

2018
LAW PAPER I
(Tamil & English Versions)

Duration : 3 Hours

Max. Marks : 100

General Instructions to candidates :

- i. Section A, B and C have 6 questions each and the candidates shall answer 5 questions each from each of these sections . Each question in these sections carry 5 marks each .
- ii. Section D contains 2 questions and both the questions should be answered. Each question in this section carries 10 marks.
- iii. Section E contains 1 question and it carries 5 marks.
- iv. The facts and particulars provided in the Question Paper i.e. the court name, place, case numbers, names of parties etc., found in the questions are fictional and may not be true in the real and legal sense. Yet candidates have to conclusively assume them to be true for the purposes of solving the questions.
- v. Candidates may write the answers either in English or in Tamil but not in both.
- vi. The question paper is printed in Tamil and English versions. In all matters and the cases of doubt, the English version is final.

LAW PAPER I
SECTION A — (5 x 5 = 25)
CODE OF CIVIL PROCEDURE

1. A sale deed was executed by Aravind in favour of Balu with respect to certain properties in Ponneri. Claiming share in the said properties Chandran s/o Aravind filed a suit seeking Permanent Injunction restraining the Sub Registrar, Ponneri from registering the sale deed executed by Aravind in favour of Balu before the District Munsif Ponneri. Discuss with reasons about the maintainability of the Suit before the civil court.

2. Do the principles of Res judicata apply between two stages in the same litigation — Discuss briefly.

3. A suit for declaration of title and for recovery of possession of immovable properties was filed and the same was decreed by the trial court without considering and going into the plea of adverse possession raised by the defendant. In the Execution petition filed by the plaintiff/deGREE holder, the defendant/Judgment debtor filed an application per se void for under Sec. 47 Code of Civil Procedure, 1908, stating that the decree is not executable and the reason that his defence of adverse possession was not considered. He also filed Kist receipts and patta in his favour. Would the claim of the defendant/Judgment Debtor be sustainable? Elaborate your answer with reasons.

De Facto IAS

Tamil Nadu Mains Questions 2018

4. For action against Public nuisance - who can initiate proceedings before the Civil Court? Discuss quoting the relevant provisions in the Code of Civil Procedure, 1908.

5. In an Execution proceeding, -the Judgement Debtor/Défendant was set exparte for non-appearance and order was passed. After 35 days of the order, the Judgement Debtor/Defendant filed an application to set aside the exparte order along with an application under Section 5 of the Limitation Act, 1963 to condone the delay in filing the set-aside application. Would the executing court be justified in allowing the petition filed under Section 5 of the Limitation Act, 1963? Discuss with reasons.

6. Interpleader Suit — discuss giving illustration.

SECTION B — (5 x 5 = 25) CODE OF CRIMINAL PROCEDURE

7. Briefly narrate the Procedure for trial of Warrant Cases instituted otherwise than on Police Report.

8. Whether a Magistrate could order police custody when the Accused pleads right of silence and alleges that no information would be disclosed by him in the police custody even if he is sent to police custody. Qualify your answer with reasons.

9. During the course of trial before a Magistrate, from the deposition of the witnesses it is revealed that offences triable by the Court of Sessions have also been committed by the accused. What is the course to-be adopted by the Magistrate? Explain with relevant sections.

10. Discuss the scope and powers of Court under Sec. 357A Code of Criminal Procedure, towards Victim Compensation.

11. Kumar 1 is convicted for offences under section 326 Indian Penal Code and 506(II) Indian Penal Code and sentenced to undergo three years rigorous imprisonment and 2 years Simple Imprisonment respectively by the Judicial Magistrate, Alandur. The court directed that the sentences should run consecutively and the sentence of rigorous imprisonment for 3 years should follow the sentence of simple imprisonment for 2 years. Does the court have power to specifically indicate as to which of the sentences would commence first. Explain by citing the relevant section.

De Facto IAS

Tamil Nadu Mains Questions 2018

12. pay compensation of Rs. 50,000/- to the defacto complainant and in default to undergo imprisonment for 3 months. The accused did not pay the compensation and he underwent the default sentence also. Would the accused still be liable to pay compensation? Give your reasons with reference to the relevant provisions of the Code of Criminal Procedure, 1973.

SECTION C — (5 x 5 = 25) INDIAN EVIDENCE ACT

13. Can a Witness or his Counsel object to the questions asked by the Court to the witness on the ground that it is irrelevant? Elaborate your answer citing the relevant provisions of Indian Evidence Act, 1872

14. Can secondary evidence be let in with respect to Electronic record. What precautions are to be taken before admitting such evidence?

15. During cross examination of the prosecution witnesses, some of them admitted that they were interviewed by the Public Prosecutor on that day before trial. Whether the credibility of the witnesses is impeached by the above admission. Discuss briefly.

16. Whether an admission made by a party to the suit in an earlier proceeding, is admissible as against him in the subsequent proceedings?

17. How can a document which requires attestation be proved when the Attestors are not alive?

18. In a trial PW3, Anand was examined in chief, but was not cross examined. Hence his evidence was closed. Later on, an application was filed to recall PW3 and to cross examine him and the same was allowed. Witness summons issued to PW3, Anand, were returned with an endorsement that the said person had died. So he could not be cross examined. During arguments it was submitted on the side of the applicant that the evidence of 'PW3' cannot be considered as he was not subjected to cross examination. What is the evidentiary value of 'PW3's deposition? Discuss based on the relevant section.

SECTION D — (2 x 10 = 20) CONSTITUTION OF INDIA

19. Whether the Right to Life under Article 21 of the Constitution includes the Right to die? Discuss based upon recent citations of the Hon'ble Supreme Court.

20. Elaborate on the Rights of accused as enumerated in D.K. Basu Vs. State of West Bengal, — AIR 1997 SC 610.

SECTION — (1 x 5 =5)
PLEADINGS

21. If Mala Fides and Bias is pleaded, the party against whom Mala Fides and Bias is alleged, is to be added as a party. Discuss and explain this statement.

2018
LAW PAPER II
(Tamil & English Versions)

Duration : 3 Hours

Max. Marks : 100

General Instructions to Candidates :

- i. The facts and particulars provided in the Question Paper i.e. the court name, place, case numbers and names of parties are fictional. Yet candidates have to conclusively assume them to be true for the purposes of solving the questions. .
- ii. Candidates may write the answers either in English or in Tamil but not in both.
- iii. The Question Paper is provided in Tamil and English versions. In all matters and the cases of doubt, the English version is final.

De Facto IAS
LAW PAPER II
SECTION A — (4 x 10 = 40)
FRAMING OF ISSUES

Note :

- i. This section contains four questions and all the four shall attend. For the Pleadings provided, issues shall be framed. The question carries 10 marks.
- ii. The candidates are to assume the role of the Presiding Officers and they are to consider the details of the pleadings furnished herein below and frame necessary issues.
- iii. Candidates need not write the cause title of the case, court number, the name of the Judge, case number, name of the Advocates etc., No separate marks will be awarded for writing cause title. Marks will be awarded only for the Issues framed.

1. Suit for declaration, recovery of possession and for mesne profits with costs.

The averments in the plaint are briefly as follows :-

The suit property, which is a Bajanaimadam belongs to the Baliya Naidus of Melapalayam, Vadakailasam, Panruti Taluk. The plaintiff is the hereditary trustee of the said Bajanai madam, which has been so declared in the compromise decree in O.S.No0.648/26 on the file of this court. The suit property was rented out to one Parthasarathi Naidu on a monthly rent of Rs.15/- and he was paying rent regularly, but later fell into arrears. He became a chronic defaulter. In the minutes book of the trust, the said Parthasarathi Naidu had acknowledged the rent due by him on 09.2.1975. The said Parthasarathi Naidu and his son have signed in the minutes book and thereby undertook to vacate the suit property by the month of Chitrai. But Parthasarathi Naidu did not vacate the property. Further, he let out the suit property to the defendant, in the year 1976 and the defendant has been in possession and enjoyment of the suit property. The defendant had no right to be in possession and he was inducted into possession only by the tenant of the trust in the year 1976. The defendant is none other than the brother of the deceased Parthasarathi Naidu. As the defendant refused to vacate the suit property, the plaintiff issued a notice on 05-10-1977, for which the defendant gave a false reply, thereby denying the title of the trust. As the defendant denied the title of the plaintiff, the plaintiff is obliged to file this suit for declaration of title, recovery of possession and for mesne profits with costs.

Written statement of the defendant in brief:

The defendant contends that the plaintiff has no locus standi to file the suit, as he is not the hereditary trustee of the Baliya Naidu Community. The allegation that there is a 'Bajanai madam' which belongs to the Baliya Naidus community, is denied. The decree in O.S.648/26 is not binding on the defendant. The suit property was rented out to one Parthasarathi Naidu and he committed default and that he acknowledged the arrears in the minute book are not known to the defendant. The allegation that the defendant was put in possession only from June, 1976 is denied. The defendant and his predecessors- in-interest are in possession of the suit property for more than 50 years in their own right and that they have in any event prescribed title to the suit property by adverse possession. The notice issued by the plaintiff was suitably replied by the defendants and the plaintiff has no right to claim any mesne profits, as against the defendant. Therefore the suit has got to be dismissed with costs.

2. Suit for partition of the plaintiffs' share in the suit property and mesne profits .

The averments in the plaint are briefly as follows :



De Facto IAS

Tamil Nadu Mains Questions 2018

The first Plaintiff is the younger sister of one Raja Balasubramania Mudaliar. The second and third plaintiffs are daughters of Dhanapathi Ammal, the elder sister of the first plaintiff and Raja Balasubramaniam. The first plaintiff's father was Raja Mudaliar. Kumaravel Mudaliar and Somasundara Mudaliar were brothers of the said Raja Mudaliar. Somasundara Mudaliar died in 1920, leaving behind him surviving his widow and a son Masilamani. Kumaravel, Raja and Masilamani entered into a partition agreement of the joint family properties on 24-01-1925 in which the suit property fell to the share of Raja Mudaliar. Raja Mudaliar died on 20-4-1925 leaving behind him surviving his only son Raja Bala Subramaniam, two daughters Dhanapathi Ammal and Santhanayaki Ammal and his widow Pappathi Ammal. Dhanapathi Ammal had three daughters Doraikannu, Jayalakshmi, the 2nd plaintiff and Nagarathinam, the third plaintiff. Dhanapathi Ammal died in or about 1946. Doraikannu died in Singapore. Raja Balasubramaniam was married to one Neelambal Ammal in the year 1918. They had no issues. Neelambal Ammal died on 16-3-1959. Raja Balasubramaniam died on 18-8-1969 at T.B.Sanitorium. Soon after the death of his father Raja Mudaliar, his son Raja Balasubramaniam became the absolute owner of the suit property and he was in possession of the same till he died. The first defendant was born to Raja Balasubramaniam and Loganayaki Ammal. The second defendant is the husband of the first defendant. The plaintiffs understand that due to the illicit intimacy between Raja Balasubramaniam and Loganayaki Ammal, the first defendant was born. Since Raja Balasubramaniam wanted to keep the matter secret, he did not take the matter to any of his relatives nor intimate the birth of the child to anyone. After a year of the birth of the first defendant, there were differences between Raja Balasubramaniam and Loganayaki Ammal, and therefore Loganayaki Ammal left Madras and went to live at Irumbuliyur and the child continued to live with Raja Balasubramaniam and Neelambal Ammal. In the year 1961 the first defendant was married to the 2nd defendant at Madras. Raja Balasubramaniam retired from service in 1955 and thereafter he was employed as Security Officer in Messrs T.I. Cycles of India Ltd for a period of five years. During that time, he sold some of his properties at Walajabad and with the sale proceeds and with the aid of the service benefits, he completely renovated the suit property. After the death of the Raja Balasubramaniam, the first defendant issued a notice dated 27-3-1971 to the 2nd said plaintiff's husband Seetharama Mudaliar claiming herself to be the heir of Raja Balasubramaniam, demanded the return of certain cash and other personal effects of Raja Balasubramaniam. The said contention was promptly refuted by a notice dated 27-4-1971. The plaintiffs state that Raja Balasubramaniam died without any legal issues. The first defendant is not the legal heir of the said Raja Balasubramaniam and she has no manner of right over the property and estate of Raja Balasubramaniam. There was no relationship of husband and wife between Raja Balasubramaniam and Loganayaki Ammal and therefore in the absence of any such relationship, the first defendant cannot be said to be the legitimate daughter of Raja Balasubramaniam. The first and second defendants have no manner of right to be in possession of the property. The defendants are in illegal occupation of the suit property. Being the only heirs of the said Raja Balasubramaniam, the first plaintiff is entitled to one half share in the suit property. They are also entitled to claim mesne profits from the defendants from the date of the death of Raja Balasubramaniam, but they are waiving their claim of mesne profits up to the date of the suit. They are claiming the mesne profits from the date of the suit. The first plaintiff reported dead and plaintiffs 4 and 5 were brought on record as legal representatives of the first plaintiff as per order in I.A.No0.246/74 dt.8-3-1974. Hence the suit for declaration that the plaintiffs are the joint and put owners of the suit property; for partition of the suit property by metes and bounds the 2nd, 3rd plaintiffs in possession of one fourth share each respectively and the plaintiffs 4 and 5 be put in possession of one half share in the suit property and for recovery of mesne profits at Rs.150/-p.m. from the defendants.

Written statement of the defendants in brief:

The defendants contend that the relationship between Raja Balasubramaniam and Lokanayaki Ammal was that of legally married husband and wife and the first defendant is therefore a daughter of Raja Balasubramaniam. The plaintiffs are remote heirs and cannot claim any manner of right, title or interest in the suit property. During the lifetime of Raja Balasubramaniam, the first defendant was regarded as his own daughter. Raja Balasubramaniam left a Will in and by which he bequeathed the suit property to the first defendant to be enjoyed by her. The defendants deny that there was any illicit intimacy between Raja Balasubramaniam and Lokanayagi Ammal. The defendants performed the funeral ceremonies and so they rightly claim to succeed to the estate of Raja Balasubramaniam. The first defendant is his heir and legitimate issue and so she is entitled to the suit property. The defendants deny that they are not in legal occupation of the suit property. The plaintiffs are not entitled to claim any right or interest in the property. The plaintiffs are not entitled to claim mesne profits at Rs.150/-per month. The suite property is a very old and dilapidated building. Hence they pray that the suit may be dismissed with costs.

In the additional written statement, the first defendant contends that she is the lawful issue of deceased Raja Balasubramaniam, who was the absolute owner of the suit property and the defendants were in possession of. the same till the death of her father. She denies that Raja Balasubramaniam stayed with the second plaintiff during his last days. She is the only legal issue of the deceased Raja Balasubramaniam and she was acknowledged to be so by him and his wife Neelambal during their lifetime.

3. Suit for directing the defendant to deliver vacant possession of the suit property, for directing the defendant to pay Rs.360/- being the arrears of rent and to pay damages, for use and occupation from 01-03-1975 to 31-3-1975 and for directing the defendant to pay Rs.40/- per month for damages for use and occupation from date of plaint till date of delivery of possession and for costs of the suit.

The averments in the plaint in brief are :

The plaintiff-Devasthanam is the owner of premises No.13A, Jeenis Road, more fully . described in the plaint schedule. The defendant was a tenant of the said premises on a monthly rent of Rs.40/-. The defendant had failed and neglected to pay the rent from June 1974. The plaintiff, therefore, determined the tenancy of the defendant with the end of the month of February 1975 by issuing a notice dated 25-1-1975 through counsel. The defendant had acknowledged the said notice on 06-02-1975. The plaintiff is obliged to come forward with this suit for recovery of possession of the suit property and for Rs.360/- being the arrears of rent due from June 1974 to January 1975, and for recovery of damages for use and occupation @ Rs.40/- per month from 1-3-1975 to 31-3-1975 which is the date of plaint and thereafter at Rs.40/- per month till date of delivery of possession of the suit property and for costs of the suit.

The defendant pleads as follows : The defendant admits that he is a tenant in respect of the suit premises, but states that he has been a tenant for a longtime. The defendant alleges that he has been paying rent regularly and in or about June 1974, the plaintiff refused to receive the rents. However, this defendant has paid rents up to date. . The defendant contends that the tenancy is one covered by the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 and hence the plaintiff is not entitled to maintain the suit for possession in this court and on this ground the suit is liable to be dismissed. It is also contended that notice to quit is not valid in law and the plaintiff is not entitled to claim possession. It is alleged that the defendant was always ready and willing to pay the sum of Rs.350/- as arrears and it is only the plaintiff, who has been refusing to receive the same. The defendant contends that this suit is not bonafide and he prays that the suit may be dismissed with costs.

4. Suit for redemption of Mortgage .

The plaint averments are as follows :-

Plaintiff executed a mortgage on 09-11-1922 in respect of suit property in favour of one Chinnan. As heirs of the mortgagee, the defendants are in possession of the suit property. Though the Plaintiff is ready to pay the mortgage amount, the defendants are not amenable to accept the amount and surrender the property. Hence, the suit.

The defendants have filed a written statement contending as follows :

For the debt of plaintiff and others, one Arunachalam Ramalingam filed O.S.445 of 1957 and purchased the equity of redemption of the suit property and other properties and therefore, the present plaintiff has no right to redeem the suit property from the defendants.

Plaintiff's Reply statement :

The plaintiff has filed a replication denying contentions of the contesting defendants in their written statement.

**SECTION B — (2 x 30 = 60)
WRITING JUDGEMENT**

Note :

- i. Candidates need not write the cause title of the case, court number, the name of the Judge, case number, name of the Advocates etc., No marks will be awarded for writing cause title. Marks will be awarded based on : (1) (i1i) appreciation of facts and evidence (i1) for application of law, and the reasoning given by the candidates for arriving at whatever conclusion they have reached.
- ii. The candidates are to assume the role of the Presiding Officers and they are to write judgement, commencing with answering the issues .
- iii. There are 2 questions in this section and each question carries 30 marks . Candidates are supposed to answer all questions .

5. **Plaint Averments in Brief :**

The Suit property originally belonged to one late Samy, who had two sons Anandan and Seshu and daughter Rajammal. Anandan died on 14.7.1970 and Seshu died on 14.12.1974. Rajammal died on 11.11.1972. Anandhan had a son by name Sethuraman who died on 15.5.1975. Plaintiff Mythili is the widow of Sethuraman. Rajammal had a son by name Sriraman, who is the defendant in the suit and a daughter by name Kalyani. Kalyani was married to her uncle Seshu and they had no children. After the death of Samy all his properties had been partitioned among his children and the suit property has been allotted to Seshu. After Seshu's death it devolved upon his wife Kalyani. The Defendant also happens to be the brother of Kalyani. Kalyani died intestate on 10.7.1987. After the death of Kalyani, the plaintiff is claiming right over the suit property as per section 15(1) of the Hindu Succession Act. The defendant being the brother of Kalyani took possession of the suit property and hence the suit has been filed seeking the relief of the Declaration of title and for recovery of possession.

Defendant's written statement in brief

The defendant resisted the suit on the ground that he alone is the heir of Kalyani and her husband as per Hindu Succession Act, 1956. Defendant also claims himself to be in possession of the suit property.

Issues :

1. Whether the plaintiff is the legal heir of the deceased Kalyani?
2. Whether the defendant as legal heir of Kalyani and Seshu excluded the plaintiff as claimed by him?
3. Whether the Plaintiff is entitled for declaration of title and for recovery of possession?
4. To what other relief?

Evidence :

Plaintiff side evidence :

1. PW1 - Plaintiff Mythili has deposed in support of her case.

Defendants side evidence :

1. DW11 - Defendant Sriraman has deposed in support of his case.

Arguments :

Plaintiff's Counsel has claimed that the plaintiff is the sole legal heir of deceased Kalyani. Defendant's counsel has claimed that the defendant is the sole legal heir of Kalyani.

Admitted facts :

De Facto IAS

Tamil Nadu Mains Questions 2018

1. Relationship between parties and the fact that the suit property of Seshu devolved on his wife Kalyani after his death are admitted.
2. Defendant in possession of the Property is also admitted.

The provisions of Section 8, 15, 16 and schedule of Hindu Succession Act, 1956 are provided for reference. With the above facts, the judgement shall be written.

Section 8 :

8. General rules of succession in the case of males :

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter

- a. firstly, upon the heirs, being the relatives specified in class I of the Schedule ;
- b. secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule ;
- c. thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- d. Lastly, if there is no agnate, then upon the cognates of the deceased.

Section 15 :

15. General rules of succession in the case of female Hindus :

1. The property of a female Hindu dying intestate shall devolve according to the - rules set out in Section 16 :

- a. firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- b. secondly, upon the heirs of the husband;
- c. thirdly, upon the mother and father;
- d. fourthly, upon the heirs of the father; and
- e. lastly, upon the heirs of the mother.

2. Notwithstanding anything contained in sub-section (1)

- a. any property inherited by a female Hindu from her father or mother shall other devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and
- b. any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

Section 16

16. Order of succession and manner of distribution among heirs of a female Hindu

The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among -those heirs shall take place, according to the following rules, namely:

Rule 1 : Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

Rule 2 : If any son or daughter of the intestate had predeceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3 : The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 the case shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as may be, and such person had died intestate in respect thereof immediately after the intestate's death.

THE SCHEDULE

HEIRS IN CLASS I AND CLASS II

CLASS I

Son ; daughter; widow; mother; son of a predeceased son; daughter of a predeceased son; son of a predeceased daughter; daughter of a predeceased daughter; widow of a predeceased son; son of a predeceased son of a predeceased son; daughter of a predeceased son of a predeceased son; widow of a predeceased son of a predeceased son. Son of a predeceased daughter of a predeceased daughter; daughter of a predeceased daughter; daughter of a predeceased daughter of a predeceased son of a predeceased daughter; daughter of a predeceased daughter of a predeceased son.

CLASS II

I. Father.

II. (1) Son's daughter's son,
(2) Son's daughter's daughter,
(3) Brother,
(4) Sister.

III. (1) Daughter's son's son,

De Facto IAS

Tamil Nadu Mains Questions 2018

- (2) Daughter's son's daughter,
- (3) .Daughter's daughter's son,
- (4) Daughter's daughter's daughter.

- IV. (1) Brother's son,
(2) Sister's son,
(3) Brother's daughter,
(4) Sister's daughter.

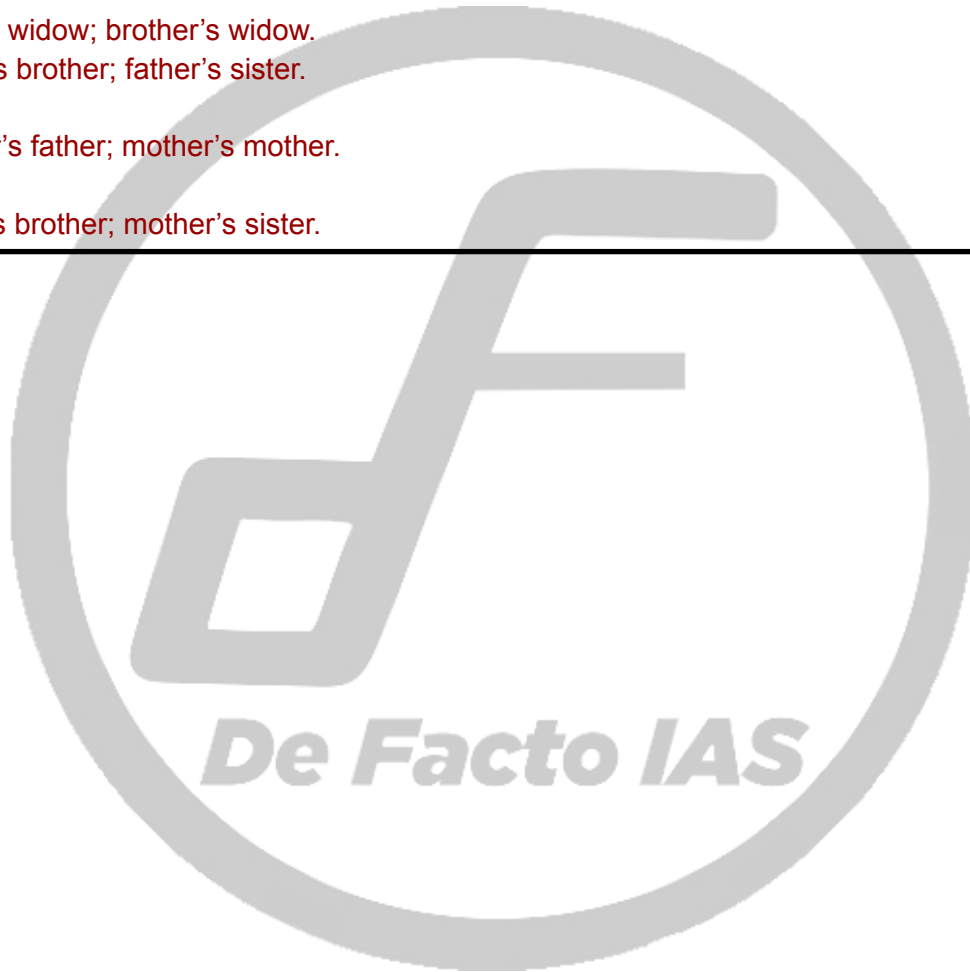
V. Father's father; father's mother.

VI. Father's widow; brother's widow.

VII. Father's brother; father's sister.

VIII. Mother's father; mother's mother.

IX. Mother's brother; mother's sister.



6. The case of the Plaintiff :

The defendant borrowed from the plaintiff a sum of Rs. 50,000/- by way of cheque dt. 22.4.2016 agreeing to repay the same on demand with interest at 12% per annum. Despite repeated demands and issuance of legal notice dt. 10.10.2016. The defendant refused to repay the amount. Hence the Plaintiff has filed this suit claiming Rs. 50,000/- with interest at 12% per annum.

The case of the Defendant.

The defendant has not borrowed any money from the Plaintiff. In fact the Plaintiff had taken a hand loan of Rs. 50,000/- from the defendant about 6 years ago and when the said amount was demanded, the Plaintiff had issued the suit cheque dt. 22.04.2016 which was encashed by the defendant. The Plaintiff had requested him to depose evidence in his favour in a civil suit, which he had refused. Because of this enmity the Plaintiff had filed the present false claim against the defendant. No amount is payable to the Plaintiff. Hence the suit is liable to be dismissed.

Issues :

1. Whether the suit cheque was issued as a hand loan to the defendant?
2. Whether the Plaintiff had issued the suit cheque only towards repayment of the debt due towards the defendant?
3. Whether the Plaintiff is entitled to the suit claim?
4. To what other relief?

Plaintiff's side evidence :

1. Plaintiff has examined himself as PW1 and has deposed in favour of his case.
2. One Prabhu has been examined as PW2. He has deposed that the cheque was given by the plaintiff only as hand loan to the defendant.

Exhibit Ex A1 is the Legal notice issued by the plaintiff.

Defendant's side evidence :

1. Defendant examined as DW1 — Defendant had deposed in his cross examination that though he had received legal notice he had not sent any reply because when the defendant approached the plaintiff after receipt of the legal notice the Plaintiff had agreed not to proceed with any litigation in pursuant to the cheque. However he had admitted that he is not aware of the suit number for which he was called to depose in favour of the Plaintiff. The defendant has admitted that Prabhu was present when the Plaintiff gave him the suit cheque. He has also admitted that there is no previous enmity with Prabhu.
2. Defendant's brother Ramasamy was examined as DW2.

He has deposed that 6 years ago the Plaintiff had borrowed Rs. 50,000/ from the defendant as a hand loan.

De Facto IAS
Tamil Nadu Mains Questions 2018

Exhibits : NIL

Arguments :

Counsel for the Defendant argued that presumption under Sec. 139 of Negotiable Instruments Act is in his favour. The counsel for the plaintiff has argued that presumption under Sec. 118 of Negotiable Instruments Act is in his favour.

Admitted facts :

1. The suit Cheque dated 22.4.2016 was encashed by the defendant With the above facts, the Judgment shall be written.

2018
LAW PAPER III
(Tamil & English Versions)

Duration : 3 Hours

Max. Marks : 100

General Instructions to candidates :

- i. The facts and particulars provided in the Question Paper i.e. the court name, place, case numbers and names of parties are fictional. Yet candidates have to conclusively - assume them to be true for the purposes of solving the questions.
- ii. Candidates may write the answers either in English or in Tamil but not in both.
- iii. The Question Paper is provided in Tamil and English versions. In all matters and the cases of doubt, the English version is final.

LAW PAPER III
SECTION A — (4 x 10 = 40)
FRAMING OF CHARGES

Note:

- i. This section contains four questions and all the four shall be attended. Each question carries 10 marks.
- ii. The candidates are to assume that they are the Presiding Officers and they are to consider the details of the final report furnished herein below and frame necessary charges specifically against each accused. If the candidates feel that the accused are to be discharged they shall pass a reasoned order discharging the accused.
- iii. Candidates need not write the cause title of the case, court number, the name of the Judge, case number, name of the Advocates etc., No marks will be awarded for writing cause title.

De Facto IAS

Tamil Nadu Mains Questions 2018

1. The defacto complainant, wife of the 1st accused, while living with her husband in the matrimonial home, had preferred a complaint against her husband the 1st accused and his family members namely the 2nd accused her mother-in-law, 3 and 4 accused her sister-in-laws, alleging that the accused persons abused her verbally and harassed her on 23.11.2009 in the house of the accused at about 3.00pm. The final report was laid against accused 1 to 4 for offences under sec. 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998.

2. On 13.6.2015 at about 20.00 hours the accused A1 to A4 armed with wooden logs along with A5 and A6 formed themselves into an unlawful assembly in front of the shop of the defacto complainant David at Block No.71, Kotturpuram, Chennai and A1 by uttering trespassed into the said shop and assaulted David with wooden log on his head causing simple injury. The second accused entered the shop and assaulted David on his legs with a wooden log causing injury. When John, brother of David intervened he was also assaulted on his face by A4 with a wooden log resulting in loss of his left molar tooth. A3, A5 & A6 threatened David that if the same is repeated in future he will face dire consequences. Due to the injury sustained on the leg, David was bedridden and he underwent treatment as in-patient till 05.7.2015 at 'MN' Hospital. The Doctor who treated David opined that David has suffered simple injuries and John has suffered grievous injuries. The Inspector of Police of Kotturpuram Police Station laid a final report against A1 to A6 for offences under sec. 147, 148, 323, 326 r/w. 149, 452, 294(b) and 506(ii) IPC.

3. On met at the hotel, 27.6.2001 at 2.30 pm at Green Hotel, Red hills, the defacto complainant Kumar A1 abused A11 for not returning back Rs. 50,000/ which he had borrowed from him. A1 confided the incident to his brothers A2 and A3 at his home and they mutually decided to beat Kumar. On the same day at 8.30 pm A1 to A3 gathered near Ayyappan temple at Kattupakkam through which Kumar passes regularly to his home. When Kumar passed by, A1 who was hiding behind the Ayyappan temple whistled and signalled Kumar's arrival to the other accused who were standing 150 ft away. A2 caught hold of Kumar while A3 assaulted him with a knife thereby causing grievous injury on his right shoulders. The final report has been filed by the Inspector of police charging A1 to A3 for offences under sec. 341, 326 r/w. 34 IPC .

De Facto IAS

Tamil Nadu Mains Questions 2018

4. According to the final report laid down by the DCB Police, Virudhunagar, A1 Raman, A2 Hari and approver 1 Samy Pillai are close friends. Between 12.7.1996 and 14.11.1996, all the three of them had cheated one Suresh and the complainant State Bank of India, Main branch, Virudhunagar fraudulently and dishonestly, deceiving and inducing the Bank to deliver a sum of Rs. 1,40,000/- from Suresh's account. The 2nd Rs. Rs. accused Hari had withdrawn, on 12.7.1996, Rs. 75,000/- and on 14.8.96, 55,000/-, from Suresh's Savings Bank Account No0.95/21379. Similarly on 8.11.96 the 5,000/-, and on 13.11.96 Rs. 5,000/- have been withdrawn by the approver Samy Pillai. During the same course of transaction, the 1st accused Raman had forged and created a duplicate pass book of S.B. Account No. 95/21379 and had made entries in it for period 5.8.1995 to 22.2.1996 (i.e.) the entries found in the original passbook, intending that the forged passbook shall be used for the purpose of cheating.

During the same course of transaction, A2 Hari and approver Samy Pillai, had forged certain documents namely 4 withdrawal slips intending that it shall be used for the purpose of cheating.

During the same course of transaction, A2 had fraudulently used as genuine, certain documents namely withdrawal slips which he knew to be forged documents even at the time when he used them and similarly the approver had also used forged withdrawal slips knowing fully well that they were forged documents even at the time when they were used.

A1 had abetted A2 in the commission of offence by inducing A2 to fill up the body of the first two withdrawal slips and also induced him to sign the withdrawal slips. He had similarly abetted the approver and induced him to fill up the remaining 2 slips. Hence charges for offences u/s 468, 420, 471, 420 r/w 109 IPC against the accused have been laid.

SECTION B — (2 x 30 = 60) WRITING JUDGEMENT

De Facto IAS

Note:

- i. Candidates need not write the cause title of the case, court number, name of the Judge, case number, name of the Advocates etc., no marks will be awarded for writing cause title. Marks will be awarded based on appreciation of facts and evidence, for application of Law, the reasoning given by the candidates for arriving at whatever conclusion they have reached.
- ii. The candidates are to assume the role of the Presiding Officer and they are to write the Judgment commencing from Points for Determination.
- iii. There are 30 questions in this section and each question carries marks. Candidates are to answer both the questions.

5. The complainant preferred Private complaint under 190(1) (a) r/w. 200 Code of Criminal Procedure, 1973 for offence under sec. 138 of Negotiable Instruments Act containing the following details:

The complainant has claimed that he owned five cents of land at Virugambakkam Revenue village, Chennai and the accused who was acquainted with him expressed his willingness to purchase the property for a sum of Rs. 2 crores. Both the parties agreed that the sale consideration would be shown as Rs. 75 lakhs in the sale deed so as to evade stamp duty which would help the purchaser, while the complainant would also be benefited by evasion of capital gains tax for the entire sum. As agreed, the sale deed showing the consideration of Rs. 75 lakhs was executed on 10.5.2016, this amount of Rs.75 lakhs was given by way of demand draft and it was also recorded in the sale deed. India, Rs. The accused also issued cheque bearing no. 101017 drawn on State Bank of Virugambakkam Branch dt. 10.5.2016 for the balance sale consideration of 1.25 crores on the same day.

When the complainant presented the cheque into his Indian Overseas Bank Account at Virugambakkam, the cheque was returned on 12.5.16 with the Banker's endorsement "Insufficient funds". Statutory notice under Section 138 of Negotiable Instruments Act, 1881 was issued on 16.5.16 and the same was returned on 19.5.16 with endorsement "intimation served addressee absent". Hence, the complainant issued a second notice on 20.5.16 and the same was received by the accused on 22.5.16, but he neither reply nor paid the cheque amount.

After recording sworn statement of the complainant, Court took cognizance against the accused for the offences under Section 138 Negotiable Instrumenté Act, 1881 and issued summons to the accused along with documents filed by the complainant. On appearance and questioning, the accused denied the offence and evidence was recorded on the side of the complainant. The complainant was examined as PW1 and the dishonoured cheque, Banker's endorsement, two legal notices with returned cover and acknowledgment card respectively and certified copy of the sale deed executed by the complainant in favour of the accused were marked as Exhibits P1 to P7. PW2 is a common friend of the accused and the complainant. He has deposed that the sale consideration was mutually agreed upon by both parties and fixed at Rs. 2 crores and that the subject cheque was issued for the balance consideration only.

When these incriminating circumstances made out from the evidence were put to the accused under section 313 (1) (b) Code of Criminal Procedure and questioned, the accused specifically denied the allegations .

No oral or documentary evidence was adduced on the side of the accused . Both sides were heard .

On the side of the complainant it was submitted that the accused has not denied his signature or the issuance of cheque and hence presumption under sec. 139 Negotiable Instruments Act, 1881 has to be invoked and as the accused has not rebutted the presumption, he is liable to be punished and the complainant must be compensated.

The counsel for the accused submitted that issuance of second notice is not permissible and further that there is no legally enforceable debt or liability and the complainant cannot depose against the recitals of the sale deed.



De Facto IAS

Tamil Nadu Mains Questions 2018

6. The final report as laid by the Inspector of Police , Coimbatore Race Course Police Stations is that on the night of 15.01.2008 at Valmeekam House, Race Course, Coimbatore the accused committed trespass into the house of the defacto complainant by breaking open the staircase door latch and committed theft of 5 gold bangles (2 bed sovereigns each) and 3 gold rings (1 sovereign each) from the Almirah kept in the room. Hence, the accused has committed offences punishable u/s. 457 and 380 IPC.

On appearance of the accused on receipt of summons, copies of the documents relied upon by the prosecution were furnished to him uw/s 207 Code of Criminal Procedure. The accused was questioned and he denied the offence and claimed to be tried. After perusing all the relevant records and hearing both sides, as the court is of the opinion that there is ground for presuming that the accused has committed offences under ws.457 and 380 IPC, the court framed charges against the accused for offences u/s 457 and 380 IPC. The charges were read over and explained to the accused in Tamil and he was questioned. The accused denied the charges and claimed to be tried.

The prosecution has examined (1) Mr. Purushothaman , (2) Mrs. Lakshmi , (3) Mrr. Kumar neighbour of Compliment , (4) Mr. Ravi Constable , and (5) Mr. Ramanathan Inspector of police as PW1 to PW5 and exhibits Ex. P1 tp Ex . P9 was marked . Material Objects M.O.1 and M.O.2 were marked .

The brief facts of the prosecution case is as follows:

PW1 and PW2 are residing at Valmeekam House, Race Course, Coimbatore. On 16.01.2008 when they woke up in the morning they found their house staircase door 'latch broken and 5 gold bangles (2 sovereigns each) and 3 gold rings (1 sovereign each) from the Almirah kept in the bedroom missing. On the same day at 9.00 am PW1 lodged Ex.P1 Police complaint and PW5, registered FIR in crime no. 37/2008 on the basis of Ex.P1 complaint. PW1 has also deposed that the police came to his house and investigated and later on 6/11/2008 his wife went to the police station and identified the jewels. PW2 has corroborated his deposition. He has also deposed that Experts visited the place of occurrence and on examination found that the accused had entered into PW1s house by breaking open the door latch of the staircase and entered the house through the staircase. No fingerprints were found.

PW3 has deposed about receiving information about the theft, visiting PW1's house, being present when the police inspected the house and signing as witness in the observation mahazar. His signature in the observation mahazar has been marked as Ex. P2 .

PW4 has deposed about the arrest of the accused near the burial ground at Pappampatti by the Investigation Officer , about recording the voluntary confession of the accused and recovery of jewels based on confession from the house of the accused situated behind Pappampatti burial ground. His signatures in the confession and seizure mahazar are marked as Ex.P3 and Ex.P4.

PW5 has deposed that he took up investigation on 16/1/2008 after receipt of complaint from PW1 and registering FIR Ex.P5 at 9.05 am. He has also deposed about inspecting the in the scene of occurrence, preparation of Ex.P6 Observation mahazar and Ex.P7 Rough sketch presence of PW3. He has further deposed that on 05.11.2008 at 11.00pm when 'he along with PW4 were on patrol duty near Pappampatti burial ground, he arrested the accused who was moving suspiciously, and that on enquiring, the accused gave a voluntary confession statement at-11.15 pm in the presence of PW4 who was the only available witness at that time and in furtherance of said confession, seized M.O.1, 5 gold bangles and M.O.2, 3 gold rings in the presence of PW4 from the house of the accused which is situated behind Pappampatti burial ground on the outskirts of Coimbatore City. The admitted portion of the confession and the seizure mahazar have been marked as Ex.P8 and Ex.P9. The Investigating Officer has also deposed that PW5, PW1 and PW2 identified the jewels so seized, in the Police station on 6.11.2008. He has further stated that after completing the investigation he filed the charge sheet against the accused.

After the Prosecution side was closed, the incriminating circumstances made out from the evidence was put to the accused and he was questioned under section 313(1)(b) Code of Criminal Procedure, 1973. The accused denied the same. The accused did not let in any evidence.

Arguments:

The Learned Assistant Public Prosecutor would submit that the evidence of PW1 to PWS5 are sufficient to prove the case of the prosecution that M.O.1 and M.O.2 were stolen from the house of PW1 and PW2 by the accused by committing housebreaking and theft. The cogent and corroborative evidence of PW1 and PW2 in identifying the recovered jewels both in the Police station and in the Court and the cogent and corroborative evidence of PW4 and PW5 in speaking about the voluntary confession of the accused and recovery made pursuant there to would prove the case against accused beyond all reasonable doubt and hence, the accused has to be convicted and sentenced, for the offence under section 457, 380 IPC.

The counsel for the accused would submit that there are no vital facts and evidence to implicate the accused in the occurrence, especially fingerprints at the scene of occurrence and evidence of any independent witness to speak about the arrest and recovery. He would submit that PW4 is an interested witness and as such his evidence cannot be considered. The counsel for the accused further submitted that there is no explanation on the side of the prosecution as to why and what made PW5 to arrest the accused on 05.11.2008 near the burial ground Pappampatti, when he had no evidence to connect the accused with the crime. The evidence of PW5 is also not specific to the extent that he arrested the accused under suspicion. Thus the case of the prosecution against the accused is false and the material objects alleged to have been seized are created for the purpose of the case.

Specify the offence under which the accused can be charged and write judgement.