs. The FIR is registered. Chargesheet is filed. Trial commences. Ramesh is charged for the offences under Sections 307, 376 read with Section 511 IPC and 506 IPC. Ruby deposes about the incident and also files in court printouts of the email and the semi-nude pictures sent by Ramesh which she had taken out from the computer of the cyber cafe near her house. Seema deposes about what was told to her by Ruby on the day of the incident. Dr. Rajesh proves the MLC of Ruby as per which there were present 2 contusions on the back of her head, scratch marks on her neck and her shoulder bone was found dislocated. Contentions raised by the defence are :

- (i) Ramesh and Ruby were married and so no case of rape or attempt to rape was made out;
- (ii) At the most this was a case covered under Sections 323 and 354 IPC however, since no charges under these sections were framed the accused could not be convicted.
- (iii) The testimony of Seema is inadmissible in evidence being hearsay and the allegation of threat is not proved as the printouts of the email and photographs are inadmissible in evidence. Decide.

(50 Marks)

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PART - A

1. In a civil suit filed on 01.01.2016 by Sohan ("plaintiff") against Anil and Sunil ("defendants") for declaration and injunction on averments that he is owner of one-half of share in property "Y" on account of inheritance, it having been contested, following facts emerge as admitted and/or proved:
 - (i) Dewan Chand was the owner of properties "X" and "Y", they being residential houses built on plots of land given on perpetual lease by Land & Development Officer (L&DO) of the Government of India to his late father from whom he inherited;
 - (ii) His wife having pre-deceased him, Dewan Chand died on 01.01.1998, leaving behind two sons, Amar Chand and Karam Chand, as his successors-in-interest;
 - (iii) Amar Chand died on 01.01.1999;
 - (iv) On 01.01.2000, L&DO cancelled the perpetual lease deed respecting plot beneath property "X" and initiated proceedings for resumption which action was challenged by Karam Chand by a civil suit ("first case"), impleading L&DO and Sohan as defendants seeking reliefs of declaration that the cancellation of perpetual lease and order of resumption were illegal and for

direction to L&DO for mutation of said plot in his favour claiming that Amar Chand was a bachelor and had left behind Sohan as his illegitimate son born out of cohabitation with Sunita who had already died, they (Amar Chand and Sunita) having never married and, therefore, the estate of Dewan Chand had devolved in entirety on him (Karam Chand);

- (v) The suit filed by Karam Chand (first case) was contested by L&DO, *inter alia*, on the plea that the impugned action was justified and also by Sohan on the ground he was born to Sunita out of her marriage with Amar Chand;
- (vi) Sohan absented from proceedings and so was set *ex parte* in the first case which was decreed on 01.01.2006 with findings returned accepting the contention of Karam Chand that Sohan was an illegitimate son of Amar Chand since his marriage with Sunita was void and that consequently Sohan was not entitled to inherit, holding the impugned action of L&DO bad in law and directing mutation of property "X" in the sole name of Karam Chand;
- (vii) No appeal was filed against the decree passed in first case and L&DO complied with the direction for mutation, Karam Chand having died soon thereafter;
- (viii) At the time of his death, Amar Chand was in occupation of a part of property "Y", the said portion having continued to be in use and occupation of Sohan;
- (ix) The suit in question (second case) was filed by Sohan claiming to be legitimate son of Amar Chand born out of his wedlock with Sunita, alleging that the defendants (sons of Karam Chand) had tried to illegally dispossess him from his share in the property "Y".

The defendants contest the suit (second case) on the arguments that:

- (a) The decree in the first case operates as *res judicata*;
- (b) The plea of the plaintiff being a legitimate son of Amar Chand is barred by rule of *issue estoppel*;
- (c) The illegitimacy renders the plaintiff disentitled to claim inheritance; and
- (d) The plaintiff is a trespasser and, therefore, cannot claim any relief.

The plaintiff presses for decree arguing that:

- (a) The decree in the first case being *ex parte* cannot bar the second case also for the reason the findings recorded therein were on mixed questions of facts and law;
- (b) The issue of law was wrongly decided as void marriage or illegitimacy even if established could not be a ground to deny inheritance and the rule of *issue estoppel* cannot impede the power of court to determine an issue of law correctly in subsequent case;
- (c) The suit property in second case is different from property which was subject matter of first case; and
- (d) The plaintiff is in lawful possession as co-owner of suit property.

Decide.

(60 Marks)

2. In a claim brought before motor accident claims tribunal on plea of fault liability, the tribunal is called upon to determine the loss of dependency resulting from death of the victim, a 45 years old matriculate who was working on temporary basis as sales assistant in a shop for last five months at monthly fixed remuneration of Rs. 6000/-. The claimants pray for the element of future prospects of increase in income to be considered. The respondents contest and refer to the following observations in decision of a bench of two Hon'ble Judges of Supreme Court, rendered on 15.04.2009, reported as *Sarla Verma v. DTC*, (2009) 6 SCC 121:

"24. ... In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, ... The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. ... Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

The respondents also rely on the decision dated 02.04.2013 of a bench of three Hon'ble Judges of Supreme Court, reported as *Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65, wherein the above noted decision in *Sarla Verma* (supra) was quoted with approval.

Per contra, the claimants place reliance on the decision dated 23.04.2012 of another bench of two Hon'ble Judges of Supreme Court in *Santosh Devi v. National Insurance Co. Ltd.*, (2012) 6 SCC 421 to following effect:

14. We find it extremely difficult to fathom any rationale for the observation made in para 24 of the judgment in *Sarla Verma case* ... that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. ...

18. ... it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation.

The claimants also refer to decision dated 12.04.2013 of another bench of three Hon'ble Judges of Supreme Court in *Rajesh v. Rajbir Singh*, (2013) 9 SCC 54, wherein the view in *Santosh Devi* (supra) was approved, holding further as under:

8. ... in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the

actual income of the deceased while computing future prospects. ... Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

In *National Insurance Company Ltd. v. Pushpa* (2015) 9 SCC 166, the divergence of opinion in above rulings came to the notice of another bench of two Hon'ble Judges of Supreme Court and, by order dated 02.07.2014, the issue was referred for authoritative pronouncement to a larger bench which is yet to be decided.

Discuss the principles to be followed to apply the binding precedent with reference to Article 141 of the Constitution of India.

(40 Marks)

3. (a) Write a note on setting aside and enforcing the arbitral award.

(15 Marks)

- (b) Write short note on offer and acceptance in the context of law on contracts.

(10 Marks)

PART - B

1. The following background facts are admitted / proved:

- A. Shivpal was owner of two parcels of land, estate "A" and estate "B", abutting each other, having acquired title from his own income. His first wife had given birth to three sons named Gagan, Pawan and Karan. She having died, he married again and from this wedlock he was blessed with two sons named Harish and Satish. His second wife having predeceased him, Shivpal died, in 1950, leaving behind a will bequeathing equal undivided shares in estate "A" in favour of his three sons from first wife to the exclusion of others and similarly bequeathing equal undivided shares in estate "B" in favour of Gagan and his two sons from second wife to the exclusion of others.
- B. Harish instituted a suit in 1956 impleading Satish as defendant for partition of property inherited from father describing the suit property in schedule to the plaint, mentioning estate "B" therein, pleading, *inter alia*, that Gagan having taken share in estate "A" could not claim in suit property. The suit was contested on various grounds including one that it did not relate to entire estate of Shivpal.
- C. On application of Harish (plaintiff), Gagan was added as second defendant by order in 1957. On another application moved in 1958, the schedule to plaint was amended to include estate "A" therein.
- D. Gagan died in 1959. The fact of his death was brought on record by Satish in 1965. No application for substitution having been filed, the civil court by its order dated 20.09.1977 observed that the suit against Gagan had abated.
- E. On 08.06.1980, on application of plaintiff, a consent order was passed directing the parties to maintain *status quo* with respect to the suit property restraining sale, transfer, alienation or creation of third party interest or change in its nature or character.
- F. On 19.08.1985, the legal heirs of Gagan with Pawan and Karan executed and got registered a sale deed transferring, for consideration, their right, title and interest in estate "A" in favour of their jointly owned private company "Gagan-Estate", in which all of them were directors, the company being engaged in business of land development and real estate. On 01.01.1987, "Gagan-Estate" started excavation work in estate "A" for development and securing it by a boundary wall.
- G. The plaintiff filed application in civil court on 01.09.1985 alleging, *inter alia*, willful breach of *ad-interim* injunction order and complicity between legal heirs of Gagan and the directors of the company. By order dated 02.09.1985, the civil court ordered the lands comprised in estate "A" to be attached with direction to company "Gagan-Estate" to refrain from carrying out any work thereupon.

The order dated 02.09.1985 has been challenged by legal heirs of Gagan by appeal contending that:

- (i) there was no willful breach;

- (ii) Gagan having died, the suit had abated and the orders passed therein did not bind the appellants;
- (iii) the amendment to include estate "A" in the schedule to plaint was improper and also bad on account of non-joinder.

The company "Gagan-Estate" has filed separate appeal against the same order on grounds that:

- (i) One who is not party to the suit cannot be proceeded against for breach of injunction order passed therein;
- (ii) It (the company) was a *bonafide* purchaser, and having acquired title over estate "A" for consideration by a sale deed duly registered, it could not be put to any restraint against its enjoyment in these proceedings.

The plaintiff (respondent in appeals) resists contending that:

- (a) the appellants in first appeal claim through Gagan and, therefore, were bound by the orders in the suit since:
 - 1) Gagan was a party and lands comprised in estate "A" were added as subject matter of the suit;
 - 2) the observation of trial court in one order about abatement was incorrect as cause of action had survived on account of estate being undivided;
- (b) the doctrine of *lis pendens* applies and the sale in favour of "Gagan-Estate" is bad and inoperative.

Decide both appeals which have been clubbed.

(60 Marks)

2. H and W, both Hindus, were married to each other according to Hindu Vedic rites on 01.01.2000 and lived together in matrimonial home till 01.06.2001 when W, then pregnant, left for her parental home expressing inability to continue cohabitation on account of her grievances about interference in her life by the widowed sister of H also living under the same roof. She refused to return even upon H requesting her several times on phone or by e-mails. During her stay in parental home, W gave birth to a son on 01.02.2002. On 01.05.2003, W joined a post-graduate degree course in University in the same town and shifted to hostel accommodation leaving the child in the care of her parents. Upon learning these facts, H came to the Hostel on 01.07.2003 to convince W to return with the child to his society offering to set up separate house for the sister. He stayed with her for two days but returned, on 03.07.2003, with W still not ready to resume cohabitation. On 01.08.2004, H served a legal notice on W setting out the above facts asking her to resume cohabitation within two months reserving right to file petition for divorce on grounds of mental cruelty and desertion. H filed a petition (first case) in Family Court on 01.06.2005 seeking for decree of dissolution of marriage on ground of desertion. The petition is contested by W denying willful desertion referring to the conduct of sister of H as cause of discord.

On 01.07.2005, W filed a petition (second case) in Family Court seeking restitution of conjugal rights against H expressing desire to live with him provided there was cordial atmosphere. H suffered these proceedings *ex parte* and thus this petition was decreed on 01.01.2006.

On 01.07.2006, H served a notice on W, asking her to return to matrimonial home forthwith informing her that his widowed sister had shifted residence to another town. W did not respond to the notice. H filed another petition (third case) in Family Court on 01.02.2007 seeking dissolution of marriage referring to the conduct of W after filing of the petition in the first case. This case is also contested by W referring to the discord mentioned in reply to the first case.

Both petitions filed by H, i.e. first and third case, have been clubbed. Decide.

(40 Marks)

3. (a) Write a short note on effect of acknowledgement on limitation.

(15 Marks)

(b) Elaborate the law on liability for holding out as a partner.

(10 Marks)