

All India Bar Examination
Model Question Paper 1: Answers and Explanations

Part I

Question 1: The correct answer is (c). Section 89 of the CPC expressly provides for alternative dispute resolution. Section 89(1) provides that where a court thinks that parties may be amenable to a settlement, it can formulate the terms of the settlement, and once it receives the parties' observations on such terms, it can refer the settlement for arbitration, conciliation, mediation, or judicial settlement, including settlement through a Lok Adalat. (See page 1 of the AIBE Preparatory Materials, Book 1)

Question 2: The correct answer is (d). An arbitration agreement, like any other agreement, must meet all the requirements of validity under the Indian Contract Act. Aside from this, the Arbitration Act, 1996 also sets out a number of other requirements for an arbitration agreement to be valid. (See page 2 of the AIBE Preparatory Materials, Book 1)

Question 3: The correct answer is (b). Section 36 of the Arbitration Act, clearly provides that an arbitral award can be enforced in the same manner a decree of a civil court. (See page 6 of the AIBE Preparatory Materials, Book 1)

Question 4: The correct answer is (d). Section 31 of the Arbitration Act, makes it mandatory for an arbitrator or arbitral tribunal, as the case may be, to provide the reasons on which the award is based. The only exceptions permitted to this are if the parties agree that no reasons have to be given, or if the award is an award on agreed terms under Section 30. (See page 10 of the AIBE Preparatory Materials, Book 1)

Question 5: The correct answer is (b). A participated in the arbitration proceedings; if A wished to plead that there was no arbitration clause, she should have done so before participating in the proceedings. (See pages 10-11 of the AIBE Preparatory Materials, Book 1)

Question 6: The correct answer is (e). The Arbitration Act covers domestic as well as international commercial arbitrations. There was no agreement between the parties, express or implied, that that Arbitration Act would not apply to the arbitration proceedings. There is no vested right to have the award enforced under the Foreign Awards Act. (See page 12 of the AIBE Preparatory Materials, Book 1)

Question 7: The correct answer is (a). A settlement agreement has to be signed by all the parties to the dispute. Unless the agreement is signed and accepted by the parties, it will not have the force of an arbitral award or a decree of a court under the Arbitration Act. (See page 19 of the AIBE Preparatory Materials, Book 1)

Question 8: The correct answer is (c). While it is important to be able to identify who the defendant is, it is not the plaintiff's duty to produce him before court. (See pages 20-21 of the AIBE Preparatory Materials, Book 1)

Question 9: The correct answer is (c). Only suits for compensation are precluded by S.95(2) of the Code. (See page 22 of the AIBE Preparatory Materials, Book 1)

Question 10: The correct answer is (d). The principles of *res judicata* are agnostic as to which party prevailed in the first suit. (See page 23 of the AIBE Preparatory Materials, Book 1)

Question 11: The correct answer is (a). See Order VII Rule 11 of the CPC. (See page 29 of the AIBE Preparatory Materials, Book 1)

Question 12: The correct answer is (e). One of the requirements for a court to be 'competent' is that it should have jurisdiction over the matter. Here, the parties, as well as the property that was the subject matter of the dispute, were situated in another state, over which the High Court which A wanted to approach had no jurisdiction. Therefore, that High Court was not a 'competent civil court' for this dispute. (See pages 21-22 of the AIBE Preparatory Materials, Book 1)

Question 13: The correct answer is (e). B was merely holding the title deeds in safekeeping, and the facts tell us clearly that she wished to return the title deeds and recover her charges. Though she does not claim the title deeds herself, she would be entitled to institute an interpleader suit to have the court determine whether A or C should get the deeds, and from whom she can recover her charges. (See page 25 of the AIBE Preparatory Materials, Book 1)

Question 14: The correct answer is (d). B cannot set off the debt in this action, since the amount was owed to B alone, and did not relate to the other defendant, C, at all. (See page 30 of the AIBE Preparatory Materials, Book 1)

Question 15: The correct answer is (b). The right to equality is provided by A.14 of the Constitution. (See page 45 of the AIBE Preparatory Materials, Book 1)

Question 16: The correct answer is (c). The right to life is provided by A.21 of the Constitution. (See page 48 of the AIBE Preparatory Materials, Book 1)

Question 17: The correct answer is (e). The Supreme Court has the power to issue directions or orders or writs in such matters. (See page 49 of the AIBE Preparatory Materials, Book 1)

Question 18: The correct answer is (d). A.23 of the Constitution prohibits traffic in human beings and *begar* and other similar forms of forced labour. (See page 50 of the AIBE Preparatory Materials, Book 1)

Question 19: The correct answer is (a). A.15(1) of the Constitution prohibits discrimination on the basis of place of birth, but the discrimination in this case was on the basis of residence. Residence is not one of the grounds of discrimination prohibited by A.15(1) of the Constitution. While a government-run college is part of 'State' for purposes of Part III of the Constitution, it has clearly not violated A.15(1) of the Constitution in this case. (See page 44 of the AIBE Preparatory Materials, Book 1)

Question 20: The correct answer is (c). A.32(1) of the Constitution guarantees the right to approach the Supreme Court for a violation of any fundamental right. There is no requirement for a petitioner to approach a High Court under A.226 of the Constitution before approaching the Supreme Court under A.32 of the Constitution in matters involving the violation of a fundamental right. (See page 50 of the AIBE Preparatory Materials, Book 1)

Question 21: The correct answer is (c). The Supreme Court clearly has the authority under A.142(1) of the Constitution of the Constitution to pass the order quashing the proceedings against the judge, if it feels that it is necessary to do so in order to do complete justice in the matter before it. A.142(1) of the Constitution does not mention that this power can only be used in certain types of matters - it states that the Supreme Court has this power in respect of any cause or matter pending before it. (See page 60 of the AIBE Preparatory Materials, Book 1)

Question 22: The correct answer is (d). An offer lapses if a counter-offer is made. (See page 79 of the AIBE Preparatory Materials, Book 1)

Question 23: The correct answer is (a). Minors are not competent to contract as per S.11 of the Contract Act. (See page 81 of the AIBE Preparatory Materials, Book 1)

Question 24: The correct answer is (c). S.26 of the Contract Act expressly makes agreements in restraint of marriage void. (See page 85 of the AIBE Preparatory Materials, Book 1)

Question 25: The correct answer is (b). S.124 of the Contract Act defines a contract of indemnity as a contract by which a party promises to save another from loss caused by the conduct of the promisor or by the conduct of another person. (See page 95 of the AIBE Preparatory Materials, Book 1)

Question 26: The correct answer is (a). A the offeror, had clearly specified that the communication of the acceptance should have been through a letter. B did not communicate the acceptance in the mode prescribed, and, therefore, A is not bound by the offer. (See page 78 of the AIBE Preparatory Materials, Book 1)

Question 27: The correct answer is (d). The fact that A had visited a doctor in relation to her heart ailment in the previous year would clearly be a relevant fact for the purposes of an insurance policy. She had knowledge of her medical condition, and she actively concealed it by not marking the box provided in the insurance policy application form. A has committed fraud. (See pages 80 and 81 of the AIBE Preparatory Materials, Book 1)

Question 28: The correct answer is (b). It is not reasonable for A to insist that B come to her office in another city to collect the payment for the goods; on the other hand, B has provided a reasonable manner of payment. (See page 88 of the AIBE Preparatory Materials, Book 1)

Question 29: The correct answer is (c). Offences under the IPC are often qualified with the terms that indicate they require a mental element to be determined before a person can be said to have committed that offence. (See page 104 of the AIBE Preparatory Materials, Book 1)

Question 30: The correct answer is (b). This is provided in S.120-A of the IPC. (See page 107 of the AIBE Preparatory Materials, Book 1)

Question 31: The correct answer is (b). Premeditation is not an ingredient of the offence covered by S.304A of the IPC. (See page 114 of the AIBE Preparatory Materials, Book 1)

Question 32: The correct answer is (c). The commission of theft consists in the moving of a movable property of a person out of his possession without his consent and the existence of a dishonest intent. (See page 114 of the AIBE Preparatory Materials, Book 1)

Question 33: The correct answer is (e). (See page 107 of the AIBE Preparatory Materials, Book 1)

Question 34: The correct answer is (d). Mistaking C for her identical twin, B, was clearly a mistake of fact. A was acting in the belief that she was bound by the law to arrest C, and therefore, has not committed an offence. (See page 108 of the AIBE Preparatory Materials, Book 1)

Question 35: The correct answer is (b). The contention that B was not in the guardianship of her lawful guardian, just because she was alone at home, is not correct. A has committed the offence of kidnapping from lawful guardianship. (See page 116 of the AIBE Preparatory Materials, Book 1)

Question 36: The correct answer is (b). Other laws may also define an offence to be bailable or non-bailable. For instance, S.77B of the Information Technology Act, 2000. (See page 123 of the AIBE Preparatory Materials, Book 1)

Question 37: The correct answer is (e). A Chief Judicial Magistrate may not pass a sentence of death. (See page 124 of the AIBE Preparatory Materials, Book 1)

Question 38: The correct answer is (a). The words arrest and custody are not synonymous. (See page 125 of the AIBE Preparatory Materials, Book 1)

Question 39: The correct answer is (a). For this reason, it has great significance during the course of a trial. (See page 132 of the AIBE Preparatory Materials, Book 1)

Question 40: The correct answer is (b). Since the arrest was in relation to a bailable offence, A cannot be denied bail, as long as she agrees to comply with the conditions of the bail. (See page 127 of the AIBE Preparatory Materials, Book 1)

Question 41: The correct answer is (e). All the reasons set out in (a) in (d) are relevant, and the court can consider these when deciding whether or not to grant A bail. (See page 128 of the AIBE Preparatory Materials, Book 1)

Question 42: The correct answer is (d). Since A was planning to leave the country, there may be a reasonable belief that A would not be present in court for the trial. The court can take this fact

into consideration, and issue a warrant for A's arrest under S.87 of the Cr.P.C. (See page 130 of the AIBE Preparatory Materials, Book 1)

Question 43: The correct answer is (c). Amendment cannot be claimed as a matter of right and the power to either grant or refuse amendments is in the discretion of the court. (See page 148 of the AIBE Preparatory Materials, Book 1)

Question 44: The correct answer is (d). Order VII Rule 1 of the CPC lays down the mandatory particulars which must be stated in a plaint. (See page 149 of the AIBE Preparatory Materials, Book 1)

Question 45: The correct answer is (b). The Indian Stamp Act, 1899 has an inclusive definition of the term 'conveyance'. (See page 151 of the AIBE Preparatory Materials, Book 1)

Question 46: The correct answer is (c). Unless mandated by statute, it is not necessary to the validity of a deed that its execution is attested by any witness. (See page 154 of the AIBE Preparatory Materials, Book 1)

Question 47: The correct answer is (a). The word 'holster' must be construed in relation to the words found in immediate connection with it - carrying a gun in one's pocket would not satisfy the condition set down in the statute. (See page 144 of the AIBE Preparatory Materials, Book 1)

Question 48: The correct answer is (c). Applying the doctrine of *expressio unius est exclusio alterius*, it is clear that the mention of citizens implies the exclusion of non-citizens from those having the rights to vote. (See page 145 of the AIBE Preparatory Materials, Book 1)

Question 49: The correct answer is (b). That B promised to pay the debt, even if time-barred, is critical to A's suit. As such, it is a material fact, and not merely a material particular. Failure to mention this in the pleadings is fatal to A's suit, and she cannot now make good that error by any amount of proof. (See pages 146 and 147 of the AIBE Preparatory Materials, Book 1)

Question 50: The correct answer is (b). This per the definition of "proved" in the Evidence Act. (See page 158 of the AIBE Preparatory Materials, Book 1)

Question 51: The correct answer is (e). In criminal cases, the accused enjoys a presumption of innocence that the prosecution must disprove to secure a conviction from a Court. It is not enough for the presumption of innocence to remain not proved. (See page 159 of the AIBE Preparatory Materials, Book 1)

Question 52: The correct answer is (e). Judicial admissions are made by a party at a proceeding prior to the trial and constitute a waiver of proof being binding on the party that makes the admission. (See page 161 of the AIBE Preparatory Materials, Book 1)

Question 53: The correct answer is (b). S.63 of the Evidence Act provides an inclusive definition of secondary evidence. (See page 167 of the AIBE Preparatory Materials, Book 1)

Question 54: The correct answer is (e). The fact of B's illness does not relate to any right or liability in asserted or denied in the prosecution of A for B's murder. The first three facts, however, could be used to prove A's liability. (See page 158 of the AIBE Preparatory Materials, Book 1)

Question 55: The correct answer is (b). These facts clearly show A's conduct in relation to her trial for theft. (See page 160 of the AIBE Preparatory Materials, Book 1)

Question 56: The correct answer is (d). B has asserted the existence of these facts as the basis of her claim to the land. As such, B must prove these facts. (See page 168 of the AIBE Preparatory Materials, Book 1)

Question 57: The correct answer is (a). The Natural Law theory postulates that law consists of rules that are in accordance with reason; that "there exist objective moral principles which depend on the essential nature of the universe and which can be discovered by natural reason." (See page 174 of the AIBE Preparatory Materials, Book 1)

Question 58: The correct answer is (b). Devlin argued that a society has a right of self-defence against any harm that may ensue to the moral code that binds it. (See page 178 of the AIBE Preparatory Materials, Book 1)

Question 59: The correct answer is (a). This is the only statement that does not follow from the Hohfeldian framework. (See page 181 of the AIBE Preparatory Materials, Book 1)

Question 60: The correct answer is (d). While applying the mischief rule, it is critical to keep in mind the situation before the statute and the 'mischief' that the statute intended to remedy. (See page of the AIBE Preparatory Materials, Book 1)

Question 61: The correct answer is (c). The literal reading of the enactment results in absurdity, so the golden rule must be applied to address the absurdity. (See pages 184-185 of the AIBE Preparatory Materials, Book 1)

Question 62: The correct answer is (d). The mischief contemplated by the enactment would be suppressed by this reading, while also advancing the remedies under the enactment. (See page 184 of the AIBE Preparatory Materials, Book 1)

Question 63: The correct answer is (e). The general words "other public places" follows specific words that are all in the nature of commercial establishments, so the term "other public places" must be read to mean "other commercial establishments" (See pages 183-184 of the AIBE Preparatory Materials, Book 1)

Question 64: The correct answer is (e). (See page 186 of the AIBE Preparatory Materials, Book 1)

Question 65: The correct answer is (d). There is no prohibition on advocates against running for political office. (See page 187-189 of the AIBE Preparatory Materials, Book 1)

Question 66: The correct answer is (d). An advocate may refuse to accept a particular brief in special circumstances. (See page 189 of the AIBE Preparatory Materials, Book 1)

Question 67: The correct answer is (c). An advocate must only communicate or negotiate with an opposing party regarding the controversy, through the counsel representing the opposing party. (See page 197 of the AIBE Preparatory Materials, Book 1)

Question 68: The correct answer is (c). The Rules of the Bar Council do not prevent an advocate from owning, or having a share in, a business that the advocate has inherited. The advocate may not, however, be personally involved in the management of the business. (See page 188 of the AIBE Preparatory Materials, Book 1)

Question 69: The correct answer is (d). A has identified D in the affidavit, and, if the affidavit is critical to the case, A may be called upon as a material witness to identify D in the suit. A can be disbarred from appearing in the matter. (See page 189 of the AIBE Preparatory Materials, Book 1)

Question 70: The correct answer is (c). Since A was not aware of the receipt, he cannot be held responsible for the delay. (See page 194 of the AIBE Preparatory Materials, Book 1)

Question 71: The correct answer is (e). A standing timber, as opposed to timber tree, includes only such trees which, if cut, can be used as a timber. (See page 199 of the AIBE Preparatory Materials, Book 1)

Question 72: The correct answer is (c). Positive covenants do not run with the land. (See page 203 of the AIBE Preparatory Materials, Book 1)

Question 73: The correct answer is (c). A contingent interest is normally transferable; however, if the transferee of a contingent interest dies before obtaining the possession, the interest fails, and therefore, cannot be inherited. (See page 206 of the AIBE Preparatory Materials, Book 1)

Question 74: The correct answer is (d). In this form of mortgage, the mortgage is created simply by way of deliverance of the title deed of an immoveable property by the mortgagor to the mortgagee (or the mortgagee's agent), with the intent of creating a security on such property. (See page 210 of the AIBE Preparatory Materials, Book 1)

Question 75: The correct answer is (b). The death of C makes the condition incapable of being satisfied. (See page 206 of the AIBE Preparatory Materials, Book 1)

Question 76: The correct answer is (c). The condition is invalid in so far as it exceeds the period of 18 years. Accordingly the income may be disposed off as if the restrictive period has expired. (See page 205 of the AIBE Preparatory Materials, Book 1)

Question 77: The correct answer is (e). None of the options is an absolute restraint. (See page 202 of the AIBE Preparatory Materials, Book 1)

--

Part II

Question 78: The correct answer is (a). Despite some judgments bypassing the classificatory approach the predominant approach remains the classificatory one. Therefore, since the actions of the authority were in exercise of its legislative functions, the Court would most likely not insist upon adherence to the principles of natural justice. (See pages 2-3 of the AIBE Preparatory Materials, Book 2)

Question 79: The correct answer is (b). Power to modify an Act can be delegated, subject to the safeguards that the parent Act lays down the policy according to which the power is to be exercised. (See pages 4-5 of the AIBE Preparatory Materials, Book 2)

Question 80: The correct answer is (d). The enactment specifically permits the authority to give retrospective effect to its regulatory notifications. However, enactment does not clearly and specifically provide for retrospective levy of fees. (See page 8 of the AIBE Preparatory Materials, Book 2)

Question 81: The correct answer is (b). The principle does not deal with the *vires* of provisions in the Articles of Association, but rather, the manner in which such provisions may be enforced. (See page 25-26 of the AIBE Preparatory Materials, Book 2)

Question 82: The correct answer is (a). The agreement is invalid and A has no remedy, because had A consulted the Articles of Association of the company, A would have detected the defect in the agreement. (See pages 27 of the AIBE Preparatory Materials, Book 2)

Question 83: The correct answer is (d). A director of a public company has a fiduciary obligation towards the company and is under a duty to act in the best interest of the company. Duty of good faith implies that all the actions of the directors must be for the benefit of the company and the shareholders of the company. (See page 31 of the AIBE Preparatory Materials, Book 2)

Question 84: The correct answer is (c). A holding company can never be the subsidiary of its own subsidiary. (See page 24 of the AIBE Preparatory Materials, Book 2)

Question 85: The correct answer is (c). Since the company restricts the right of its members to transfer its shares, it must be a private limited company (S.3(1)(iii) of the Companies Act). Since the question states that the company is in good standing, the excess members must be employees or ex-employees. (See page 23 of the AIBE Preparatory Materials, Book 2)

Question 86: The correct answer is (e). A company has a separate legal identity from its members, and can therefore *inter alia* own property, whether immovable, intangible or goods, in its own name, and enter into contracts in its own name, even with its members. (See page 22 of the AIBE Preparatory Materials, Book 2)

Question 87: The correct answer is (a). Since A was a Muslim at the time of his death, property will only pass to C and not to B. (See page 72 of the AIBE Preparatory Materials, Book 2)

Question 88: The correct answer is (a). It is not a defence to urge that the disease was innocently contracted or that it is curable. The ground is satisfied if it is shown that the disease is in a communicable form. (See page 65 of the AIBE Preparatory Materials, Book 2)

Question 89: The correct answer is (d). A is a Hindu, but only if he never professed the Christian faith. The mere act of baptism in such cases does not amount to conversion. (See page 78 of the AIBE Preparatory Materials, Book 2)

Question 90: The correct answer is (c). The Central Board and the State Boards perform the functions set out in Ss.16 and 17 of the Air Act. S.17(1)(g) empowers the state boards to independently notify emission standards. However, by operation of S.24 of the EPA, the Environment Protection Rule norms take precedence over standards laid down by state boards. (See page 49 of the AIBE Preparatory Materials, Book 2)

Question 91: The correct answer is (b). Although S.31A of the Air Act enables the state board to direct closure or discontinuance of the objectionable activity, sealing the unit and preventing access is unauthorised. (See page 49-50 of the AIBE Preparatory Materials, Book 2)

Question 92: The correct answer is (d). The Wildlife Protection Act does not extend to all types of lizards and snakes but applies only to scheduled species. A would be acquitted if the articles were not made from the skins of scheduled species. (See pages 57-58 of the AIBE Preparatory Materials, Book 2)

Question 93: The correct answer is (a). Indian courts have not generally accepted prior knowledge as an exception to the rule of strict liability. (See page 61 of the AIBE Preparatory Materials, Book 2)

Question 94: The correct answer is (b). The State is under a duty to provide a lawyer to accused persons who are unable to afford legal services. (See page 89 of the AIBE Preparatory Materials, Book 2)

Question 95: The correct answer is (e). This is on the basis of the decision in *Bangalore Water Supply & Sewerage Board v. A. Rajappa*, AIR 1978 SC 548. (See page 99 of the AIBE Preparatory Materials, Book 2)

Question 96: The correct answer is (d). This strike is not illegal, as the conciliation proceedings are before a conciliation officer and not a Board of Conciliation. (See page 101 of the AIBE Preparatory Materials, Book 2)

Question 97: The correct answer is (a). The fact that A continued in employment knowing that his work would precipitate injury is irrelevant. Once it is found that the work which A has been doing is to be within the scope of A's employment, the question of negligence, great or small on A's part is irrelevant. (See page 115 of the AIBE Preparatory Materials, Book 2)

Question 98: The correct answer is (d). Since B is A's servant, A is vicariously liable for B's tortious act and must compensate C. (See page 124 of the AIBE Preparatory Materials, Book 2)

Question 99: The correct answer is (c). An Indian company is always resident in India. (See page 142 of the AIBE Preparatory Materials, Book 2)

Question 100: The correct answer is (b), since this statement is not an application of the principle described. (See page 142 of the AIBE Preparatory Materials, Book 2)

x-x