Himachal Pradesh Civil Judge (Mains) 2024: Civil Law I — Solution

The paper asks about the Indian Evidence Act, 1872. Corresponding provisions of the Bharatiya Sakshya Adhiniyam, 2023 appear in the answers. Section 170 preserves the earlier Act for proceedings pending at commencement on 1 July 2024.

Question 1

1(A). SBI's interpleader plaint and the three competing defences · 8 + 12 marks

(a) In the Court of the Civil Judge at [place]. Civil Suit No. [ ]. State Bank of India, [branch], through its authorised officer, plaintiff, versus A, B and C, defendants 1–3, of [addresses]. Plaint under section 88 and Order XXXV of the Code of Civil Procedure, 1908.

1. X hired locker [number] and maintained deposits identified in Schedule I. X died intestate on [date]. The plaintiff holds the deposits and controls access to the locker. Its contents are to be identified by inventory. The competing demands and documents received are annexed.

2. A claims as adopted son, B as brother, and C as a supplier of necessaries and financial support. Each demands delivery inconsistent with another's demand. The bank claims no interest apart from lawful costs or charges and has no collusion with any defendant. All claim through or against X's estate. The bank is ready to deposit the money and deal with the articles as the Court directs.

3. The cause arose on receipt of the competing claims on [dates] at this branch within jurisdiction. The amount and valuation for jurisdiction and court fee are [particulars]. No pending suit known to the bank can properly determine all these rights. Pray direct deposit and inventory, determine the rightful recipient, discharge the bank on compliance, and allow proper costs. Schedule, authorisation and documents attached. [Officer's signature.] Verified at [place/date]: paragraphs 1–3 are true from identified bank records and inquiries. [Signature and affidavit.]

(b) In the same suit. Separate written statements under Order VIII. Each defendant admits X's death and the competing demands, denies inconsistent claims as set out below and asks that the bank deliver only under a decree. The defendants cannot give one joint verification of contradictory claims.

A, defendant 1: I am X's lawfully adopted son. I rely on [date, capacity of giver and adopter, consents, actual giving and taking, age at adoption and deed/witnesses]. My present age of 21 and separate residence do not determine my status at adoption. Under section 12 of the Hindu Adoptions and Maintenance Act a validly adopted son is the adoptive parent's child. I claim the Class I son's share under sections 8–10 and the Schedule to the Hindu Succession Act, subject to other entitled Class I heirs and proved estate liabilities. B's collateral claim is denied. Pray decree my entitlement after inquiry. [A, verification of facts within knowledge, date, place and affidavit.]

B, defendant 2: I am X's brother. I put A to proof of the pleaded adoption and C to proof of her status, advances and documents. As an heir in Class II, entry II, I claim only in the absence of Class I and prior-ranking heirs, subject to persons sharing my entry. An adopted son or surviving widow established in Class I excludes my claim. Pray determine heirship and release my established share. [B, verification and affidavit.]

C, defendant 3: I furnished necessaries and financial support during the three years of X's illness. The dates, amounts, recipients, proof of payment and basis for reimbursement are in Schedule C. I seek satisfaction of any debt proved against the estate; expenditure alone does not vest ownership of jewellery or title deeds in me. The expression "his wife" requires identification: if I am X's surviving widow I claim a Class I share as well; if I am B's wife, I assert only my independently proved creditor's claim. I deny the other defendants' exclusive entitlement. Pray settle the competing claims and preserve any separate remedy needed for a disputed debt. [C, verification and affidavit.]

1(B). When proof of one fact concludes another · 8 marks

Section 4 of the Indian Evidence Act distinguishes three judicial responses. Where the court may presume, it may call for proof or treat the fact as proved unless disproved. Where it shall presume, that latter course is mandatory until rebuttal. Where one fact is declared conclusive proof of another, the court must accept the second upon proof of the first and cannot admit evidence offered merely to disprove it. The party invoking the rule must establish every foundational condition. Evidence that a condition was absent addresses the foundation and remains admissible.

Section 112 illustrates the difference. Birth during the continuance of a valid marriage, or within 280 days of dissolution while the mother remains unmarried, establishes legitimacy unless the parties had no access to each other at any time when the child could have been begotten. Non-access means absence of opportunity. A quarrel, separation in feeling or mere denial of intercourse does not prove it. Kamti Devi v Poshi Ram emphasises the substantial proof required for non-access.

Under section 41 a competent probate court's final judgment conferring a legal character conclusively establishes that character from the time specified. It does not establish every incidental recital about estate assets. Competence, fraud or collusion may be shown under section 44. The BSA counterparts include sections 2(1)(b), 35, 38 and 116.

1(C). Written terms and admissible oral proof · 12 marks

Section 91 requires a party asserting the terms of a contract, grant or property disposition reduced to writing to produce the document. It applies also where law requires a matter to be recorded in writing. Several writings may together embody the terms. If statutory grounds for secondary evidence are established, the permitted form of secondary evidence may be given. For example, a witness who actually saw a lost original may describe its contents after loss and the foundation for that evidence are proved. A category requiring a certified copy cannot be satisfied with an oral summary. In Bai Hira Devi v Official Assignee of Bombay the Supreme Court distinguished proof of a document's terms from the further restriction on variation of established terms.

Section 92 operates between parties and their representatives once the terms are proved. It excludes oral agreement or statements offered to add to, subtract from, contradict or vary the writing. Its six provisos leave the following inquiries open. First, facts such as fraud, illegality, incapacity, want of execution, mistake or failure of consideration may invalidate the instrument or justify appropriate relief. Secondly, a separate agreement on a silent matter may be proved if consistent with the document; the document's formality matters. Thirdly, a separate oral condition precedent to an obligation can be shown. Fourthly, a distinct subsequent oral rescission or modification may be proved, except where the contract is required by law to be written or has been registered. Fifthly, a usage annexing incidents may be established if consistent with express terms. Sixthly, evidence may show how language relates to existing facts.

Thus a witness may identify which house locally bears the deed's description, or prove that delivery was conditional on an independent approval. He cannot simply substitute an alleged oral price for the plainly recorded price between the parties. Sections 93–98 further distinguish ambiguity apparent in the document from uncertainty in applying its language. Section 99 permits a stranger to prove a contemporaneous agreement varying terms when his own interest requires it. BSA sections 94–102 cover these rules.

Question 2

2(A). Understatement of value and fraudulent omission · 8 marks

Section 27 of the Indian Stamp Act, 1899 requires full and true disclosure of consideration and all facts affecting the duty or its amount. The Himachal Pradesh amendment expressly brings in market value where that measure applies. Reporting a lower figure may lead to assessment and recovery of a deficit. Criminal punishment under section 64 has the additional element of intent to defraud the Government.

Section 64 reaches the person executing an instrument which omits the required facts, a preparer who neglects or omits to state them, and a person performing another act calculated to deprive Government of duty or penalty. Each alternative is governed by the opening requirement of fraudulent intent. The central provision prescribes a fine up to ₹5,000. A bona fide dispute about comparable values can justify an inquiry into duty even if the evidence falls short of proving the offence.

Under the Himachal Pradesh section 47-A, the registering officer who has reason to believe that market value or consideration was untruly stated may refer after registration. The Collector must hear the parties, inquire and determine the proper amount. The liable party pays any deficiency. Subsection (3) permits the specified examination of a previously unreferred instrument within three years from registration. Distinguish this recovery and the separate impounding procedure from a prosecution for deliberate evasion.

2(B). Transfer and withdrawal of civil appeals in Himachal Pradesh · 8 marks

Section 22 of the Himachal Pradesh Courts Act, 1976 deals with an appeal already pending before the District Judge from a Civil Judge's decree or order. The District Judge may transfer it to another Civil Judge under his administrative control who is competent to dispose of it. The source decree, pendency, administrative relationship and competence of the receiving court must all fit. An ordinary transfer cannot confer appellate competence on a court that lacks it.

The District Judge may withdraw a transferred appeal. He can hear and decide it himself or retransfer it to another competent court under his administrative control. The transferee follows the rules applicable to an equivalent appeal heard by the District Judge. The whole power operates subject to general or special orders issued by the High Court. Transfer therefore changes who hears a pending appeal without changing the governing appellate procedure.

Section 21(3) separately permits the High Court, by notification, to direct specified appeals otherwise lying to the District Court to a named Civil Judge. That court is deemed the District Court for those appeals. Section 21-A is transitional: the Chief Justice can transfer proceedings pending before the High Court immediately before commencement of the 1994 amendment to the subordinate court which would have jurisdiction if the matter were newly filed after commencement.

2(C). The cab driver's account of the conspiracy · 12 marks

Section 10 of the Evidence Act requires reasonable ground to believe that two or more persons conspired to commit an offence or actionable wrong. Bhagwandas Keshwani v State of Rajasthan illustrates this requirement of reasonable ground. Once a prima facie common design is shown, acts, words or writings of one conspirator in reference to their common intention are relevant against the others, both to prove the conspiracy and to show participation. The statutory illustration allows acts after the intention was first entertained, even though a particular accused joined later or did not know all the participants. Mere joint trial is no foundation for this exception to the ordinary rule against hearsay.

Apply the distinction between what was said or done during the plan and what D says now about it. Words directing D to take B and C to the spot, spoken while the scheme was on foot, may be proved through a competent witness who heard them. Evidence that D drove them there, where they were found, and what he personally saw is independently relevant. An instruction about disposing of the body might itself concern a continuing common object if that disposal formed part of the plan. But a later account to investigators or a retrospective account at trial does not become the statement of every conspirator. The prosecution must identify the speaker, occasion and connection with the design.

D denies prior knowledge or agreement. A paid ride, even coupled with knowledge acquired en route, does not automatically establish intentional participation. Other evidence might show that he knowingly continued to assist; that is a finding requiring proof. This self-exculpatory account accusing A, B and C is not a confession of D's own guilt available under section 30. If he lawfully testifies to personal observations, the other accused can test them in cross-examination. Police restrictions apply to a police statement, while answers in the accused's own examination do not become sworn testimony against his co-accused. BSA sections 8, 23 and 24 are relevant counterparts.

2(D). Cancelling an outstanding written instrument · 12 marks

Section 31 of the Specific Relief Act allows the person against whom a written instrument is void or voidable to sue for its cancellation if leaving it outstanding creates a reasonable apprehension of serious injury. Identify the particular deed, the legal defect, how it could be asserted against the plaintiff, and the injury feared. A forged deed that clouds title or a registered conveyance procured from its executant by fraud can satisfy the practical purpose of the remedy. A bare assertion that the instrument is inconvenient does not establish a ground.

The court has discretion to adjudge the instrument void or voidable and order it delivered up and cancelled. If it was registered, the court sends a copy of the decree to the registration officer and the officer notes cancellation against the relevant entry. That protects against continued reliance on the public record. A stranger whose own independent title is asserted may need a declaration that the instrument does not bind him, and possession if dispossessed; the relief should correspond to the actual legal interest and injury. Article 59 of the Limitation Act ordinarily allows three years from knowledge of the facts entitling the plaintiff to cancellation or setting aside.

Section 32 permits partial cancellation when the instrument evidences distinct rights or obligations which can properly be separated. The court should identify which provisions survive rather than rewrite an inseparable bargain. Section 33 permits an order restoring benefits received or awarding compensation as justice requires. It also addresses successful resistance to enforcement of a voidable instrument and, within the statutory limit of benefit, an agreement void owing to incapacity under section 11 of the Contract Act. Cancellation removes the outstanding evidence of a right; restoration prevents the successful party retaining an inequitable advantage.

Question 3

3(A). Identifying the real dispute and the competent court · 8 marks

Section 9 CPC gives the civil courts jurisdiction over suits of a civil nature except those expressly or impliedly barred. A controversy over a right to property or an office is civil even if its decision depends entirely on religious rites and ceremonies. Determine jurisdiction at institution from the material allegations in the plaint read as a whole, the legal right asserted and the true relief sought. A defendant's anticipated denial cannot change the character of that claim. Conversely, the words "declaration" or "injunction" cannot confer jurisdiction when the relief would in substance nullify a determination reserved to a special forum.

Dhulabhai v State of Madhya Pradesh requires close examination of the special enactment. Look for explicit exclusion, finality clauses, the creation of special rights or liabilities, an adequate mechanism to investigate and grant relief, and the scope of any challenge to the very legality of the proceedings. Failure to follow fundamental judicial procedure differs from an alleged error within jurisdiction, which the statutory appeal can correct. Exclusion is not readily inferred.

After subject-matter competence, test pecuniary limits and the territorial rules of sections 15–20 against the claim as properly valued. Returning a plaint to the competent civil court under Order VII rule 10 differs from rejecting a plaint disclosing a legal bar under rule 11(d).

3(B). Separate instruments and the stamp already used · 8 marks

Sections 13–15 of the Indian Stamp Act protect the allocation of duty to the particular instrument. An instrument on impressed stamp paper must be written so the stamp appears on its face and cannot be used again. Once an instrument chargeable to duty has been written on the sheet, section 14 prohibits writing a second chargeable instrument on it. Space at the bottom and the face value of the stamp do not make a fresh document duly stamped. Under section 15 an instrument written in violation is deemed unstamped, with the ordinary consequences for impounding and admission where applicable.

First, P writes a duly stamped lease in favour of Q. Q subsequently writes an independent chargeable loan agreement with R on the unused reverse. That agreement is a second instrument and is treated as unstamped. Secondly, where a mortgage secures payment of money and the mortgagee endorses receipt of that money on the mortgage, section 14 permits the endorsement if duly stamped or itself exempt. The same proviso permits a properly stamped or exempt endorsement transferring a right created or evidenced by the instrument.

The inquiry is whether there are two independent chargeable instruments. Sections 4–6 separately determine duty on several instruments completing the same transaction or on an instrument covering distinct matters or descriptions.

3(C). Joinder, addition and transposition · 12 marks

Order I rules 1 and 3 allow multiple plaintiffs or defendants when relief arises from the same act, transaction or series, jointly, severally or in the alternative, and separate suits would raise a common question of law or fact. Both requirements matter. A passenger and the owner of damaged cargo may have different damages yet share a collision and the issue of negligence. Rule 7 permits alternative defendants where the person entitled to relief has a genuine doubt about whom to sue. Rules 2 and 3A permit separate trials or other orders where joinder would embarrass or delay proceedings.

The plaintiff ordinarily selects whom to sue, but rule 10(2) permits the court, at any stage, on application or of its own motion and on just terms, to strike out an improperly joined party or add a person who ought to be joined, or whose presence is needed for effective and complete adjudication. A necessary party is one in whose absence an effective decree cannot be made. A proper party assists complete resolution of the questions in the suit. An interest in the precedent or in an unrelated dispute is insufficient. Rule 9 saves proceedings from ordinary misjoinder or nonjoinder; absence of a necessary party is excepted. Objections should ordinarily be taken at the earliest opportunity under rule 13.

Transposition changes the side of an existing party and can secure adjudication where that party's genuine interest aligns with the other side. Under Order XXIII rule 1A a defendant asking to be transposed as plaintiff when the original plaintiff withdraws or abandons the suit must show a substantial question to be decided against another defendant. The court hears affected parties, considers alignment and prejudice, settles the amended pleadings and provides an opportunity to meet the claim. It cannot force fundamentally inconsistent causes into one suit simply for convenience.

3(D). Possession shown by B and the case against A · 12 marks

Section 11 of the Evidence Act makes an otherwise irrelevant fact relevant through either of two connections. It may be inconsistent with a fact in issue or relevant fact. Alternatively, alone or in connection with other facts it may make the existence or non-existence of such a fact highly probable or improbable. The statutory illustration of an accused being elsewhere at the material time shows the difference between a decisive inconsistency and a circumstance that merely creates some speculative doubt. “Highly” limits collateral inquiries.

Ask C precisely what he saw, when and where, how he identifies the arms now produced and what B actually did. First-hand evidence that B physically handled and displayed the particular weapons close to the charged time directly bears on B’s custody and knowledge. If they were other weapons or the date was remote, the link needs further proof. A witness repeating someone else’s account that B showed him arms raises a different hearsay issue.

As against A, B’s possession does not by itself establish knowing or joint possession by A. Equally, one person’s handling of a movable thing is not inherently inconsistent with another’s joint control. The display does not prove exclusive possession by B unless the surrounding circumstances make that a reliable inference. Evidence that B alone kept the weapons in a locked place under his exclusive control at the relevant time could materially weaken the case against A. Evidence that both exercised control could support the opposite inference. The judge should state the proposition for which C is heard, apply the high-probability test if relying on section 11, and independently assess the remaining evidence against each accused. BSA section 9 corresponds.

Question 4

4(A). Constructive res judicata and representative litigation · 8 marks

Section 11 CPC bars retrial of an issue previously directly and substantially in issue between the same parties, or persons claiming under them, litigating under the same title, where a competent court heard and finally decided it. Explanation IV treats a matter which might and ought to have been put forward as a ground of attack or defence in the first suit as if it had been directly and substantially in issue. The omitted ground must have been available and one which should fairly have been raised then. An unrelated claim or a right arising later is not barred merely because the parties litigated before.

Explanation VI deals with a public right or a private right claimed in common. Where persons litigate bona fide in respect of such a right for themselves and others, all interested persons are deemed to claim under those litigating. Order I rule 8 supplies a formal procedure for numerous persons with the same interest, including permission or direction, notice and safeguards on withdrawal or compromise. A decree binds the represented class as to the common matter.

For example, residents properly represented in an earlier bona fide suit over a common right of way cannot relitigate that right by naming a new resident. A genuinely independent private easement or a collusive proceeding calls for a different inquiry.

4(B). Compensation in addition to a decree for performance · 8 marks

Under section 21 of the Specific Relief Act the plaintiff suing for specific performance can also claim compensation for breach. Subsection (3) directly answers the question: if specific performance ought to be granted but performance alone is insufficient to do justice, the court shall award such compensation as justice requires. The plaintiff must establish an enforceable contract, the defendant's breach, his own entitlement to performance including section 16, and actual compensable loss left unremedied by performance.

A purchaser eventually receiving the promised premises may, for example, prove reasonable expenditure on alternative accommodation resulting from the seller's delay. Award the expense attributable to the delay after accounting for mitigation. Do not award both the value of the promised property and transfer of that same property. Subsection (4) applies Contract Act section 73 principles: loss naturally arising or within the parties' contemplation, with remote loss excluded.

Subsection (5) requires the compensation claim in the plaint, but permits amendment at any stage on just terms. The defendant should have the opportunity to contest loss. Indian Oil Corporation v Amritsar Gas Service illustrates the limit: a determinable distributorship could attract compensation, but the arbitrator could not compel its restoration. Subsection (2) separately addresses refusal of specific performance where a contract was broken and compensation is due. Distinguish that statutory inquiry from converting the suit into a wholly different claim for damages. Section 24 makes omission important, since dismissal of the specific-performance suit bars a later suit for compensation for the same breach.

4(C). Amending pleadings once trial has begun · 12 marks

Order VI rule 17 CPC empowers the court at any stage to permit alteration or amendment of pleadings on just terms and requires allowance of amendments necessary for determining the real questions in controversy. Read the proposed pleading alongside the original. Does it clarify a misdescription, add a material event or enable the real right to be adjudicated? Will it avoid another suit? Would it displace a binding admission, destroy an accrued limitation defence, or replace the original suit with a wholly unrelated dispute? Identify the effect on the opposing party and whether time to answer, evidence and costs can cure the prejudice.

An applicant should present the precise proposed changes, the material facts supporting them and the stage of proceedings. Serve the other side and decide the objection by reasons. The proviso sets an additional threshold after trial has commenced: the court must conclude that, despite due diligence, the applicant could not have raised the matter earlier. An assertion of inadvertence or a new advocate's preference does not meet the test. State when the information was sought, when it became available and what steps were taken. Vidyabai v Padmalatha treats due diligence as a condition on the power once trial has begun.

A later municipal order changing the status of the disputed premises may require an amendment even after evidence begins. A fact apparent in the applicant's own file throughout needs specific explanation. If allowed, record the precise scope, the terms and whether new issues or evidence are necessary. Under rule 18 an amendment must actually be made within the time fixed or, in default of a specified time, within fourteen days, unless the court extends time. Permission to plead a fact neither proves it nor prejudges the merits of any defence.

4(D). Admissions proved against their maker · 12 marks

Section 17 of the Evidence Act defines an admission as an oral, documentary or electronic statement suggesting an inference concerning a fact in issue or a relevant fact, made by a person and in circumstances specified by the Act. Sections 18–20 include a party or authorised agent, a representative acting in that capacity, certain persons with proprietary or pecuniary interests or from whom title was derived while the interest continued, a person whose position or liability must be established, and a person expressly referred to for information. Identify the relationship and authority at the time of speaking.

The ordinary rule in section 21 permits proof against the maker or representative in interest. The maker cannot establish the truth of his own favourable account merely by having said it earlier. The exceptions permit proof on his behalf if the statement would be relevant between third persons under section 32 if he were dead; if it records a relevant state of mind or body at or about the time and accompanying conduct renders falsehood improbable; or if relevant independently of being an admission. An accused claiming a watch was lawfully acquired cannot prove his own earlier repetition of that claim merely as an admission; a contemporaneous relevant fact independently explaining his conduct stands differently.

Prove the statement through a competent witness or authenticated record, give enough context to understand it, and permit explanation. Section 22 limits oral admissions about documents, section 23 protects specified settlement communications, and additional safeguards govern confessions. An evidentiary admission is substantive material but under section 31 is generally not conclusive; it may found an estoppel when its requirements are met. Formal admissions under section 58 may dispense with proof, subject to the court's discretion. BSA sections 15–21, 25 and 53 cover the main rules.

Question 5

5(A). Death of a formal defendant · 8 marks

Under Order XXII rule 1 CPC death alone does not cause abatement if the right to sue survives. Where it survives against the surviving defendants alone, rule 2 permits the court to record the death and proceed. Consider the relief sought and the effect of a decree on the deceased's estate. A party joined only for completeness, against whom no relief is sought and whose rights are unaffected, can often be omitted. Calling him "pro forma" in the caption cannot overcome an actual interest in the decree.

Where the right does not survive against the others alone, rule 4 requires representatives of the deceased defendant to be joined. Failure to apply within limitation entails abatement as against him. Rule 4(4) separately permits the court to exempt substitution of a defendant who failed to file a written statement or, having filed it, failed to appear and contest at the hearing. The exemption is a judicial decision. Rule 6 also saves a case where death occurs after conclusion of the hearing and before judgment.

Rule 11 applies these principles to appeals. A separable appeal may continue against surviving respondents. If the decree is joint and indivisible and success against the survivors would create inconsistent decrees, loss of a necessary respondent can defeat the entire appeal. The inquiry is practical: can effective and consistent relief still be given?

5(B). Conduct, incriminating admissions and confessions · 8 marks

Section 8 of the Evidence Act makes relevant a party's conduct in reference to the proceeding or a fact in issue when influenced by or influencing that fact. Conduct includes physically pointing out a place, fleeing or concealing an object, when the necessary connection is proved. Statements accompanying and explaining acts are treated differently from a later narrative. The court should first determine what the accused actually did and whether an innocent explanation remains plausible.

Pakala Narayana Swami v Emperor requires a confession to admit the offence or substantially all the facts constituting it. An admission of a seriously incriminating fact, such as knowledge of a hiding place, falls short of confessing murder. A deliberate and unequivocal affirmative gesture in answer to a clear question may communicate an admission; the question, understanding, voluntariness and precise meaning of the gesture must be proved before characterising it as a confession.

Sections 24–26 exclude specified induced confessions, confessions to police and custodial confessions outside a Magistrate's immediate presence. Calling a communication "conduct" cannot avoid that prohibition. Under section 27 only information distinctly related to a discovery is provable on its statutory conditions. Aghnoo Nagesia v State of Bihar illustrates the care required with a confessional police account. BSA sections 6 and 22–23 supply the corresponding rules.

5(C). Setting aside a decree made ex parte · 12 marks

Under Order IX rule 6 CPC, when the plaintiff appears and the defendant does not, the court may hear the suit ex parte if summons was duly served. Failure or lateness of service calls for fresh service or adjournment as prescribed. The plaintiff still has to establish entitlement. The resulting judgment and decree bind the defendant and can be executed until set aside, reversed or stayed.

The ordinary restorative application is under rule 13 to the court which made the decree. The defendant must establish either that summons was not duly served or that sufficient cause prevented appearance when the suit was called. Produce the service address and report, relevant dates and evidence of the obstacle, such as hospitalisation at the material time. Neglect without a credible explanation is insufficient. A mere irregularity in service cannot justify setting aside if the defendant had notice of the hearing date and sufficient time to appear and answer.

Rule 14 requires notice to the opposite party. The court may impose terms as to costs or payment into court and appoint a date to proceed. Where the decree cannot properly be set aside against the applicant alone, the order may extend to others. Under article 123 of the Limitation Act the ordinary period is thirty days from decree, or from knowledge where summons was not duly served. Substituted service under Order V rule 20 does not count as due service for that article's purpose. Delay requires a sufficient explanation under section 5 where applicable.

A defendant can also appeal an original ex parte decree under section 96(2), challenging the merits. Rejection of a rule 13 application is appealable under Order XLIII rule 1(d). The explanation to rule 13 bars the application when an appeal against the decree was disposed of otherwise than by withdrawal. Before decree, rule 7 provides a distinct opportunity to rejoin the hearing on showing good cause.

5(D). Police custody, the passerby and the recovered articles · 12 marks

First identify the audience and custody. Section 25 of the Evidence Act prevents proof against the accused of a confession to a police officer. Section 26 separately excludes a confession made while in police custody unless made in the immediate presence of a Magistrate. Walking to the station while under arrest is custody. The location outside the police building does not remove the bar. Nothing indicates the presence of a Magistrate.

C's independent hearing does not make the prohibited confession available through a different witness. Section 26 concerns the circumstances of the accused's statement. C may testify to acts he personally observed which are independently relevant, but he cannot repeat the barred account to prove that A murdered B. Nor can an officer avoid sections 25–26 by calling the confessional narrative a record of ordinary conduct.

Section 27 admits so much, and only so much, of information supplied by an accused in police custody as relates distinctly to a fact discovered in consequence. Prove the precise information, its receipt before the alleged discovery, the visit and finding, what was previously unknown and the connection with A's knowledge. In Pulukuri Kotayya the discovery embraced the place and the accused's knowledge of it. If the statement was "I killed B with a knife which I hid below the stone", proof may extend to the information identifying the hiding place; the asserted past use of the knife remains excluded.

Separate admissibility from weight. If the articles were lying openly or police already knew their location, the prosecution must explain what the information actually revealed. Proximity to the scene alone establishes neither A's exclusive knowledge nor that these were the items used. Prove identity, seizure, custody, blood evidence and linkage to B through admissible evidence. A lawfully proved discovery can corroborate the case but cannot restore the entire confession. BSA section 23 and its discovery proviso correspond.

Question 6

6(A). Inconsistent dying declarations · 8 marks

Section 32(1) admits a deceased person's statement concerning the cause of death or circumstances of the transaction resulting in death when that cause is in question. Pakala Narayana Swami v Emperor explains that expectation of death is unnecessary. Multiple declarations must each satisfy the rule. Their admissibility does not decide whether any one reliably identifies the assailant.

Put the declarations side by side on the material particulars. Was the death described as accidental in one and intentional in another? Do the versions differ only over sequence or peripheral detail? For each, examine opportunity to observe, consciousness, capacity to understand, ability to communicate, the person recording the words, time elapsed, treatment and opportunity for prompting. Laxman v State of Maharashtra emphasises actual fitness. A medical endorsement is valuable, but the evidence of a reliable recorder may establish fitness. Neither the earliest version nor the one formally recorded by a Magistrate wins by rank.

Where an apparent conflict is satisfactorily explained, or independent evidence supports one account and exposes the defect in another, the court may rely on the trustworthy account and give its reasons. A fully reliable declaration can itself support conviction. Where material contradictions survive and no safe basis distinguishes them, the prosecution cannot obtain conviction by selecting the incriminating version. BSA section 26(a) corresponds.

6(B). Legal and equitable set-off · 8 marks

Order VIII rule 6 CPC permits a defendant in a suit for recovery of money to claim an ascertained, legally recoverable sum due from the plaintiff. The parties must fill the same character in both claims and the amount must lie within the court's pecuniary jurisdiction. Ordinarily the defendant pleads particulars at the first hearing; later pleading needs the court's permission. The written statement operates like a plaint in a cross-suit, allowing a final judgment on both claims. A matured debt of ₹30,000 due from P to D on an independent loan can be set off against P's claim for ₹80,000 for goods, if these conditions hold.

Equitable set-off rests on the close connection between the reciprocal demands. They must arise from the same transaction or be so closely linked that it would be unjust to enforce the plaintiff's claim without accounting for the defendant's. The court has discretion and the amount need not already be liquidated. If P claims the balance of the price for building work and D proves defective execution of that very work, an allowance for reasonable remedial cost may be considered even where its amount requires assessment.

An unliquidated claim for damage on a wholly separate occasion lacks this equitable connection. The defendant may need a properly maintainable counterclaim or independent suit instead.

6(C). Substituted service of summons · 12 marks

Order V rule 20 CPC allows substituted service when the court is satisfied that there is reason to believe the defendant is keeping out of the way to avoid service or that, for some other reason, ordinary service cannot be effected. It is a judicial conclusion based on the record. Examine the stated address, the serving officer's attempts and report, postal endorsements and any evidence of evasion or relocation. A returned envelope giving an incorrect address may justify inquiry for the right address. It does not by itself establish deliberate avoidance.

Distinguish affixation by a serving officer under rules 17–19 after the specified refusal or inability to find the defendant, from a court's order under rule 20. Under rule 20 the court can direct affixation in a conspicuous place in the courthouse and on a conspicuous part of the house where the defendant last resided, carried on business or worked for gain, or direct another suitable manner. If newspaper advertisement is ordered, it must be in a daily newspaper circulating in the locality where the defendant was last known actually and voluntarily to reside, carry on business or personally work for gain.

The order should identify the material establishing inability to serve, the proposed mode likely to give notice and a sufficient time for appearance. Verify compliance with the actual order and the accuracy of names, address and hearing date before proceeding ex parte. In Smruti Pahariya v Sanjay Pahariya the Supreme Court disapproved resort to substituted service without the necessary satisfaction. Regularly effected substituted service is as effectual as personal service under rule 20(2). Article 123 of the Limitation Act nevertheless contains a specific qualification when computing time to challenge an ex parte decree. The different provisions address different questions.

6(D). Using part of the testimony of a hostile witness · 12 marks

Section 154 of the Evidence Act enables the court in its discretion to permit the party calling a witness to put questions ordinarily available to the adverse party. A witness may evade answers, deliberately suppress material facts or depart from an earlier account in circumstances justifying a searching examination. The purpose is to elicit the truth and test the witness's credit. A fair but unhelpful answer does not automatically entitle counsel to treat a witness as dishonest, and a formal declaration of hostility is unnecessary.

With leave the calling party may use leading questions, test the basis of the witness's account, and confront him with the relevant portion of a previous inconsistent statement. Under section 145, if the earlier writing is to be used for contradiction, call his attention to the particular part. If he denies the words, prove them in the proper way. A prior police statement is subject to the special criminal procedure restrictions. Its contradiction of the witness generally impeaches credit and does not itself prove the facts stated in it.

Sat Paul v Delhi Administration makes clear that permission to question one's own witness does not efface his evidence. Section 154(2) expressly permits the party calling him to rely on any part. Consider the whole deposition, the explanations elicited by both sides and the surrounding evidence. A witness may reliably identify a vehicle and its movements while his identification of its driver fails under questioning. The judge should state what testimony remains safe and why, giving particular attention to material corroboration where credibility is damaged. The adverse party retains the opportunity to cross-examine. BSA sections 148, 157 and 158 cover contradiction, permission and impeachment.

Question 7

7(A). Obtaining performance through another agency · 8 marks

Section 20 of the Specific Relief Act gives a party injured by non-performance the option, unless the parties agreed otherwise, to obtain substituted performance through a third party or its own agency and recover the expenses and other costs actually incurred, spent or suffered from the party in breach. The provision complements the Contract Act. Its object is to procure the promised performance without forcing the injured party to wait indefinitely for the defaulter.

The injured party must first give written notice of not less than thirty days calling on the party in breach to perform within the period specified. On refusal or failure, it may procure substitute performance. Recovery under this route requires that the work actually be done through the third party or the injured party's own agency. Preserve the contract, notice and proof of delivery, evidence of breach, replacement scope, invoices and proof of the expense. An estimate for work never procured does not establish those costs.

For example, after the contractor fails to finish a roof, the owner may give the statutory notice, engage another contractor for the outstanding work and claim the properly attributable costs. After obtaining substituted performance the owner cannot claim specific performance against the original contractor. The right to claim compensation remains, subject to proof and avoiding recovery twice for the same loss.

7(B). Comparison of disputed handwriting · 8 marks

Section 73 of the Evidence Act empowers the court to compare a disputed signature, writing or seal with a specimen admitted or proved to its satisfaction to be genuine. The court may direct a person present to write words or figures to enable comparison. Section 45 makes an expert's opinion relevant and section 47 admits the opinion of a person acquainted with the handwriting. Establishing the genuineness of the comparison sample is essential whichever method is used.

Murarilal v State of Madhya Pradesh recognises judicial comparison but emphasises the risks of acting as one's own expert. O Bharathan v K Sudhakaran illustrates the danger of a judge independently treating other disputed signatures as reliable standards. The expert's conclusion is advisory. The judge may reject it for stated reasons after examining the basis, natural variations, age of the specimens, other proof of execution and the opportunity for cross-examination. A bare visual impression or unexplained disagreement carries little weight.

A sound course where authorship is decisive is to obtain sufficiently numerous, reasonably contemporaneous and independently proved samples, hear a competent expert if needed, and use comparison to assess the whole body of proof. The court retains the final decision; it must show the evidential path to that decision. BSA sections 39, 41, 45 and 72 correspond.

7(C). Preserving property and attaching it in execution · 12 marks

Before judgment, Order XXXVIII rule 5 is available only where the court is satisfied by affidavit or otherwise that the defendant, with intent to obstruct or delay execution of a decree that may be passed, is about to dispose of or remove the whole or part of his property from its local jurisdiction. A plausible money claim and the mere existence of assets do not establish that intent. Specify the property and estimated value unless the court otherwise directs. The court may call for security or require the defendant to show cause and may order conditional attachment. Attachment under rule 5 without compliance with subrule (1) is void. On failure to show cause or furnish security rule 6 permits attachment of sufficient property. On a satisfactory answer or security the attachment is withdrawn. Earlier third-party rights are protected; an attachment validly continuing need not be repeated when execution follows.

After decree, sections 51 and 60 and Order XXI govern execution by attachment and sale. Has the judgment-debtor a saleable interest or disposing power exercisable for his own benefit? Attachment may reach goods, land, debts and shares, following the mode appropriate to the property. For immovable property rule 54 requires the prohibitory order and prescribed publication. Claims of other persons are heard under rule 58. Sell only what is necessary to satisfy the decree under rule 64.

Important section 60 exemptions include necessary clothing, bedding and cooking vessels; protected personal ornaments; artisans' tools; the necessary husbandry implements, cattle and seed grain of an agriculturist; and the specified occupied homes of an agriculturist, labourer or domestic servant. Other examples are books of account, a mere right to sue, the right of personal service, labourers' and domestic servants' wages, exempt portions of salary, specified pension and provident-fund payments, a future right to maintenance and a mere expectancy of succession. Check the exact category and applicable local exemption before attaching.

7(D). Facts especially known to the husband · 12 marks

Sections 101–103 of the Evidence Act place the initial burden on the person asserting the facts necessary to relief. Section 106 places the burden of proving a fact especially within a person's knowledge upon that person. Shambhu Nath Mehra v State of Ajmer explains why the rule is confined to exceptional knowledge; it cannot be used to dispense with an applicant's initial case. Knowledge must be assessed practically: who can reasonably produce the books, payslips, bank records, tax return or business accounts?

In a maintenance application the wife must establish the statutory basis for her claim, including the relationship, her financial circumstances and other relevant conditions of the remedy invoked. She should provide material reasonably obtainable about his work, employer, business, assets or standard of living. She need not ordinarily prove the exact amount of private annual income by obtaining records accessible to him alone. Once a credible factual basis is laid, the husband must explain his actual resources, recurring liabilities, dependants and deductions with the records in his possession. The wife is equally responsible for candid disclosure of her own resources.

The court may direct financial disclosure by both sides, obtain employment records where appropriate, permit challenges to the figures and distinguish turnover from net income and disposable means. If the husband withholds accessible records without justification, an adverse inference under section 114 illustration (g) may be drawn. The inference must rest on evidence and reasonable estimation; it does not automatically establish whatever figure the wife claims. Record findings on needs, means and the basis for fixing the sum. BSA sections 104–106, 109 and 119 supply the corresponding proof rules.

Question 8

8(A). Executing a foreign money decree · 8 marks

Section 44A CPC permits direct execution in a District Court of a qualifying money decree of a superior court in a reciprocating territory. The Central Government's notification must specify the territory and the relevant superior courts. A decision's foreign origin alone does not qualify it. The definition excludes sums payable for taxes or like charges, fines or other penalties, and an arbitral award even if enforceable as a decree in the country of origin.

File a certified copy of the decree and a certificate from the foreign superior court stating the extent of any satisfaction or adjustment. That certificate conclusively establishes such satisfaction or adjustment for the section. The decree may be executed as if passed by the District Court. Section 47 and applicable Order XXI procedure govern execution, including notice and the judgment-debtor's objections.

The court must refuse execution if the judgment falls within a section 13 exception: want of competent jurisdiction, absence of a decision on the merits, an incorrect view of international law or refusal to recognise applicable Indian law, proceedings opposed to natural justice, fraud, or a claim founded on breach of Indian law. A foreign default judgment requires examination of whether merits were actually considered. For a non-reciprocating territory or otherwise nonqualifying decree, the holder ordinarily brings a timely Indian suit on the foreign judgment and executes the resulting Indian decree.

8(B). Perpetual injunction · 8 marks

Under sections 36–38 of the Specific Relief Act a perpetual injunction is a final decree after hearing on the merits which permanently restrains assertion of a right or commission of an act contrary to the plaintiff's rights. A temporary injunction preserves matters during litigation under the CPC. The plaintiff must establish an enforceable obligation in his favour and its actual or threatened breach. Where the obligation arises from a contract the court is guided by the Act's provisions on specific performance.

If the defendant invades or threatens the plaintiff's right to or enjoyment of property, section 38(3) identifies grounds such as a defendant who is the plaintiff's trustee, absence of a standard for calculating actual damage, inadequacy of money compensation, or the need to prevent numerous suits. Repeated obstruction of a proved right of way, for example, may require prospective restraint even if particular losses could separately be claimed. Define the route and conduct precisely in the decree.

Section 41 restricts relief, including where the plaintiff lacks personal interest, has acquiesced in a continuing breach, or an equally efficacious usual remedy is certainly available, except in breach of trust. Section 39 separately permits a mandatory injunction requiring positive acts. Under section 40 damages may be sought in addition or substitution on the statutory pleading terms.

8(C). Executing the decree where circumstances have changed · 12 marks

The executing court must ascertain what the decree directs, who can enforce it, against whom, and the outstanding obligation. The court which passed it or the transferee court acting within authority can use section 51 and Order XXI to deliver property, attach and sell, appoint a receiver or use another appropriate statutory mode. Arrest for a money decree requires the statutory safeguards. The court should check limitation, territorial authority, prior payment or satisfaction, exemption of property, notice requirements and claims by persons asserting independent rights. Under section 47 questions between parties or their representatives concerning execution, discharge or satisfaction are determined in execution.

The decree is the limit of the court's authority. It may construe ambiguous language in light of the judgment, pleadings and identified property. It may choose lawful machinery that gives practical effect to the command, such as settling and executing a conveyance under rule 34 when the judgment-debtor refuses to sign. A change of representative, certified adjustment, established satisfaction or supervening legal prohibition can affect the permissible extent or mode of enforcement. Hear both sides and decide whether the change actually affects enforceability.

It cannot rehear the merits, correct an ordinary error of law in the decree, raise the amount, replace delivery of an identified asset with newly assessed damages or add a liability against a stranger merely because the original relief has become inconvenient. An objection that the decree is a nullity for inherent want of jurisdiction is distinct from asking the executing court to sit in appeal. If an amendment, review, appeal or special statutory application is needed, it belongs before the competent forum. Where the same judge can exercise a separate statutory power, the legal source and conditions of that power must be identified. Thus the court may adapt execution to changed facts while preserving the substance adjudicated.

8(D). Cross-examination and a writing used to refresh memory · 12 marks

Under sections 137–138 of the Evidence Act cross-examination is examination by the adverse party after examination-in-chief. It may extend to relevant facts beyond those mentioned in chief. Its purposes include testing perception, memory, accuracy and credibility, exposing interest or bias, eliciting admissions and putting the essential contrary case to the witness so the witness has an opportunity to answer. Leading questions may ordinarily be asked. The judge retains control over questions lacking reasonable grounds, questions needlessly scandalous, insulting or offensive and impermissible questions regarding sexual history.

Section 145 distinguishes two uses of a previous written statement. Counsel may ask about it without first showing the writing or proving it. If intending to contradict the witness by the writing, counsel must draw attention to the particular parts before proving them. That procedure is distinct from a witness refreshing memory.

Under section 159 a witness may consult a writing made at the time or sufficiently soon afterwards, or a writing made by another which he read when the matter was fresh and then knew to be correct. A copy needs the court's permission and sufficient reason for non-production of the original. An expert may refresh memory from professional treatises. Section 160 also permits testimony to a fact recorded as described where the witness has no specific recollection now but is sure the record was correct when made.

If a writing is used in either way, section 161 requires it to be produced and shown to the adverse party on demand. That party may cross-examine upon it and must have a fair opportunity to inspect it. A shopkeeper who refreshes his memory from a contemporaneous ledger can be tested on when the entry was made and its accuracy. Section 161 does not itself impose universal advance disclosure of every potentially relevant document before any cross-examination. Separate procedural disclosure obligations may of course apply. BSA sections 142–143, 146, 148–155 and 162–164 correspond.