

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1.

CWP No. 11695 of 2023(O&M)
Date of Decision: June 01 , 2023.

Navdeep Kaur

.....Petitioner

Versus

State of Punjab and others

..... Respondents

AND

2.

CWP No. 5308 of 2023(O&M)
Rakesh Kumar Sharma

.....Petitioner

Versus

State of Punjab and others

..... Respondents

3.

CWP No. 11237 of 2023(O&M)
Gurmeet Kaur

.....Petitioner

Versus

State of Punjab and others

..... Respondents

4.

CWP No. 4890 of 2023(O&M)
Ishan Goyal

.....Petitioner

Versus

State of Punjab and others

..... Respondents

5.

CWP No. 4697 of 2023(O&M)

Rajni Devi

.....Petitioner

Versus

State of Punjab and others

..... Respondents

6.

CWP No. 11312 of 2023(O&M)

Simerpreet Sekhon

.....Petitioner

Versus

State of Punjab and others

..... Respondents

7.

CWP No. 11926 of 2023(O&M)

Paranmani

.....Petitioner

Versus

State of Punjab and others

..... Respondents

8.

CWP No. 6497 of 2023(O&M)

Sangeeta Choudhary

.....Petitioner

Versus

State of Punjab and others

..... Respondents

9.

CWP No. 4630 of 2023(O&M)

Navjot Kaur and another

.....Petitioners

Versus

State of Punjab and others

..... Respondents

10.
Vidit Mehta

CWP No. 5323 of 2023(O&M)

.....Petitioner

Versus

State of Punjab and others

..... Respondents

11.
Kulwinder Kaur

CWP No. 6493 of 2023(O&M)

.....Petitioner

Versus

State of Punjab and others

..... Respondents

12.
Himanshu Rai

CWP No. 6684 of 2023(O&M)

.....Petitioner

Versus

State of Punjab and others

..... Respondents

13.
Rahul

CWP No. 7983 of 2023(O&M)

.....Petitioner

Versus

State of Punjab and others

..... Respondents

14.
Gursimran Kaur and another

CWP No. 8366 of 2023(O&M)

.....Petitioners

Versus.

State of Punjab and others

..... Respondents

15.
Prabhjeet Singh

CWP No. 9028 of 2023(O&M)

.....Petitioner

Versus

State of Punjab and others

..... Respondents

16.
Hargun inder Singh

CWP No. 9803 of 2023(O&M)

.....Petitioner

Versus

State of Punjab and others

..... Respondents

17.
Mankirat Kaur Sra

CWP No. 10483 of 2022(O&M)

.....Petitioner

Versus

State of Punjab and others

..... Respondents

18.
Raham

CWP No. 9256 of 2023(O&M)

.....Petitioner

Versus

State of Punjab and others

..... Respondents

19.
Vaibhav Kataria

CWP No. 8614 of 2023(O&M)

.....Petitioner

Versus

State of Punjab and others

..... Respondents

20.

CWP No. 5971 of 2023(O&M)

Raja Tripat Partap Singh Cheema

.....Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. D.S.Patwalia, Sr. Advocate
with Mr. A.S.Chadha, Advocate
for the petitioner (s) in CWP Nos. 11695 and 8366 of 2023

Mr. G.S.Bal, Sr. Advocate
With Mr. Dilshad G. Gill, Advocate
for the petitioner (s) in CWP No. 5323 of 2023.

Ms. Ridhi Bansal, Advocate
and Ms. Sidhi Bansal, Advocate
for Ms. Sangeeta Chaudhary, Advocate
for the petitioner (s) in CWP No. 6497 of 2023.

Mr. Pardhuman Garg, Advocate
for the petitioner (s) in CWP Nos. 4630, 4697, 4890, 6593,
6684, 9028, 9256 and 8614.

Mr. Gurinder Pal Singh, Advocate
for the petitioner (s) in CWP No. 10484 of 2023.

Mr. Pawandeep Singh, Advocate

for the petitioner (s) in CWP No. 11312 of 2023.

Mr. Vinish Singla, Advocate
for the petitioner (s) in CWP No. 5971 of 2023.

Ms. Srishti Shukla, Advocate
for the petitioner (in CWP Nos. 11237 and 11926 of 2023).

Mr. Sandeep Jain, Addl.AG., Punjab.

Mr. Sandeep K. Sharma, Advocate
for respondents no.1 to 4 in CM-9857-CWP of 2023 in CWP
No. 4697 of 2023.

Dr. Payal Mehta, Advocate
for respondent no.3 (in CWP Nos. 11237, 11312, 11695,
11926, 7983, 8366 and 9803 of 2023).

Mr. Shobit Phutela, Advocate
for Punjab and Haryana High Court (in CWP Nos. 6684, 9028,
5971, 8614, 9256, 4630, 4697, 6497, 4890, 5308, 5329, 6493 of
2023).

LISA GILL, J.

1. All these writ petitions are being taken up together for hearing at request and with consent of all learned counsel for the parties as prayer in all these writ petitions is for quashing the final answer key dated 21.02.2023, Annexure P-5A, in respect to various Sets/Codes of question papers of the Preliminary Examination of the Punjab Civil Services (Judicial Branch), which was held in pursuance to advertisement dated 06.09.2022, Annexure P-1.
2. For the sake of convenience basic foundational facts have been culled out from CWP No. 11695 of 2023, with the specific questions, answer key of which is under cloud, being taken from different writ petitions as narrated in the following paras.
3. Advertisement dated 06.09.2022, Annexure P-1, was issued for inviting online application forms from eligible candidates for the post of Civil Judge (Jr. Division)-cum-Judicial Magistrate. 52 out of 159 posts were

advertised in the general category with breakup of posts for other categories being detailed in Clause 2.2 of the said advertisement. Process of selection of candidates includes three stages i.e., Preliminary examination, Main examination and viva voce. As per Clause 3.3 of the Advertisement, preliminary examination consists of objective type questions with multiple choices with question paper consisting of 125 questions with each question carrying four (04) marks.

4. It is stated in Clause 3.3 (i) of the Advertisement that preliminary examination would be of objective type questions with multiple choices (which can be scrutinized by computer) as distinguished from the main written examination which would be subjective/narrative type. Question paper for preliminary examination would be of two hours with each question carrying four marks. For each incorrect answer, 0.20 % i.e., $\frac{1}{5}^{\text{th}}$ marks would be deducted. It is further provided that there will be no negative marking in respect of un-attempted questions.

5. Admittedly, Preliminary examination was conducted on 22.01.2023 after issuance of notice attached as Annexure P-2 with CWP No. 11695 of 2023. There were four sets (Codes) of papers – A, B, C and D, containing the same 125 questions in different seriatim. Petitioners in all the writ petitions took the preliminary examination. Total applications received for the Preliminary Examination is informed to be 8363 and number of applicants who took the Preliminary Examination is 6497.

6. Proposed answer key was released on 24.01.2023, whereby cut off was set at 393.6 marks for the General Category and 349.6 for the Backward Caste Category. Objections were invited to the proposed answer key by 30.01.2023. As per information supplied by the respondents, 993 objections in respect to 51 questions, including the 14 questions involved in

the present writ petitions, were received.

7. Learned Recruitment Committee consisting of five Judges of this High Court constituted an Expert Panel compromised of three members of the rank of Additional District and Sessions Judge on 03.02.2023 to examine the objections and submit recommendations. Petitioners in the present writ petitions submitted their objections *qua* the questions, which are detailed as under along with the marks secured by them in the Preliminary Examination:-

Sr. No.	Petition No.	Case Title	Questions Challenged	Marks Obtained
1.	CWP No. 11237 of 2023	Gurmeet Kaur Vs. State of Punjab and others	1, 64, 73	391.20
2.	CWP No. 11312 of 2023	Simerpreet Sekhon Vs. State of Punjab and others	64, 73, 85, 88	385.60
3.	CWP No.11695 of 2023	Navdeep Kaur Vs. State of Punjab and others	67, 94	390.40
4.	CWP No. 11926	Paranmani Vs. State of Punjab and others	69, 73	391.20
5.	CWP No. 4630 of 2023	Navjot Kaur and another Vs. State of Punjab and others (2 Petitioners)	1, 69	Navjot Kaur 388.00 Nazuk Sood 390.40
6.	CWP No. 4697 of 2023	Rajni Devi Vs. State of Punjab and others	37, 64, 73, 94	335.20 (BC Category)
	CM-9856-CWP of 2023	Intervenor (Shubham Grover)	37, 73	386.40
	CM-9857-CWP of 2023	Intervenor (Poonam Goswamy)	37, 64	385.60
7.	CWP No. 6497 of 2023	Sangeeta Choudhary Vs. State of Punjab and others	67, 69, 73, 94	340.00 (BC Category)
8.	CWP No. 4890 of 2023	Ishan Goyal Vs. State of Punjab and others	91, 103,	392.00
9.	CWP No. 5308 of 2023	Rakesh Kumar Sharma Vs. State of Punjab and others	37, 64, 73, 91, 94	382.40
10.	CWP No. 5323 of 2023	Vidit Mehta Vs. Punjab and Haryana High Court and another	1, 64, 69, 73, 85, 91 and 103	381.60
11.	CWP No. 6493 of 2023	Kulwinder Kaur Vs. State of Punjab and others	73	390.40
12.	CWP No. 6684 of 2023	Himanshu Rai Vs. State of Punjab and others	94	328.00 (SC Category)
13.	CWP No. 7983 of 2023	Rahul Vs. State of Punjab and others	37, 73, 94	392.00
14.	CWP No. 8366 of 2023	Gursimran Kaur and another Vs. State of Punjab and others (2 petitioners)	73, 94	Gursimran Kaur 391.20 Sandeep Singh 387.20

CWP Nos.11695 of 2023 (O&M) and connected petitions 9

15.	CWP No. 9028 of 2023	Prabhjeet Singh Vs. State of Punjab and others	35, 73, 91, 94	347.20 (BC Category)
16.	CWP No. 9803 of 2023	Hargun Inder Singh Vs. State of Punjab	73, 117, 17, 1, 64	373.60
17.	CWP No. 10483 of 2023	Mankirat Kaur Sra Vs. State of Punjab and others	64, 73	392.80
18.	CWP No. 9256 of 2023	Raham Vs. State of Punjab and others	35, 69, 94	392.80
19.	CWP No. 8614 of 2023	Vaibhav Kataria Vs. State of Punjab and others	35, 94	384.80
20.	CWP No. 5971 of 2023	Raja Tripat Partap Singh Cheema Vs. State of Punjab and others	64, 85, 91	389.60

8. It was submitted by learned counsel for the parties that question numbers as reflected in the abovesaid table are as per the seriatim in Set/Code-A irrespective of the seriatim in the different Sets/Codes i.e., Sets/Codes B, C and D. Objections as raised by the present petitioners are in respect to the answer key *qua* 14 questions at serial numbers 1, 17, 35, 37, 64, 67, 69, 73, 85, 88, 91, 94, 103 and 117 as in Set/Code-A.

9. It is informed that 1354 candidates qualified for the main examination. 1333 candidates have registered for the main examination to be conducted on 02.06.2023. The Expert Panel constituted by the Learned Recruitment Committee submitted its report on 10.02.2023 with its recommendations to the Learned Recruitment Committee for taking final decision on the objections.

10. Details of the objections submitted and recommendation thereon by the Expert Panel as found in the written statements/replies filed in some of the writ petitions and as produced before us by learned counsel for respondent No.3 are reproduced hereunder:-

Sr. No.	Questions in dispute	Petitioners Claim	Consideration by Panel (initial answer key)	Recommendation of the Expert Panel	Decision of the Learned Recruitment Committee
1.	Question No. 1: Q) Which of the following sections	CWP No.4630 of 2023 That the Petitioner has claimed that	D	Reading of the Criminal Law (Amendment) Act, 1983 (Act No. 43 of 1983)	Deleted (The Committee considered the

	have been inserted in the Indian Penal Code, 1860 by the Criminal Law (Amendment) Act, 2013: A) Section 376A B) Section 376B C) Sections 166A, 166B, 354C D) All of the above	the correct answer of Question No.1 is answer "C" and contends that this claim is supported by Notification issued by Ministry of Law and Justice (Legislative Department) dated 02.04.2013, the Indian Penal Code was amended by virtue of the Criminal Law Amendment Act 2013. The Petitioner further states that the provisions of the abovementioned Notification make it clear that Section 166A, 166B, 354C have been inserted in the Indian Penal Code, 1860 by the Criminal Law Amendment 2013 and Sections 376A, 376B have been substituted not inserted in the IPC 1860. Therefore, the Petitioner claims that answer "C" to the question no.1 of Code A would be the correct and the right answer and there was no need or any necessity to delete the same without any sufficient cause. <u>CWP No.11237 of 2023</u> Therefore, the Petitioner claims that answer "D" to the question no.1 of Code A would be the correct and the right answer and there was no need or any necessity to change the Answer to option C and subsequently, delete the same without any sufficient cause. Contentends that this claim is supported by Notification issued by Ministry of Law and Justice (Legislative Department) dated 02.04.2013, the Indian Penal Code was amended by virtue of the Criminal Law Amendment Act 2013.The Petitioner further states that the provisions of the abovementioned Notification make it clear that Section 166A, 166B, 354C have been inserted in the Indian Penal Code, 1860 by the Criminal Law Amendment 2013 and Sections 376A, 376B have been substituted not inserted in the IPC 1860. <u>CWP No.9803 of 2023</u> Petitioner claims that the proposed answer key of question No.1 was published as “D”. She had also marked option “D” as her answer. The same has been arbitrarily deleted while finalizing the answer key.	reveals that Sections 376A and 376B were inserted in the Indian Penal Code (for short, "Code") in the year 1983. Perusal of the Criminal Law (Amendment) Act, 2013 indicates that Sections 166A, 166B and 354C were inserted (i.e. for the first time), whereas Section 376A and 376B, which were already in the Code since the year 1983, were substituted in the year 2013. The question posed is specifically asking for the inserted provisions and not amended/substituted provisions. Though, changes have been effected in Sections 376A and 376B through the Criminal Law (Amendment) Act, 2013 by substituting the provisions. However, the insertion amounts to new addition which is not the case in hand. Therefore, the objections raised by the candidates have merits and in the opinion of this panel, the correct answer is option C and not option D. Thus, the Panel recommends the change of official answer key from Option D to Option C.	recommendations of the Expert Panel as also the objections and cross-objections received on the recommended change of answer key. After deliberating on the same, the Hon’ble Committee resolved to delete the question being ambiguous.)	
2.	<u>Question no. 17</u> Q) Section 162 of the Code of Criminal Procedure, 1973 is for the protection of- A) Accused B) Witnesses C) Police officer D) Magistrate	<u>CWP No.9803 of 2023</u> The Petitioner states that the protection under Section 162 is given to both the accused as well as witnesses. So the marks should be given to the candidates who mark Option A or Option B.	A	The question posed pertains to Section 162 CrPC. Sections 161 and 162 CrPC relate to the oral examination of witnesses by the police, the record to be made of their statement and the use to which it may be put subsequently. The provisions primarily protect the interest of the accused and creates an	A

			absolute bar against the previous statement made before the police officer being used for any purpose whatsoever except provided in the proviso and 162(2). There is no reference to the word "witness" in section 162(1) CrPC. The proviso refers to a witness in the context of use of his previous statement, if any suffered by him to the police officer. The bar against obtaining signature of the person being examined by the police officer, if his statement is recorded in writing, is meant to protect the interest of accused from being prejudicially affected by any dishonest or questionable methods adopted by police officer. Statements recorded under Section 161 CrPC, reduced into writing, if duly proved, may be used by the accused to contradict such witness and the procedure for contradiction is stipulated in Sections 145 Evidence Act, 1872. The prosecution may with the permission of Court, in certain circumstance, use the statement under Section 161 CrPC to contradict the witness and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness for the purpose of explaining any matter referred to in his cross-examination. The panel has gone through the all the above judgments and has found nothing in the said judgments suggesting that Section 162 CrPC is meant for the protection of witness. The reasoning assigned by the objectors is found to be untenable. The aforesaid view is also supported by the commentary of "Sohoni's Code of Criminal Procedure 21st Edition, Justice ML Singhal, volume 2, LexisNexis pp. 830-837"; B.B. Mitra on Code of Criminal Procedure, 1973, Volume I, 21st Edition (2011), page 768; Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973, Volume I (1996),
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				pp.37-42; Law Commission of India, 41st Report on the Code of Criminal Procedure, 1898, Volume I (September, 1969), pp.69-76. Accordingly, the Panel is of the view that the official answer key is correct.	
3.	Question No. 35: Q) Mesne profits can be claimed regarding: A) Intellectual property only B) Movable property only C) Immovable property only D) both movable and immovable property	CWP No.9028 of 2023 The Petitioner has claimed answer of Question No.35 to be "D". Petitioner contends that this claim is supported by the landmark case of <i>Jasbir Singh Vs Ranjit Singh</i> (P&H) Judgement (RSA No.4637 of 2010 dated 10.02.2011), this Hon'ble Punjab and Haryana High Court had dismissed the appeal filed by the Appellants whereby the plea was taken by the Appellants that mesne profits can be claimed only for Immovable property and not for movable property and had upheld the judgement passed by the Lower Court whereby mesne profit was awarded to the respondents in case of Movable property. That the Petitioner further claims that the Hon'ble High Court in the aforementioned case had also mentioned Section 2(12) of CPC, which defines the meaning of mesne profit which is reproduced as under: <i>"Mesne profit of property means those profits, which the person in wrongful possession of the property, actually received or might, with ordinary diligence, have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession."</i> CWP No.8614 of 2023 The Petitioner has claimed answer of Question No.35 to be "D". Petitioner contends that this claim is supported by the landmark case of <i>Jasbir Singh Vs Ranjit Singh</i> (P&H) Judgement (RSA No.4637 of 2010 dated 10.02.2011), this Hon'ble Punjab and Haryana High Court had dismissed the appeal filed by the Appellants whereby the plea was taken by the Appellants that mesne profits can be claimed only for Immovable property and not for movable property and had upheld the judgement passed by the Lower Court whereby mesne profit was awarded to the respondents in case of Movable property. That the Petitioner further claims that the Hon'ble High Court in the aforementioned case had also mentioned Section 2(12) of CPC, which defines the meaning of mesne profit which is reproduced as under: <i>"Mesne profit of property means those profits, which the person in wrongful possession of the property,</i>	C	The term 'mesne profit' is defined in Section 2 (12) CPC to mean those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits but shall not include profits due to improvements made by the person in wrongful possession. The Black's Law Dictionary, 9th Edition at page 1329 defines mesne profits as the profits of an estate received by a tenant in wrongful possession between two dates. The word "estate" is defined at page 626 to be amount, degree, nature, and quality of a persons' interest in land or other property; esp., a real-estate interest that may become possessory, the ownership being measured in terms of duration. Wharton's Law Lexicon in its 14 Edition at page 652 defines mesne profit as an action of trespass brought to recover profits derived from land, whilst the possession of it has been improperly withheld: that is, the yearly value of the premises. Mesne profits are the rents and profits which a trespasser has, or might have, received or made during his occupation of the premises, and which therefore he must pay over to the true owner as compensation for the tort which he has committed. Justice C.K. Thakker, Judicial Officer's Law Lexicon, 3rd Edition 2014, on page 2992 has given sources defining "mesne profits" and it has been considered to be admissible in respect of immovable property. K.B. Singh v. M.D.I. Co-op, Association, AIR 1959 Manipur 9 at p13 has	C

	<i>actually received or might, with ordinary diligence, have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession."</i> CWP No.9256 of 2023 The Petitioner has claimed answer of Question No.35 to be "D". Petitioner contends that this claim is supported by the landmark case of <i>Jasbir Singh Vs Ranjit Singh</i> (P&H) Judgement (RSA No.4637 of 2010 dated 10.02.2011), this Hon'ble Punjab and Haryana High Court had dismissed the appeal filed by the Appellants whereby the plea was taken by the Appellants that mesne profits can be claimed only for Immovable property and not for movable property and had upheld the judgement passed by the Lower Court whereby mesne profit was awarded to the respondents in case of Movable property. That the Petitioner further claims that the Hon'ble High Court in the aforementioned case had also mentioned Section 2(12) of CPC, which defines the meaning of mesne profit which is reproduced as under: <i>"Mesne profit of property means those profits, which the person in wrongful possession of the property, actually received or might, with ordinary diligence, have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession."</i>	considered the definition of mesne profits in Section 2(12) CPC holding it to be claimable in respect of immovable property only. To the similar effect is the decision of Himachal High Court in the case Karam Chand vs. Punjab National Bank MANU/HP/0024/2000 which after relying on the aforesaid decision as well as decision of the Supreme Court in Lucy Kochuvareed vs. P. MarlappaGounder AIR 1979 SC 1214 holds that mesne profits are not claimable in respect of movables. In this case plaintiff claimed mesne profits against the defendants for being in illegal possession of a truck. In Jasbir Singh supra; plaintiff claimed mesne profits in respect of use of mini bus by the defendants for the period they remained in illegal possession of the bus and the Court based its reasoning on the ground that the term/expression "property" in Section 2(12) CPC is not qualified by either immovable or movable. The Panel after going through the decision rendered in Jasbir Singh (supra) has found that the learned Judge has not given any definite opinion on the interpretation of term "mesne profits" defined in section 2(12) CPC as he alternatively considered the case of the appellant for damages or compensation under the law of tort. With due deference to the aforesaid authority, the Court, however, did not consider the effect of the remaining part of the provision on the interpretation of the aforesaid expression as well as its historical evolution. No doubt mesne profits as defined under Section 2 (12) CPC employs the expression "property" without any qualification, however, it talks about those profits which a person has actually received or might have received with ordinary diligence after remaining	
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				in wrongful possession together with interest on such profits which shall not include profits due to improvements made by the person in wrongful possession. Apart from that Order 2 Rule 4, Order 7 Rule 2, Order Rule 20 Rule 12 and Order 21 Rule 42 treat claim for mesne profits only in respect of immovable property. Though the Panel is of the view that the official answer key is correct yet in view of the single bench judgment of Punjab and Haryana High Court in Jasbir Singh (supra), the panel leaves it to the judgment of the Hon'ble Committee to take the final call.	
4.	Question No. 37: Q) A decision on finding given by Court without jurisdiction: A) Can operate as Res Judicata under all circumstances B) Cannot operate as Res Judicata C) Can operate as Res Judicata under certain circumstances only D) May operate as Res Judicata or may not	CWP No. 4697 of 2023. That the Petitioner claims that the Correct Answer of Question No.37 is answer "C" and the reasoning of which is according to them is supported by law as stated as below: Jurisdiction of Court is broadly of 3 types: 1. Subject matter Jurisdiction: If court doesn't have subject matter jurisdiction, then the decision/decreed is void and cannot operate as res judicata. 2. Territorial Jurisdiction: If court does not have territorial jurisdiction, then the decision/decreed is not void and can still operate as res judicata if there was no consequent failure of justice. 3. Pecuniary Jurisdiction: If Court does not have pecuniary jurisdiction, then also decision/decreed is not void and can still operate as res judicata if there was no consequent failure of justice. That the Petitioner claims that perusal of the above said provision makes it clear that in the cases of lack of Territorial and pecuniary jurisdiction, it is more of an administrative and technical defect and it does not hit the roots of the inherent competency and therefore, the decision/decreed will be void only when there was a consequent failure of the justice and the defendant was prompt enough to have raised the objection in the trial court at the earliest possible opportunity. CWP Nos. 9856 & 9857 of 2023 Filed application for impleadment. CWP No. 5308 of 2023	B	The panel has considered the objections and finds those to be unfounded. The question refers to a general principle governing res-judicata and a decision on finding rendered by Court without jurisdiction cannot operate as res-judicata. The extrapolation on the part of the objectors by relying upon Sections 11, 21 and 21A CPC is incorrect. Even in the context of Section 11 CPC, the Supreme Court in Church of South India Trust Assn. vs. Telugu Church Council, 1996 (2) SCC 520 has confined the competency of the Court in respect of pecuniary and subject matter jurisdiction. Sections 21 and 21A CPC relate to taking of objections as to jurisdiction of the Court to try a suit or pass a decree and the appropriate stage at which it should be taken. It does not limit the operation of the principle of res-judicata. The remaining cited authorities are not applicable to the question. Accordingly, the Panel is of the view that the official answer key is correct.	B

That the Petitioner claims that the correct Answer of Question No.37 is answer "C" and the reasoning of which is duly Supported by Law is stated as below: Jurisdiction of Court is broadly of 3 types: <i>Subject matter Jurisdiction:</i> If court doesn't have subject matter jurisdiction, then the decision/decreed is void and cannot operate as res judicata. <i>Territorial Jurisdiction:</i> If court does not have territorial jurisdiction, then the decision/decreed is not void and can still operate as res judicata if there was no consequent failure of justice. <i>Pecuniary Jurisdiction:</i> If Court does not have pecuniary jurisdiction, then also decision/decreed is not void and can still operate as res judicata if there was no consequent failure of justice. That the Petitioner claims that the perusal of the above said provision makes it clear that in the cases of lack of Territorial and pecuniary jurisdiction, it is more of an administrative and technical defect and it does not hit and the roots of the inherent competency and therefore the decision/decreed will be void only when there was a consequent failure of the justice and the defendant was prompt enough to have raised the objection in the trial court at the earliest possible opportunity. Therefore, the answer "C" to the question no.37 of Code A would be the correct and the right answer and the same ought to be changed by the respondents despite submitting the objections. Case relied upon: <i>Mantoo Sarkar v. Oriental Insurance Co. Ltd.(2008)</i> <u>CWP No. 7983 of 2023</u> That the Petitioner claims that the Correct Answer of Question No.37 is answer "C". The question did not tell as to which type of jurisdiction the Court lacked. Jurisdiction of Court is broadly of 3 types: i. Subject matter Jurisdiction: ii. Territorial Jurisdiction iii. Pecuniary Jurisdiction: That if question had specifically used the word subject matter jurisdiction instead of jurisdiction, then option "B" would have been correct; but in case of non-mention of the kind of jurisdiction the Court lacked, a decision on finding given by Court without jurisdiction can operate as res judicata under certain circumstances only. In case of lack of territorial /		
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		pecuniary jurisdiction there is no consequent failure of justice. <u>Relied upon:</u> 1. Mantoo Sarkar v. Oriental Insurance Co. Ltd.			
5.	<u>Question Number 64:</u> Q) Which of the following is not a public document? A) An order issuing a search warrant. B) A crop cutting report by a Collector C) Order of competent authority fixing prices of commodities D) Complaint or written statement in a suit	<u>CWP No. 4697 of 2023</u> Filed application for impleadment. <u>CWP No. 9857 of 2023</u> Filed application for impleadment. <u>CWP No. 5308 of 2023</u> That the Petitioner claims that the correct Answer of Question No.64 as per proposed answer key is answer "D" and the Petitioner had also marked the Answer "D" and the respondents had deleted the said question from the final answer key without any basis. Relied upon Section 74 of evidence act: <i>74: The following documents are public documents.-</i> <i>(1) documents forming the acts or records of the acts</i> <i>(i) of the sovereign authority,</i> <i>(ii) of official bodies and Tribunals, and</i> <i>(iii) of public officers, legislative, judicial and executive, (of any part of India or of the Commonwealth), or of a foreign country;</i> <i>(2) public records kept in any State of private documents."</i> Plaint or Written Statement is the best option out of the four given options. Further, it has been held by the Hon'ble Court that the Complaint or Written Statement is not a public document. <u>CWP No.5323 of 2023</u> Petitioner claims that the correct Answer of Question No. 64 as per proposed answer key is Answer "D" and the Petitioner had also marked the Answer "D" and the Respondents had deleted the said question from the final answer key without any basis. He relied upon cases: i.) Gulab Chand and Ors. v. Sheokaran Lal Seth and Ors. Also, the Madhya Pradesh Subordinate judiciary exam 2011 had the same question i.e. question no. 98, wherein option 'D' was the correct answer. <u>CWP No. 5971 of 2023</u> That the Petitioner Claims that the correct Answer of Question No.64 as per proposed answer key is answer "D" and the Petitioner had also marked the Answer "D" and the respondents had deleted the said question from the final answer key without any basis. <u>Cases relied upon:</u> Pyare Lal vs Meher Singh and other	D	Public documents are defined in section 74 of the Indian Evidence Act 1872. Broadly it includes two categories. In the first category documents forming the acts or records of the acts of the sovereign authorities, official bodies, tribunals and public officers, legislative, judicial and executive of any part of India or of the Commonwealth or of a Foreign country are included. In the second category public records kept in any state of private documents are included. There has been a cleavage of opinion among the courts regarding the inclusion of complaints or written statements in a suit in the category of public documents. The preponderance of authority is that these are not public documents as defined in section 74 of the Evidence Act. The matter has also been considered by the <i>law commission of India in its Sixty-Ninth Report on the Indian Evidence Act, 1872 (May, 1977) in para 34.16 at page 457</i>. After noticing the difference of opinion among the courts, it recommended the insertion of explanation at the end of the section to the following effect: <i>"Explanation-Records forming part of a case leading to a judgment of a court or an order of a public officer, if the order is pronounced judicially, are themselves public documents."</i> Later the <i>Law Commission of India in its 185th Report on Review of the Indian Evidence Act, 1872 (March, 2003) at page 884</i> added with the 69th report but proposed modified explanation to be added in clause (1) of section 74 which reads at under: <i>"Explanation- Records forming part of a case leading to a judgment of a court or an order of a public officer, if the order is pronounced judicially,</i>	Deleted

(C.R. No. 7388 of 2010 Date of Decision 15.12.2010) Also, the Madhya Pradesh Subordinate judiciary exam 2011 had the same question i.e. question no. 98, wherein option 'D' was the correct answer. <u>CWP No. 10483 of 2023</u> The Petitioner claims that the correct Answer of Question No. 64 as per proposed answer key is Answer "D" and the Petitioner had also marked the Answer "D" and the Respondents had deleted the said question from the final answer key without any basis. Relied on: <i>Bawa Singh v. Harnam Singh</i> (2009) 5 RCR Civil Para 9 <u>CWP No. 11237 of 2023</u> Question is wrongly deleted. <u>CWP No. 9803 of 2023.</u> The Petitioner claims that the correct Answer of Question No. 64 as per proposed answer key is Answer "D" and the Petitioner had also marked the Answer "D" and the Respondents had deleted the said question from the final answer key without any basis. <u>CWP No. 11312 of 2023</u> Petitioner claims that the correct Answer of Question No. 64 as per proposed answer key is Answer "D" and the Petitioner had also marked the Answer "D" and the Respondents had deleted the said question from the final answer key without any basis.	<i>shall be deemed to be public documents."</i> On consideration of the reports of the Law Commission, it is inferable that pleadings in a suit do not in terms fall within the ambit of Section 74 Evidence Act and accordingly, it recommended the insertion of deeming provision by adding explanation to Section 74. Even the commentators on the Law of Evidence have noticed the above conflict of opinion and states that pleadings are not public documents under Section 74. A single judge bench of Punjab and Haryana High Court in the case of <i>Bawa Singh etc. vs. S. Harnam Singh etc., In RSA No. 757-1986, DoD 27.05.2008</i>, has also held pleadings of a party does not fall in any of the public documents as specified under Section 74 of the Act. However, without reference to the aforesaid decision, a contrary view has been expressed by another single bench in the case of <i>Pyare Lal</i>. In this case, the Learned Judge has also noticed the divergent views on the character of pleadings in a suit as noticed in the commentary of <i>Ratanlal's Law of Evidence Act, twentieth Edition 2002</i>. It further transpires from the judgment that principal reliance was placed on the case of <i>Narasimha Rama Rao V. Venkataramanayya AIR 1940Mad768</i>. Reading of the aforesaid judgment indicates that the question considered by the full bench was whether an income tax return or statement filed in support of it, is a public document and answered the same in the affirmative. In para 9, it is recorded as follows: "9. As the learned Judges who have made the reference have pointed out, a plaint or a written statement has always been regarded by this Court as forming part of the record of a case and a public document of which an interested party may obtain a certified copy. If the
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			argument, that an Income Tax return is not a public document, but that the order passed thereon is, were carried to its logical conclusion, it would mean that no part of the record of a civil suit could be regarded as constituting a public document except evidence recorded by the Court or summonses or notices or interlocutory orders or the judgment in the case. In <i>BhagainMeghBaneeKoer v. GoorooPetahad Singh</i> (1876) 25 W.B. 68 Garth, C.J. and Birch J. expressly held that a petition which was the subject-matter of an order passed was part of the record in the suit, and I do not think that this can reasonably be doubted. In my judgment, it would be putting an unwarranted restriction on the words "documents forming the acts or re. cords of the acts" to say that they should be confined to those parts of an Income Tax record which the Income Tax Officer has himself prepared and to exclude documents which he has himself called for or which have been admitted to the record for the purposes of the assessment. I consider that the record of an Income Tax case must be regarded as the record of the acts of the Income Tax Officer in making his assessment and therefore that any document properly on the record is just as much a public document as the final order of assessment. For these reasons I would answer the question propounded in the affirmative. I would make the costs of this reference costs in the cause". The aforesaid observation was made only in the context of considering the question as to whether Income tax return is a public document or not. In the light of aforesaid discussion though the panel is of the view that the pleadings (plaint and written statement) are not considered to be public documents under section 74 of Indian Evidence Act, and holds that the official answer key to be correct.
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				However, in view of the conflicting judgments of the High Court, the panel leaves it to the judgment of the Hon'ble Committee to take a final call.	
6.	<u>Question No. 67</u> Q) Testimony of a witness to the existence or non-existence of the fact or the facts in issue is: A) Hearsay evidence B) Original evidence C) Oral evidence D) Direct evidence	<u>CWP No. 6497 of 2023</u> Petitioner claims that Answer given under the answer key is C, whereas correct answer of this quest is 'Option D' and the reasoning of which is duly supported by law That Section 60 of The Indian Evidence Act, 1872 is an extension of Section 59of the Act, hence every oral evidence needs to be direct. So the appropriate answer seems to be 'Option-D'. <u>CWP No. 11695 of 2023</u> That the Petitioner that correct answer of this question is 'Option D'. It is submitted that the petitioner herein had answered option 'D'. As per the final answer key, the correct answer to the said question is option 'C'. It is submitted that it is well settled proposition of law that testimony of a witness is enough to convict or render a person not guilty. It is submitted that if testimony of a witness is enough to convict a person for a particular offence, it has to be assumed that the said testimony is direct evidence. Though the testimony is given orally it does not under any circumstances mean that the same can be treated only as oral evidence. Once a particular statement or testimony is enough to convict a person or acquit him for a particular offence, it has to be understood that the same is direct evidence. It is submitted that the answer to the aforesaid question can either be option 'C' or option 'D' and therefore, action of the respondents whereby they have chosen option 'C' as the correct answer, is unjust and unfair.	C	The question pertains to the law of evidence. The Indian Evidence Act, 1872 includes oral and documentary evidence. Later, electronic record produced for the inspection of the Court has also been included. Sir James Stephen, the drafter of the Indian Evidence Act, 1872, states that the term "Evidence" is used in the Act in reference to words uttered and things exhibited in Court, which refers to oral and documentary evidence as defined in the Section 3 of the Act. Sections 59 and 60 declare that all facts except content of documents may be proved by oral evidence which must in all cases be direct. The term "direct evidence" has not been used in the same sense in which the term has been used under the English law. Under the Indian Evidence Act it has been used in contradistinction to hearsay evidence. The Act impliedly enacts the rule against the hearsay in Section 60 which requires evidence to be given by a person who has perceived the fact with his own senses. Reference may be made to the <i>69th report of the Law Commission of India on Indian Evidence Act, 1872 (May 1977)</i>. A testimony of a witness in a Court as to the existence and non-existence of a fact is oral evidence. The second deduction of the rule that it must be direct which is stipulated in Section 60 of the Act has numerous exceptions laid down in the Act. However, the question posed, relates to the definition of "Evidence" in Section 3 of the Act and an oral testimony of a witness in Court is oral evidence. The objectors have misconstrued the frame of the question and by convoluted reasoning are vying for the wrong option. The panel has gone through the judgment in	C

			the case of <i>Neeraj Dutta (supra)</i> and found it to be not dealing with oral evidence or as to what the oral testimony of a witness is described/called. It, in the fact situation obtainable therein, held that the passing of money should be proved by direct evidence. It was rendered under the Prevention of Corruption Act, 1988. The other judgments, as noticed above, relied upon by the objectors are on a different point. In both the judgments, the Court reiterated the rule laid down in Section 60 of the Act. Same is the case in <i>State of Jharkhand versus Shailendra Kumar Rai @ Pandev Raisupra</i> as it nowhere mentions that the testimony of a witness to the existence or non-existence of the fact or the facts in issue is "direct evidence". It refers to direct evidence in para 37 while referring to Section 32 of the Evidence Act, 1872. It also refers to oral evidence in para 34 and 35 of the judgment emphasizing that the oral evidence must be direct. So far as the authority <i>Chauna Orang versus The State of Assam (supra)</i> is concerned, the same mentions at one place only i.e. in para no.1 that the direct evidence is the testimony of a witness to the existence or non-existence of the fact or the facts in issue, but does not define the same to the exclusion of Section 60 of the Evidence Act, 1872. Primarily, it was in comparison to the circumstantial evidence which this judgment has been discussing so as to decide the particular matter in question. Thus, the Panel is of the view that the official answer key is correct.		
7.	Question No. 69: Q) Which one of the following questions may be forbidden by the Court: 1. Indecent 2. Scandalous 3. Intended to insult 4. To test veracity A) 1 and 2	CWP No. 6497 of 2023 The Petitioner has claimed that the correct answer of Question No.69 is answer "A" and the reasoning of which is stated as below: Section 151: Indecent and scandalous questions:- The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may	D	Sections 148 to 152 of Evidence Act, 1872 deal with categories/types of questions which the Court may forbid from being asked to a witness. Sections 149-150 require that the question cannot be asked without reasonable grounds. Section 151 states a general rule that court	D

B) 2 and 3 C) 3 and 4 D) 1, 2 and 3	have some bearing on the questions before the court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed. Section 152: Questions intended to insult or annoy: - The Court shall forbid any question which appears to it to be intended to insult or annoy, or which though proper in itself, appears to the court needlessly offensive in form. The Petitioner claims that the perusal of the above said provisions makes it clear that in the case where the questions are with regard to indecent or scandalous in the said case since the word "May" has been used by the legislature the court has the discretionary power to forbid the said questions. However, in the case where the said case since the word "Shall" has been used the court is duty bound to forbid the said question. The bare language of Sections 151 and 152 is very clear. The Petitioner claims that there is no ambiguity in the question asked by the examiner and the answer which was mentioned in the proposed answer key as well as in the final answer key i.e. Answer "D" is totally wrong and in contrary in Sections 151 and 152 of the India Evidence Act and the correct answer of the Question no.69 is Answer "A". <u>CWP No. 4630 of 2023</u> The Petitioner has claimed that the correct answer of Question No.69 is answer "A" and the reasoning of which is stated as below: Section 151: Indecent and scandalous questions:- The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed. Section 152: Questions intended to insult or annoy: - The Court shall forbid any question which appears to it to be intended to insult or annoy, or which though proper in itself, appears to the court needlessly offensive in form. The Petitioner claims that the perusal of the above said provisions makes it clear that in the case where the questions are with regard to indecent or scandalous in the said case since the word "May" has been used by the legislature the court has the discretionary power to forbid the said questions. However, in the case where the said case since the word "Shall" has been used the court is	will not allow indecent and scandalous questions except in two situations i.e. where they relate to facts in issue; and where they relates to necessary matters to be known in order to determine whether or not the facts in issue existed. It is for this reason that the provision employs the word 'may'. On the other hand Section 152 states that Court shall not allow any question which is asked only to insult or annoy the witness. The thrust of the question is to find out the forbiddable questions out of the given options. The objectors without understanding the sweep of the question adopted a pedantic approach and thus committed error in making correct choice from the available options. Thus, the Panel is of the view that the official answer key is correct.
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	duty bound to forbid the said question. The bare language of Sections 151 and 152 is very clear. The Petitioner claims that there is no ambiguity in the question asked by the examiner and the answer which was mentioned in the proposed answer key as well as in the final answer key i.e. Answer "D" is totally wrong and in contrary in Sections 151 and 152 of the India Evidence Act and the correct answer of the Question no.69 is Answer "A". <u>CWP No. 5323 of 2023.</u> The Petitioner has claimed that the correct answer of Question No.69 is answer "A" and the reasoning of which is stated as below: Section 151: Indecent and scandalous questions:- The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed. Section 152: Questions intended to insult or annoy: - The Court shall forbid any question which appears to it to be intended to insult or annoy, or which though proper in itself, appears to the court needlessly offensive in form. The Petitioner claims that the perusal of the above said provisions makes it clear that in the case where the questions are with regard to indecent or scandalous in the said case since the word "May" has been used by the legislature the court has the discretionary power to forbid the said questions. However, in the case where the said case since the word "Shall" has been used the court is duty bound to forbid the said question. The bare language of Sections 151 and 152 is very clear. The Petitioner claims that there is no ambiguity in the question asked by the examiner and the answer which was mentioned in the proposed answer key as well as in the final answer key i.e. Answer "D" is totally wrong and in contrary in Sections 151 and 152 of the India Evidence Act and the correct answer of the Question no.69 is Answer "A". <u>CWP No. 9256 of 2023</u> The Petitioner has claimed that the correct answer of Question No.69 is answer "A" and the reasoning of which is stated as below: 29. Section 151: Indecent and scandalous questions: The Court may forbid any questions or inquiries which it regards as		
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		indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed. <u>CWP No. 11926 of 2023</u> The Petitioner has claimed that the correct answer of Question No.69 is answer "A" and the reasoning of which is stated as below: Section 151: Indecent and scandalous questions:- The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed. Section 152: Questions intended to insult or annoy: - The Court shall forbid any question which appears to it to be intended to insult or annoy, or which though proper in itself, appears to the court needlessly offensive in form. The Petitioner claims that the perusal of the above said provisions makes it clear that in the case where the questions are with regard to indecent or scandalous in the said case since the word "May" has been used by the legislature the court has the discretionary power to forbid the said questions. However, in the case where the said case since the word "Shall" has been used the court is duty bound to forbid the said question. The bare language of Sections 151 and 152 is very clear. The Petitioner claims that there is no ambiguity in the question asked by the examiner and the answer which was mentioned in the proposed answer key as well as in the final answer key i.e. Answer "D" is totally wrong and in contrary in Sections 151 and 152 of the India Evidence Act and the correct answer of the Question no.69 is Answer "A".		
8.	<u>Question No. 73:</u> Q) The rule of “No one can blow hot and cold in the same breath” relates to: A) Doctrine of lis pendens. B) Doctrine of feeding the grant by estoppel C) Doctrine of holding out D) Doctrine of election	<u>CWP No. 4697 of 2023.</u> That the Petitioner claims that the correct answer of Question No.73 is answer "B" and the reasoning of which is duly Supported by Law is stated as below: The Doctrine of feeding the grant by estoppel, Section 43 of Transfer of Property Act, 1882 has embodied the general principle of estoppel. Doctrine of feeding the grant by estoppel is based on the principles of equity, justice and good conscience. The Law incorporated in Section 43 is based upon common law doctrine of Estoppel	D	The sources cited by the objectors/candidates refer to sweeping statements made without drawing on the origin of the doctrines/principles stated in the question/proposition. The panel has gone through the aforesaid sources and is of the view that certain judgments relied upon reinforces the official answer key. There is no need to individually refer to each source to avoid prolixity. In nut

by deed and the equitable principle that if a person promises more than he can perform, then he must fulfil the promise when he gets the ability to do so. The Equity does not permit him to deny his earlier statement. In other words, he cannot blow both hot & cold in the same breath.

According to Section 43 of Transfer of Property Act, 1882 if a seller/transferor for value or consideration received, transfers a property he does not own but subsequently he acquires the title to that property, which he transferred, then the purchaser/transferee can enforce the transfer against him. This is the essence of the doctrine of feeding the grant by estoppel. Thus the transferor will not be allowed to deny the false representation made by him earlier which was acted upon by the transferee i.e., the transferor will not be allowed to blow hot and cold in the same breath.

Whereas on the other hand, in the case of The doctrine of election:

Doctrine of election is stated in transfer of property act 1882 in section 35. Election means a choice between two alternative or conflicting rights. Granting two rights in such a way that one is higher than the other, you can choose either of them. You cannot have both. The applicant cannot use both, the recipient must choose between two inconsistencies or alternative rights. Basically, it means that the person taking the benefit should also bear the burden i.e. where a person takes some benefit under a deed or instrument, he must also bear its burden. It is an important part of the Transfer of Property Act 1882 to resolve property conflicts among people.

Example: A promises to give B, 50 Lakh but only on one condition that he will sell his house to C, now B here has to make the election on what to do? If he takes A's offer he will have to give his house to C. On the other hand, if he doesn't, he won't get 50 Lakh also hence he has to make an election on what to choose. The Doctrine of Election is explained by Maitland in following words: "He who accepts a benefit under a deed or a will or other instrument must:

- (i) Adopt the whole contents of that instrument.
- (ii) confirm to all its provisions.
- (iii) Renounce all rights that are inconsistent with it.

Reasoning: A bare reading of the above two doctrines is sufficient to support the view that the most appropriate & correct option considering the wordings of this

shell, it has been held that 'Doctrine of feeding the grant by estoppels' and 'Doctrine of holding out' branch out of the general principle of estoppel.

It is submitted that "Doctrine of feeding the grant by estoppels" is based on the equitable doctrine that a man who has promised more than he can perform must make good his contract when he acquires the power of performance. Reference may be made to **BB Mitra & Sen Gupta on The Transfer of Property Act, 1882, 19th Edition (2011), Kamal Law House, Kolkata, p.283.**

The doctrine of holding out is based upon rule of estoppel. Reference may be made to **CL Gupta, Law of Partnership including Liability Partnership, 4th Edition 2010, page 1.297.**

The doctrine of lis pendens is also based on a different rule i.e. maxim pendente lite nihil innovetur i.e. pending litigation nothing new should be introduced. Reference may be made to **BB Mitra & Sen Gupta on The Transfer of Property Act, 1882, 19th Edition (2011), Kamal Law House, Kolkata, p.344.**

The foundation of doctrine of election is that a person taking a benefit under an instrument must also bear the burden. The principle is in fact a branch of general rules that no one can approbate and reprobate i.e. No one can blow hot and cold in the same breath. Reference may be made to **Law Commission of India, 70th Report, The Transfer of Property Act, 1882 (August, 1977), p.227 and BB Mitra & Sen Gupta on The Transfer of Property Act, 1882, 19th Edition (2011), Kamal Law House, Kolkata, p.224.**

Accordingly, the panel is of the view that in the given options, option D is the most appropriate answer.

Thus, the official answer key is correct.

question is Option B and not Option D. <u>CWP No. 6497 of 2023.</u> Petitioner Claims that the correct Answer of Question No.73 is answer "B". <u>Cases relied upon:</u> 1. Union of India v. Murugesan 2021 (SC) Civil Appeal no. 2491-2492/2021 2. State of Punjab v. Dhanjeet Singh Sandhu (2014) 15 SCC 14 3. Joint Action Committee of Airline Pilots Association of India v. DG of Civil Aviation 2011 (5) SCC 435 <u>CWP No. 5308 of 2023.</u> The Petitioner has Claimed that both Options “B” and “D” are correct, as both the doctrines are the correct options. They have claimed that the candidate opting for one option and not for the other cannot be denied benefit of marks. Section 43 of Transfer of Property Act, 1882 has embodied the general principle of estoppel. The law incorporated in Section 43 is based upon common law doctrine of estoppel by deed. The equity does not permit him to deny his earlier statement thus the transferor will not be allowed to deny the false representations made by him earlier which was acted upon by the transferee i.e. the transferor will not be allowed to blow hot and cold in the same breath. The doctrine of election is stated in Section 35 of the Transfer of Property Act. Election means the choice between 2 alternatives or conflicting rights. The recipient must choose between two inconsistencies or alternative rights. This doctrine is also based on the principle of estoppel in the sense that it prevents a person from taking 2 inconsistent positions in the property dispute. His earlier choice constitutes an election and he is estopped from making a contradictory claim. <u>CWP No. 5323 of 2023.</u> The Petitioner claims that the correct Answer of Question No.73 is answer "B" and the reasoning of which is duly supported by law is stated as below: That the Doctrine of feeding the grant by estoppel, Section 43 of Transfer of Property Act, 1882 has embodied the general principle of estoppel. Doctrine of feeding the grant by estoppel is based on the principles of equity, justice and good conscience. The Law incorporated in Section 43 is based			
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	upon common law doctrine of Estoppel by deed and the equitable principle that if a person promises more than he can perform, then he must fulfil the promise when he gets the ability to do so. The Equity does not permit him to deny his earlier statement. In other words, he cannot blow both hot & cold in the same breath. That according to Section 43 of Transfer of Property Act, 1882 if a seller/transferor for value or consideration received, transfers a property he does not own but subsequently he acquires the title to that property, which he transferred, then the purchaser/transferee can enforce the transfer against him. This is the essence of the doctrine of feeding the grant by estoppel. Thus the transferor will not be allowed to deny the false representation made by him earlier which was acted upon by the transferee i.e., the transferor will not be allowed to blow hot and cold in the same breath. That whereas on the other hand, in the case of the doctrine of election: Doctrine of election is stated in Transfer of Property Act 1882 in Section 35. Election means a choice between two alternative or conflicting rights. Granting two rights in such a way that one is higher than the other, you can choose either of them. You cannot have both. The applicant cannot use both, the recipient must choose between two inconsistencies or alternative rights. Basically, it means that the person taking the benefit should also bear the burden i.e. where a person takes some benefit under a deed or instrument, he must also bear its burden. It is an important part of the Transfer of Property Act 1882 to resolve property conflicts among people. Example: A promises to give B, 50 Lakh but only on one condition that he will sell his house to C, now B here has to make the election on what to do? If he takes A's offer he will have to give his house to C. On the other hand, if he doesn't, he won't get 50lakh also hence he has to make an election on what to choose. The Doctrine of Election is explained by Maitland in following words: "He who accepts a benefit under a deed or a will or other instrument must: (i) Adopt the whole contents of that instrument. (ii) confirm to all its provisions. (iii) Renounce all rights that are inconsistent with it. Reasoning: A bare reading of the above two doctrines is sufficient to support the view that the most appropriate & correct option		
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	considering the wordings of this question is Option B and not Option D. Case relied upon: RSIDIC v. Diamond and Gem Development Corporation. <u>CWP No. 6493 of 2023.</u> That the Petitioner claims that the correct answer of Question No.73 is answer "B" and the reasoning of which is duly Supported by Law is stated as below: The Doctrine of feeding the grant by estoppel, Section 43 of Transfer of Property Act, 1882 has embodied the general principle of estoppel. Doctrine of feeding the grant by estoppel is based on the principles of equity, justice and good conscience. The Law incorporated in Section 43 is based upon common law doctrine of Estoppel by deed and the equitable principle that if a person promises more than he can perform, then he must fulfil the promise when he gets the ability to do so. The Equity does not permit him to deny his earlier statement. In other words, he cannot blow both hot & cold in the same breath. According to Section 43 of Transfer of Property Act, 1882 if a seller/transferor for value or consideration received, transfers a property he does not own but subsequently he acquires the title to that property, which he transferred, then the purchaser/transferee can enforce the transfer against him. This is the essence of the doctrine of feeding the grant by estoppel. Thus the transferor will not be allowed to deny the false representation made by him earlier which was acted upon by the transferee i.e., the transferor will not be allowed to blow hot and cold in the same breath. Whereas on the other hand, in the case of The doctrine of election: Doctrine of election is stated in transfer of property act 1882 in section 35. Election means a choice between two alternative or conflicting rights. Granting two rights in such a way that one is higher than the other, you can choose either of them. You cannot have both. The applicant cannot use both, the recipient must choose between two inconsistencies or alternative rights. Basically, it means that the person taking the benefit should also bear the burden i.e. where a person takes some benefit under a deed or instrument, he must also bear its burden. It is an important part of the Transfer of Property Act 1882 to resolve property conflicts among people. Example: A promises to give B, 50 Lakh but only on one condition that		
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	he will sell his house to C, now B here has to make the election on what to do? If he takes A's offer he will have to give his house to C. On the other hand, if he doesn't, he won't get 50 Lakh also hence he has to make an election on what to choose. The Doctrine of Election is explained by Maitland in following words: "He who accepts a benefit under a deed or a will or other instrument must: (i) Adopt the whole contents of that instrument. (ii) confirm to all its provisions. (iii) Renounce all rights that are inconsistent with it. <u>Reasoning:</u> A bare reading of the above two doctrines is sufficient to support the view that the most appropriate & correct option considering the wordings of this question is Option B and not Option D. <u>CWP No. 9028 of 2023.</u> 28. The Petitioner claims that the correct Answer of Question No.73 is answer "B" and the reasoning of which is duly supported by law is stated as below: That the Doctrine of feeding the grant by estoppel, Section 43 of Transfer of Property Act, 1882 has embodied the general principle of estoppel. Doctrine of feeding the grant by estoppel is based on the principles of equity, justice and good conscience. The Law incorporated in Section 43 is based upon common law doctrine of Estoppel by deed and the equitable principle that if a person promises more than he can perform, then he must fulfil the promise when he gets the ability to do so. The Equity does not permit him to deny his earlier statement. In other words, he cannot blow both hot & cold in the same breath. That according to Section 43 of Transfer of Property Act, 1882 if a seller/transferor for value or consideration received, transfers a property he does not own but subsequently he acquires the title to that property, which he transferred, then the purchaser/transferee can enforce the transfer against him. This is the essence of the doctrine of feeding the grant by estoppel. Thus the transferor will not be allowed to deny the false representation made by him earlier which was acted upon by the transferee i.e., the transferor will not be allowed to blow hot and cold in the same breath. That whereas on the other hand, in the case of the doctrine of election: Doctrine of election is stated in Transfer of Property Act 1882 in		
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	Section 35. Election means a choice between two alternative or conflicting rights. Granting two rights in such a way that one is higher than the other, you can choose either of them. You cannot have both. The applicant cannot use both, the recipient must choose between two inconsistencies or alternative rights. Basically, it means that the person taking the benefit should also bear the burden i.e. where a person takes some benefit under a deed or instrument, he must also bear its burden. It is an important part of the Transfer of Property Act 1882 to resolve property conflicts among people. Example: A promises to give B, 50 Lakh but only on one condition that he will sell his house to C, now B here has to make the election on what to do? If he takes A's offer he will have to give his house to C. On the other hand, if he doesn't, he won't get 50lakh also hence he has to make an election on what to choose. The Doctrine of Election is explained by Maitland in following words: "He who accepts a benefit under a deed or a will or other instrument must: (i) Adopt the whole contents of that instrument. (ii) confirm to all its provisions. (iii) Renounce all rights that are inconsistent with it. Reasoning: A bare reading of the above two doctrines is sufficient to support the view that the most appropriate & correct option considering the wordings of this question is Option B and not Option D. <u>CWP No. 10483 of 2023</u> The Petitioner claims that both B and D are correct because both are based on doctrine of estoppels, especially when both are the kind of estoppels and the principle of blowing hot and cold in the same breath as a facet of rule of estoppel. <u>CWP No. 11237 of 2023.</u> Therefore, the Petitioner claims that answer "D" to the question no.1 of Code A would be the correct and the right answer and there was no need or any necessity to change the Answer to option C and subsequently, delete the same without any sufficient cause. Contentends that this claim is supported by Notification issued by Ministry of Law and Justice (Legislative Department) dated 02.04.2013, the Indian Penal Code was amended by virtue of the Criminal Law Amendment Act 2013.The Petitioner further states that the provisions of the		
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abovementioned Notification make it clear that Section 166A, 166B, 354C have been inserted in the Indian Penal Code, 1860 by the Criminal Law Amendment 2013 and Sections 376A, 376B have been substituted not inserted in the IPC 1860. <u>CWP No. 9803 of 2023.</u> Petitioner Claims that the correct Answer of Question No.73 is answer "B". Petitioner has also relied on Judgements of the Hon'ble Supreme Court while dealing with the principle of approbate and reprobate in the matter titled as Union of India and others Vs. Murugesan etc. passed in Civil Appeal No.2491-2492 of 2021. Also, relied upon 1. State of Punjab v. Dhanjit Singh Sandhu 2014 15 SCC 14 2. Airline Pilots Association of India v. DG of Civil Aviation 2011 5 SCC 435 <u>CWP No. 11926 of 2023.</u> Petitioner Claims that the correct Answer of Question No.73 is answer "B". Section 43 of Transfer of Property Act, 1882 has embodied the general principle of estoppel. Doctrine of feeding the grant by estoppel is based on the principles of equity, justice and good conscience. The Law incorporated in Sec 43 is based upon common law doctrine of Estoppel by deed and the equitable principle that if a person promises more than he can perform, then he must fulfil the promise when he gets the ability to do so. The Equity does not permit him to deny his earlier statement. In other words, he cannot blow both hot & cold in the same breath. Petitioner relies on: <i>Desh Pande V. Maruti Balram Habbait</i> <u>CWP No. 11312 of 2023.</u> Petitioner Claims that the correct Answer of Question No.73 is answer "B". The Doctrine of feeding the grant by estoppel, Section 43 of Transfer of Property Act, 1882 has embodied the general principle of estoppel. Doctrine of feeding the grant by estoppel is based on the principles of equity, justice and good conscience. The Law incorporated in Sec 43 is based upon common law doctrine of Estoppel by deed and the equitable principle that if a person promises more than he can perform, then he must fulfil the promise when he gets the ability to do so. The Equity does not permit him to deny his earlier statement. In		
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	answer "B" & "D", both are correct. So therefore, candidate opting for either of the options cannot be denied marks. The Doctrine of feeding the grant by estoppel, Section 43 of Transfer of Property Act, 1882 has embodied the general principle of estoppel. Doctrine of feeding the grant by estoppel is based on the principles of equity, justice and good conscience. The Law incorporated in Sec 43 is based upon common law doctrine of Estoppel by deed and the equitable principle that if a person promises more than he can perform, then he must fulfil the promise when he gets the ability to do so. The Equity does not permit him to deny his earlier statement. In other words, he cannot blow both hot & cold in the same breath. According to Section 43 of Transfer of Property Act, 1882 if a seller/transferor for value or consideration received, transfers a property he does not own but subsequently he acquires the title to that property, which he transferred, then the purchaser/transferee can enforce the transfer against him. This is the essence of the doctrine of feeding the grant by estoppel. Thus the transferor will not be allowed to deny the false representation made by him earlier which was acted upon by the transferee i.e., the transferor will not be allowed to blow hot and cold in the same breath. Whereas on the other hand, in the case of The doctrine of election: Doctrine of election is stated in Transfer of Property Act 1882 in Section 35. Election means a choice between two alternative or conflicting rights. Granting two rights in such a way that one is higher than the other, you can choose either of them. You cannot have both. The applicant cannot use both, the recipient must choose between two inconsistencies or alternative rights. Basically it means that the person taking the benefit should also bear the burden i.e. where a person takes some benefit under a deed or instrument, he must also bear its burden. It is an important part of the Transfer of Property Act 1882 to resolve property conflicts among people. CWP No. 8366 of 2023. That the Petitioner Claims that the correct Answer of Question No.73 is answer "B". Petitioner has relied on Judgements of the Hon'ble Supreme Court while dealing with the principle of approbate and reprobate in the matter titled as <i>Union of India and others Vs. Murugesan etc.</i> passed in Civil Appeal No.2491-2492 of		
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		2021. The Hon'ble Apex Court has held that the phrase 'one cannot blow hot and cold' is also a specie of estoppel dealing with the conduct of a party. It is submitted that from the aforesaid observations of the Hon'ble Supreme Court, it is evident that there can be two answers to Question No.30 & 125. Further, the Hon'ble Supreme Court in the matter titled as <i>The Rajasthan State Industrial Development and Investment Corporation &Anr. Versus Diamond and Gem Development Corporation Ltd. &Anr.</i> has also held that the Doctrine of Election is based on the rule of estoppel.			
9.	<u>Question No. 85</u> Q) In lease of immovable property, what is transferred? (a) Right to enjoy the property (b) Interest in the property (c) Mesne profits (d) All of the above.	<u>CWP No. 5323 of 2023.</u> That the Petitioner Claims that the correct Answer as per key is Option (A) but since the Options (a), (b), (c) all are correct, therefore, the correct option should be Option (D) instead of Option (A). Case relied upon: i) <i>Hindon Forge Pvt. Ltd. v. State of UP</i> ii) <i>Associated Hotels Of India Ltd vs R. N. Kapoor</i> 1959 AIR 1262 <u>CWP No. 5971 of 2023.</u> That the Petitioner Claims that the correct Answer as per key is Option (A) but since the Options (a), (b), (c) all are correct, therefore, the correct option should be Option (D) instead of Option (A). Section 105 of Transfer of Property Act refers to interest in property along with right to enjoy. Section 108 of ransfer of Property Act, clause (j) and (k) further state transfer of interest in property. C Cases relied upon: 1) <i>Smt. Rajbir Kaur and Anr. v. S. Chokesini and Co.</i> 1988 AIR 1845 2) <i>Associated Hotels Of India Ltd vs R. N. Kapoor</i> 1959 AIR 1262 3) <i>B.M. Lall v. Dunlop Rubber Co.</i> 1968 (1) SCR 23 4) <i>ICICI v. State of Maharashtra and Ors.</i> <u>CWP No. 11312 of 2023.</u> The Petitioner submits that Question No.85 & 88 are contrary to each other if the answer to question 85 is believed to be option A, as reflected in the answer key, it would mean that in lease of an immovable property only right to enjoy the property is transferred and in lease of an immovable property no interest is created in the property. Further, if the answer to Question 88 is believed to the option C, as reflected in the answer key, it would mean that no interest is created in the property in case of a license,	A	Section 105 of the Transfer of Property Act, 1882 defines lease. It, inter alia, provides that a lease of immovable property is a transfer of a right to enjoy such property. The right which is sought to be transferred by this category/specie of transfer of property i.e. lease of immovable property, is a right to enjoy the property. No doubt in the context of Section 5 of the Act ibid, the term 'transfer' is used in its widest and most generic sense, comprehending within its scope all species of contract which pass real rights or interest as they are called in the Act, in property from one person to another. Right to enjoy the property is also an interest in the property. But, the thrust of the question is to find out the exact right or interest which is transferred in lease of immovable property. In the given set of options the most appropriate answer is option A. Thus, the panel is of the view that the official answer key is correct	A

		however, in case of a lease interest is created in the property. The Petitioner submits that a harmonious reading of the two questions shows that they are contrary to each other and hence ought to be corrected and deleted.			
10.	<u>Question No.88</u> In which of the following transactions, no interest in the property is created? A) Lease B) Mortgage C) License D) Tenancy	<u>CWP No. 11312 of 2023.</u> The Petitioner submits that Question No.85 & 88 are contrary to each other if the answer to question 85 is believed to be option A, as reflected in the answer key, it would mean that in lease of an immovable property only right to enjoy the property is transferred and in lease of an immovable property no interest is created in the property. Further, if the answer to Question 88 is believed to the option C, as reflected in the answer key, it would mean that no interest is created in the property in case of a license, however, in case of a lease interest is created in the property. The Petitioner submits that a harmonious reading of the two questions shows that they are contrary to each other and hence ought to be corrected and deleted.	C	The word/term "interest" used in the Transfer of Property Act refers to the real rights in the property. In respect of transaction/transfer of "lease, mortgage, tenancy etc, "interest/real right' in the immovable property is transferred from one person to another. On the contrary license refers to the permissive use of the property without transmitting the interest in the property to the licensee. Reference be made to BB Mitra & Sen Gupta on The Transfer of Property Act, 1882, 19th Edition (2011), Kamal Law House, Kolkata, pp.1074-1075. Reliance being placed on Easement Act, 1882 is misplaced as the statute is territorially limited in its application and Section 52 of the Act itself specifies that the right transferred in license does not amount to an interest in the property. It, thus, reinforces the point that license does not involve transfer of an interest in the immovable property. Thus, the panel is of the view that the official answer key is correct.	C
11.	<u>Question No. 91:</u> Q) Acknowledgment after the period of limitation: A) is of no effect B) gives rise to an independent and enforceable contract C) neither (a) nor (b) D) Both (a) and (b) are correct	<u>CWP No. 4890 of 2023.</u> The Petitioner claims that option "B" is the correct answer. The Petitioner relied upon Section 25 of the Indian Contract Act. Section 25 makes it clear that acknowledgment is given after the debt is barred, then it amounts to a contract and can be enforced in the competent court of law as a separate contract. It cannot be said that the said acknowledgment has no effect. <u>CWP No. 5308 of 2023.</u> The Petitioner claims that the correct answer of question 91 is not "A" and the correct answer should be on the basis of Section 25(3) of Indian Contract Act i.e., "B". The Petitioner relies on Section 25 of the Indian Contract Act. The inadequacy of the consideration is a fact which the fact should take into account in considering whether or not the consent was freely given. Since the question was ambiguous, thus the candidate opting for answer	A	The question posed is asking about the effect of acknowledgment after the period of limitation. The answer to the same is provided in Section 18 of the Limitation Act, 1963 which deals with the effect of acknowledgment in writing. As per the same, an acknowledgment made in writing signed by the parties before the expiration of the prescribed period of limitation gives rise to a fresh period of limitation from the date of said acknowledgment. Thus, to be effective, it must be made within the prescribed period of limitation. The objectors appear to have been misled by the provision contained in the Section 25 of the Indian Contract Act, 1872 which	A

	on the basis of Section 25 of the Indian Contract Act, cannot be denied the benefit of marks. <u>CWP No. 5323 of 2023.</u> That the Petitioner Claims that the correct Answer of Question No.91 is answer "D" and the reasoning of which is duly Supported by Law is stated as below: That this Hon'ble court in RSA No.2927 of 2015 decided on 02.02.2015 (Saroop Singh Vs. Rattan Singh (dead) through LRs) wherein the counsel for respondent placed reliance upon the judgment of A.V. Murthy Vs. B.S. Nagabasavanna, 2002 (1) RCR (Criminal) 745; wherein Hon'ble Supreme Court has referred to Section 25(3) of Indian Contract Act 1872 and has accepted that even the time barred debts also can be enforceable in the light of subsequent acknowledgment of liability. Hence, considering above judgment and Section 25 (3) of the Indian Contract Act, Civil Suit cannot be dismissed on the ground of limitation, since it gives rise to an independent and enforceable contract. Thus Petitioner claims that option (b) is correct option too. Moreover, as per Section 18 of Limitation Act, option (a) is also the correct answer. <u>CWP No. 9028 of 2023.</u> That the Petitioner claims that the correct Answer of Question No.91 is answer "B" and the reasoning of which is duly Supported by Law is stated as below: The important words in Section 5 of Limitation Act are "may be admitted". The legislature has not used the expression "shall be admitted". Perusal of the said provision makes it clear that even the acknowledgement of debt is given after the debt is barred then it amounts to be a contract and it can be enforced in the competent court of law as a separate contract. It cannot be said that the said acknowledgement has no effect. <u>CWP No. 5971 of 2023.</u> The Petitioner claims that the question is liable to be deleted since more than 2 sets of answers as “A”, “B” and “D”, and self-contrary in nature. Section 23(3) of Indian Contract Act has been relied upon.		deals with agreement without consideration as void unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law. Sub-section 3 of the same provides that an agreement will be a contract and not void, if it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. There is a vital distinction between 'promise to pay time barred debt' under the said provision of the Contract Act from 'acknowledgement' under the Limitation Act. Except for the commonality of being in writing the two are distinct in content, concept and operation. Judgment in the case of <i>Sama Dharman v S. Natarajan, Crl. O.P. (MD) No. 3824/2012, by the Hon'ble High Court of Madras</i>, relied on by one of the objectors support the above view. The question is asking about the effect of acknowledgement on the period of limitation, a question under the Limitation Act. 1963. The panel has considered the cited judicial precedents and found those to be inapplicable to the posed question. A detailed discussion on the cited precedent is being obviated to avoid prolixity. Accordingly, the objections raised by the candidates have no merits. Thus, the Panel is of the view that the official answer key is correct.		
12.	<u>Question No. 94:</u> Q) Condonation of delay under Section 5 of Limitation Act: A) Can be claimed as a	<u>CWP No. 4697 of 2023</u> That the Petitioner claims that the correct Answer of Question No.94 is answer "B" and the reasoning of which is duly Supported by Law is stated as below: The important words in section 5 of	C	The thrust of question is to find out the key element in the operation of Section 5 of the Limitation Act, 1963. S.5 provides for the extension of the prescribed period for filing appeal	C

matter of right B) Is a matter of discretion of the Court C) Sufficient cause for the delay has to be shown D) None of the above	Limitation Act are "may be admitted". The legislature has not used the expression "shall be admitted". Meaning thereby once the cause has been found to be sufficient, still the court is not bound to allow condonation of delay. The court will also examine the overall circumstances of the case and particularly the effect of the condonation of delay upon opposite party. If the court finds that the opposite has altered his position to such an extent that condonation of delay would result into irreparable loss to him then despite the sufficiency of the cause, the court shall not condone the delay. <u>CWP No. 6497 of 2023</u> 44. That the Petitioner Claims that the correct Answer of Question No.94 is answer "B" and the reasoning of which is duly Supported by Law is stated as below: 45. The important words in Section 5 of Limitation Act are "may be admitted". The legislature has not used the expression "shall be admitted" 46. Meaning thereby once the cause has been found to be sufficient, still the court is not bound to allow condonation of delay. The court will also examine the overall circumstances of the case and particularly the effect of the condonation of delay upon opposite party. If the court finds that the opposite has altered his position to such an extent that condonation of delay would result into irreparable loss to him then despite the sufficiency of the cause, the court shall not condone the delay. Power to condone delay under Section 5 of the Act is discretionary. Liberal Approach must be adopted which means that discretion must not be exercised arbitrarily. <u>CWP No. 5308 of 2023.</u> The Petitioner claims that the correct Answer of Question No.94 is answer "B" and the reasoning of which is duly Supported by Law is stated as below: The important words in section 5 of Limitation Act are "may be admitted". The legislature has not used the expression "shall be admitted" Meaning thereby once the cause has been found to be sufficient, still the court is not bound to allow condonation of delay. The court will also examine the overall circumstances of the case and particularly the effect of the condonation of delay upon opposite party. If the court finds that the opposite has altered his position to	etc., if sufficient cause is shown to the Court to its satisfaction. The existence of cause and thereafter its due sufficiency is to be adjudged by the Court exercising its judicial discretion based on sound principles. No straight jacket formula can be laid down the exercise of judicial discretion depends on a large number of facts and circumstances obtainable in each case. Various principles have been laid down/evolved by the Courts in order to adjudge the sufficiency of cause. The authorities cited by the objectors do not lay down any rule of law that condonation of delay is purely a matter of judicial discretion dehors the existence of element of 'sufficient cause'. It cannot be claimed as a matter of right and discretion of the court is founded on showing of 'sufficient cause'. Therefore, the candidates failed to analyse the question as well as law applicable thereto in right perspective and adopted pedantic approach without realizing the depth of question posed. Thus, the Panel is of the view that the official answer key is correct
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	such an extent that condonation of delay would result into irreparable loss to him then despite the sufficiency of the cause, the court shall not condone the delay. <u>Case relied upon:</u> <i>N. Balakrishnan v. N. Krishnamurthy</i> 1999 (2) RCR (Civil) 578. <u>CWP No. 6684 of 2023.</u> That the Petitioner claims that the correct Answer of Question No.94 is answer "B" and the reasoning of which is duly Supported by Law is stated as below: The important words in section 5 of Limitation Act are "may be admitted". The legislature has not used the expression "shall be admitted" Meaning thereby once the cause has been found to be sufficient, still the court is not bound to allow condonation of delay. The court will also examine the overall circumstances of the case and particularly the effect of the condonation of delay upon opposite party. If the court finds that the opposite has altered his position to such an extent that condonation of delay would result into irreparable loss to him then despite the sufficiency of the cause, the court shall not condone the delay. <u>CWP No. 9028 of 2023</u> That the Petitioner claims that the correct Answer of Question No.94 is answer "B" and the reasoning of which is duly Supported by Law is stated as below: The important words in section 5 of Limitation Act are "may be admitted". The legislature has not used the expression "<i>shall be admitted</i>". Meaning thereby once the cause has been found to be sufficient, still the court is not bound to allow condonation of delay. The court will also examine the overall circumstances of the case and particularly the effect of the condonation of delay upon opposite party. If the court finds that the opposite has altered his position to such an extent that condonation of delay would result into irreparable loss to him then despite the sufficiency of the cause, the court shall not condone the delay. <u>CWP No. 8614 of 2023</u> That the Petitioner claims that the correct Answer of Question No.94 is answer "B" The Petitioner states that the important words in Section 5 of Limitation Act are "<i>may be admitted</i>". The legislature has not used the expression "<i>shall be admitted</i>". Meaning thereby once		
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	the cause has been found to be sufficient, still the court is not bound to allow condonation of delay. The court will also examine the overall circumstances of the case and particularly the effect of the condonation of delay upon opposite party. If the court finds that the opposite has altered his position to such an extent that condonation of delay would result into irreparable loss to him then despite the sufficiency of the cause, the court shall not condone the delay. <u>CWP No. 9256 of 2023</u> That the Petitioner claims that the correct Answer of Question No.94 is answer "B" and the reasoning of which is duly Supported by Law is stated as below: The important words in section 5 of Limitation Act are "may be admitted". The legislature has not used the expression "shall be admitted". Meaning thereby once the cause has been found to be sufficient, still the court is not bound to allow condonation of delay. The court will also examine the overall circumstances of the case and particularly the effect of the condonation of delay upon opposite party. If the court finds that the opposite has altered his position to such an extent that condonation of delay would result into irreparable loss to him then despite the sufficiency of the cause, the court shall not condone the delay. <u>CWP No. 11695 of 2023</u> That the Petitioner Claims that the correct Answer of Question No.94 is answer "B". The important words in Section 5 of Limitation Act are "may be admitted". That Section 5 uses the word ‘May’; it is clearly stated that an application ‘may’ be admitted. Therefore, discretion has been granted to courts to admit an application or any other matter after sufficient cause has to be shown to condone any delay, even then it is the discretion of the Court to condone or not condone the delay. <u>CWP No. 7983 of 2023</u> Petitioner Claims that the correct Answer of Question No.94 is answer "B" and the reasoning of which is duly Supported by Law is stated as below: The important words in Section 5 of Limitation Act are "may be admitted". The legislature has not used the expression "shall be admitted" Meaning thereby once the cause has been found to be sufficient, still the court is not bound to allow condonation of delay. The court will		
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		also examine the overall circumstances of the case and particularly the effect of the condonation of delay upon opposite party. If the court finds that the opposite has altered his position to such an extent that condonation of delay would result into irreparable loss to him then despite the sufficiency of the cause, the court shall not condone the delay. The Petitioner has relied on the case law <i>N. Balakrishnan V. M. Krishnamurthi</i> CWP No. 8366 of 2023 That the Petitioner Claims that the correct Answer of Question No.94 is answer "B". The important words in Section 5 of Limitation Act are "may be admitted". The legislature has not used the expression "shall be admitted" That Section 5 uses the word 'May'; it is clearly stated that an application 'may' be admitted. Therefore, discretion has been granted to courts to admit an application or any other matter after sufficient cause has to be shown to condone any delay, even then it is the discretion of the Court to condone or not condone the delay. That the Petitioners have relied upon a Judgement by the Hon'ble Supreme Court dealing with the aforesaid Issue in the matter titled as <i>Ramlal, Motilal and Chhotelal Vs. Rewa Coal Fields Ltd.</i> AIR 1962 SC 361.			
13.	<u>Question No. 103:</u> Q) Pench Tiger Reserve is located in which State? A) Maharashtra B) Madhya Pradesh C) Karnataka D) Kerala	CWP No. 4890 of 2023 That the Petitioner claims that the correct Answer of Question No.103 is answer "B" and the present Petitioner had also marked the Answer "B" and the Respondents had arbitrarily deleted the question in the final answer key without any basis. That the Petitioner contends that in the proposed answer key issued by the respondents, the respondents have rightly mentioned the answer B to the Question No. 103. However, the Respondents have without any rationale, deleted the said question in their announcement as well as in the final answer key. The Petitioner further contents that once he has marked right answer to the question, then in no circumstances, the Respondents can delete the said question and if there is any necessity arises to delete the said question, then the grace marks of the said question must be given to the Petitioner who has attempted one of the correct answer. CWP No. 5323 of 2023 The Petitioner claims that both "A" and "B" are correct answers. 69. That the Petitioner	B	The official website of Government of Maharashtra as well as the map at the website of Government of Madhya Pradesh clearly shows that the Pench Tiger Reserve is situated within the territorial boundaries of both the states. Thus, the Panel recommends that marks should be allotted to all the candidates who have opted either option A or option B. In the alternate the question should be deleted as there is no option containing A and B. The Panel leaves it to the judgment of the Hon'ble Committee to take the final call.	Deleted

CWP Nos.11695 of 2023 (O&M) and connected petitions

		contends that in the proposed answer key issued by the Respondents, the Respondents have rightly mentioned the answer B to the Question No. 103. However, the Respondents have without any rationale, deleted the said question in their announcement as well as in the final answer key. The Petitioner further contents that once he has marked right answer to the question, then in no circumstances, the Respondents can delete the said question and if there is any necessity arises to delete the said question, then the grace marks of the said question must be given to the Petitioner who has attempted one of the correct answer.			
14.	Question No.117 Six months waiting period in divorce by mutual consent was held to be not mandatory in: A) Nikhil Kumar v. Rupali Kumar (2016) 13 SCC 383 B) Romesh Chander v. Savitri (1995) 2 SCC 7 C) Amardeep Singh v. Harveen Kaur AIR 2017 SC 4417 D) Durga Parsanna Tripathy v. Arundhati Tripathy (2005) 7 SCC 353	CWP No. 9803 of 2023 The Petitioner states that the correct answer to the question is option “A” whereas in the answer key it has been marked as Option “C” the Petitioner states that in the Judgement mentioned in Option “C” i.e., in Amardeep Singh V. Harveen Kaur AIR 2017 4417 it is clearly mentioned that previously the same issue was decided in Judgement mentioned at Option “A” i.e, Nikhil Kumar V. Rupali Kumar (2016) 13 SCC 383. Therefore, the correct answer should be Option “A”.	C	The panel went through the aforesaid four citations. The authority mentioned in option A does not hold so; rather the Supreme Court specifically invoked Article 142 of the Constitution of India in waiving off statutory period of six months under Section 13 (B) of Hindu Marriage Act, 1955. On the other hand, in the authority mentioned in option C, the Hon’ble Supreme Court discussed the law in detail and laid down certain parameters on the fulfillment of which a trial/family Court can waive off six months waiting period in a petition under Section 12-B of Hindu Marriage Act, 1955. Thus, the Panel is of the view that the official answer key is correct.	C

11. Summary of recommendation *qua* the answer key to the abovesaid fourteen (14) questions is as under:-

Sr. No.	Question No.	Total Objections	Remarks
1.	1	89	Changing of official answer key from option D to option C
6.	17	67	The official answer key is correct
12.	35	30	Referred to Recruitment Committee for final call
14.	37	45	The official answer key is correct
22.	64	1	Referred to Recruitment Committee for final call
24.	67	39	The official answer key is correct

26.	69	137	The official answer key is correct
27.	73	53	The official answer key is correct
34.	85	30	The official answer key is correct
37.	88	1	The official answer key is correct
39.	91	62	The official answer key is correct
42.	94	169	The official answer key is correct
46.	103	8	Referred to Recruitment Committee for final call
49.	117	7	The official answer key is correct

12. The matter was then considered by the learned Recruitment Committee in its meeting held on 13.02.2023. After consideration of recommendations as submitted by the Expert Panel, it was resolved that questions appearing at serial numbers 5, 6, 64 and 103 in the Copy of Question Paper Code 'A' be deleted with the consequence that no credit or discredit in respect of these questions be given irrespective of the fact whether these questions have been attempted by the candidates or not. In respect to question no. 35, it was resolved that no change is required for the proposed answer key and in respect to question no. 1, the Committee found anomaly in the proposed answer key, therefore recommended the change of answer from option D to option C. It was directed that proposed changes in the answer key of the preliminary examination held on 22.01.2023 be uploaded on the official website of this Court with the stipulation that any candidate may file online cross-objections on the "Cross-Objection Portal" of the official website of this High Court while affording two days time and that cross-objections, if so received, should be put up before the Committee.

13. As many as 35 cross-objections were received against the proposed change in respect to question no.1 in the answer key. The matter was reconsidered by the learned Committee and it was resolved on

21.02.2023 that question no.1 also should be deleted being ambiguous. Certain cross-objections received through e-mail qua deletion of two questions, were also considered, but finding no substance therein said cross-objections were rejected. Answer key was directed to be finalized and result prepared through the service provider. Final answer key was uploaded on 21.02.2023.

14. Learned counsel for the petitioners in different writ petitions submitted that taking preliminary examination admittedly does not vest any candidate with the right of selection and that the only right which would accrue to the candidates would be to make him/her eligible to take the main examination i.e., the next step for selection and while stating that being fully conscious of the settled position that an Expert opinion should not ordinarily be tinkered with, they vehemently argued that as the Court is not alien to the subject to law, therefore the abovesaid may not apply *stricto sensu*. Vehement arguments have been raised by learned counsel for the petitioners in respect to all the questions while submitting qua some of the questions, that deletion thereof is not made out at all and furthermore in respect to some of the questions, two or more options are correct, therefore said questions should have been deleted.

15. In respect to deletion of question no.1, it has been categorically argued that once the Expert Panel had recommended change of the final answer key from option D to C, deletion of the said question was not called for. It was argued that incorrect change in the answer key has caused manifest injustice to the petitioners, some of whom have obtained such marks that if they had the benefit of questions deleted (which are stated to have been correctly answered), they would be eligible to take the main examination. With the deletion of some of the questions, some of the

petitioners, it is submitted, have been put to specific disadvantage. Apart from reiterating the objections as raised by the petitioners qua the answer key to fifteen questions as dealt with by the Expert Committee, certain additional arguments were also raised qua some of the questions by learned counsel.

16. Learned counsel for the petitioners have urged that in the given facts and circumstances, where glaring discrepancies are apparent on the face of it, interference by this Court is called for and another Expert Committee comprising of retired High Court Judges should be constituted to look into the matter and in the meanwhile, petitioners should be permitted to take the main examination provisionally subject to decision of the said Expert Committee.

17. We also take note of the additional argument raised on behalf of the petitioner in CWP No.11695 of 2023 to the extent that no marks have been awarded to her for her answer to question no.101 of Set B i.e., Question No.10 of Set A. It is her case that she had blackened option D as answer to question no.101 which is the correct answer as per the answer key. She was not awarded any marks for the same. As per information received by her, there was overwriting on her OMR Sheet at option A also, due to which no marks were granted for this answer. Learned counsel for the petitioner submits that it is only a few dots which are visible under option A to question no.1 and the complete option D has been blackened by the petitioner, therefore she should be awarded marks for the same.

18. Original OMR Sheet of the said petition was produced before us and we found that option D of question no.101 was completely blackened and option A was partially blackened by the petitioner, inasmuch as the complete centre portion of option A was blackened and it is not a case of

few dots appearing at option A.

19. Learned counsel for the said petition on examining the original OMR Sheet himself is unable to deny that in terms of instruction no. 2 contained in the OMR sheet itself, she is not entitled to any marks for the same.

20. Learned counsel for all the petitioners, while reiterating that opinion of the Expert Panel and learned Recruitment Committee is required to be revisited, prayed that all these writ petitions should be allowed.

21. Learned counsel for respondent no.3 while refuting the arguments raised on behalf of the petitioners submitted that process of selection is being carried with strict adherence to the provisions of law and that there is no ground whatsoever which calls for setting aside of the answer key released on 21.02.2023. It is submitted that an Expert Panel was duly constituted and thereafter the matter considered by the learned Recruitment Committee itself and necessary action taken. It is thus prayed that all these writ petitions be dismissed.

22. We have heard learned counsel for the parties at length and have gone through the file and record as produced before us with their able assistance.

23. It is to be noted at the outset that written statement has been filed in some of the writ petitions i.e., CWP Nos.4630, 6497, 4697, 4890, 5308, 5323, 6593, 6684, 7983, 8366, 9028, 9803, 10483, 9256, 8614 and 5971 of 2023. Learned counsel for the parties had agreed that it was not necessary for individual written statements to be filed in all the writ petitions. CWP Nos.11237, 11312, 11926 and 11695 of 2023, in which notice of motion was not formally issued as yet were also taken up for hearing at request of learned counsel with the requisite information being

made available by learned counsel for respondent no.3.

24. It is a settled position of law that judicial restraint is always to be exercised qua interference with answer keys provided by Expert Committees in exercise of jurisdiction under Article 226 of the Constitution of India. The Hon'ble Supreme Court in **Kanpur University, through Vice Chancellor and others Vs. Samir Gupta and others, 1983(4) SCC 309**, has observed as under:-

“16..... We agree that the key-answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct.....”

25. The Hon'ble Supreme Court in case of **Ran Vijay Singh and others Vs. State of U.P and others (2018) 2 SCC 357**, while dealing with the question of revaluation or scrutiny of answer sheets held as under:-

“30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions.
They are:

- (i) If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;
- (ii) If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed;
- (iii) The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate – it has no Expertise in the matter and academic matters are best left to academics;

- (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and
- (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.”

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31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse – exclude the suspect or offending question.
32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the Courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the Court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic

example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination – whether they have passed or not; whether their result will be approved or disapproved by the Court; whether they will get admission in a college or University or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.”

26. Insofar as the argument that this Court not being an alien to the subject of law, should examine the objections raised as in appeal, is devoid of any merit, hence rejected. In this respect gainful reference can be made to a Division Bench Judgment of this High Court in **CWP No. 698 of 2022, decided on 14.01.2022, titled as Penaaz Dhillon Vs. State of Haryana and others**, wherein challenge was to the result of preliminary examination of the HCS (Judicial Branch) Examination 2020-21 for the post of Civil Judge (Jr. Division). Challenge had been raised to the answer key in the said case. While referring to judgment of the Hon'ble Supreme Court in **H.P. Public Service Commission Vs. Mukesh Thakur and others, 2010 (6) SCC 759**, it was held that merely because the subject happens to be law, the Court would not arrogate to itself the powers of the Expert Committee.

27. The Hon'ble Supreme Court while reiterating and reaffirming its earlier decisions, held as under in **U.P.P.S.C and others Vs. Rahul Singh and others, 2018 AIR (Supreme Court) 2861:-**

“12. The law is well settled that the onus is on the candidate to not only demonstrate that the key answer is incorrect but also

that it is a glaring mistake which is totally apparent and no inferential process or reasoning is required to show that the key answer is wrong. The Constitutional Courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers.”

28. Details of objections raised by the petitioners, their consideration by the Expert Panel and their evaluation by the learned Recruitment Committee has been reproduced in the foregoing paras. We have also gone through the Original Report of the Expert Panel produced before us. Learned counsel for the petitioners had referred to the judgments, which have admittedly been considered by the Expert Panel as well as the learned Recruitment Committee. Having considered the recommendation of the Expert Committee as further considered, deliberated and decided by the learned Recruitment Committee, details of which as supplied to us and as have been reproduced in the foregoing paras, we find no glaring mistake or opinion which is unreasonable, calling for interference in exercise of jurisdiction under Article 226 of the Constitution of India. In the given factual matrix, we do not consider it necessary or appropriate to render a further detailed discussion on each and every individual question.

29. We do not find any such glaring discrepancy in the matter which calls for the matter being referred to another Expert Committee. Routine constitution of such Expert Committee/s has been deprecated by the Hon’ble Supreme Court in **Haryana Public Service Commission Vs. State of Haryana and others, Civil Appeal No. 7727 of 2019 (arising out of SLP (C) No. 30800 of 2018)**. In the said case, Haryana Public Service Commission, had undertaken the selection process to appoint 133 Assistant Professors of Geography (College), for which an objective type question

paper was set up wherein candidates were required to answer 100 questions. It was contended before the learned Single Judge that out of 100 questions, most of them are either ambiguous or without correct answer key. Expert Committee was constituted, which on going through the question paper in detail gave its opinion regarding seven questions. Learned Single Judge on going through the question paper concluded that four more questions were ambiguous, therefore should be deleted from consideration. Division Bench in appeal against the decision of the learned Single Judge, while holding that it was not for the learned Single Judge to carry out the exercise of an expert, passed orders for appointing another Expert Committee, which was subject matter of challenge before the Hon'ble Supreme Court in **Haryana Public Service Commission's case** (Supra). The Hon'ble Supreme Court held that if judgment of Division Bench is allowed to stand, there would be no finality to the selection process and especially keeping in view the fact that there was no allegation as such against the Expert Committee, who in its wisdom had submitted its report.

30. We must note at this stage that much stress had been laid on the fact that deletion of question no.1 is unfair on the premise that the Expert Panel had recommended change of answer to question no.1 from option D to C and the same was accepted by the learned Recruitment Committee at the first instance on 13.02.2023. Therefore, deletion of question no.1 was incorrectly directed by the learned Recruitment Committee at a subsequent stage, working to the detriment of a number of candidates, who would otherwise have been eligible to take the Mains examination, having answered the said question correctly. However, we find no merit in this argument in view of the discussion in the foregoing paras. We further reiterate that having perused meeting note dated 17.02.2023 of the learned

Recruitment Committee we find that decision to delete Question no.1 was a well deliberated process after taking note of 35 cross-objections which were received against the proposed answer key to question no.1. It is reiterated that we have deliberately not entered the realm of discussion on the individual questions as in terms of the arguments as raised before us for the reason that we do not find the opinion and the recommendation of the Expert Panel and the decision taken by the learned Recruitment Committee to be discrepant or unreasonable which calls for any interference. As has been held by the Hon'ble Supreme Court in case of **Ran Vijay Singh (Supra)**, in the event of doubt, benefit necessarily has to be given to the examination authority rather than the candidate and exclusion of an offending question has been found to be correct way out.

31. The Hon'ble Supreme Court in **High Court of Tripura through Registrar General Vs. Tirtha Sarathi Mukherjee and others, 2019 (2) SCT 117**, held that the right to seek a writ of mandamus is based on the existence of a legal right and corresponding duty with the answering respondent to carry out public duty. In the absence of any provision, the writ Court, it is held would exercise its powers only in a situation which is rare and exceptional. No such exceptional circumstance has been pointed out in these writ petitions.

32. It is pertinent to note that there is no allegation whatsoever against the Expert Panel or the learned Recruitment Committee. In-fact, learned counsel for the petitioners have been at pains to express that there is categorically no allegation or any mala fide alleged either against the Expert Panel or learned Recruitment Committee and that they would point out only the discrepancies on the basis of which they seek relief.

33. In the given factual matrix, we find no ground whatsoever to

interfere in the matter as in our considered opinion, learned counsel for the petitioners are unable to point out any such glaring discrepancy(ies) which call for interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

34. Learned counsel for the petitioners has also been unable to point out any illegality or irregularity to indicate that the process and procedure followed was not justified or was unfair in any manner.

35. It is necessary to note at this juncture that some miscellaneous applications have been filed by some unsuccessful candidates seeking intervention on the ground that they are similarly situated as the petitioners in the said writ petitions. Hearing was afforded to learned counsel for said applicants as well.

36. Keeping in view the facts and circumstances as above, we do not find any ground whatsoever which calls for interference by this Court in the present writ petitions.

37. No other argument has been raised.

38. All the writ petitions are accordingly dismissed with no order as to costs. Pending applications are also disposed of accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

June 01 , 2023.

s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.