Assam Judicial Service Grade III (Mains) 2008

Law Paper II · compulsory paper

100 marks · 2 hours · 2008

Evidence, criminal procedure, IPC and torts

1. A, a person, is charged with travelling on a railway without ticket. He denies the charge. On whom does the burden of proof lie. Give reasons. (3)

2(I). Write short notes (Any two) — Secondary Evidence. (2+2)

2(II). Promissory Estoppel.

2(III). Dying declaration.

3. What is the value of an expert opinion given in evidence during criminal trial? Whether the expert's opinion would have primacy over ocular testimony? If so, give reasons. (4)

4. "I will tell the place of deposit of the three chemical drums which I took out from Haji Bunder on first August." The above statement was made by the accused to the police, whilst under custody. On the basis of this statement, the three chemical drums were recovered from the place referred to by the accused person. Whether the entire statement would be admissible in evidence? If not, what part of the statement would be admissible? Give reasons. (4)

5. During the course of confidential communication, 'C', a client, said to 'A', his advocate, "I wish to obtain possession of property by use of forged sale deed on the basis whereof, I request you to sue." Whether the advocate, 'A', is prohibited from disclosing these facts to the Court, when 'C' faces charge of forging the sale deed? Give reasons. (4)

6. M, an accused in a criminal trial, has given answers to the questions put to him, while recording his statement under Section 313(1)(b) Cr.P.C. Whether the answers, so given, can be used for or against him by the trial Magistrate? Give reasons. (4)

7. An accused is charge-sheeted under Section 447/323 IPC. He appears on receiving summons and prays for bail. The magistrate accepts his prayer and allows him to go on bail on the ground that the offences are bailable in nature. During trial, the accused, however, absconds. A warrant of arrest is, therefore, issued against him. On the strength of the warrant so issued, police arrests and produces you as the magistrate. Notwithstanding the fact that offences are bailable in nature can you, in such circumstance refuse to release the accused on bail and reject the bail application? Give reasons by referring to statutory provisions. (4)

8. What are the classes of criminal courts in India and what are the sentences, which they are authorized to pass? (4)

9(a). Write short notes (Any three) — Complaint.

9(b). Cognizable offence.

9(c). Police station.

9(d). First Information Report.

10. What are the periods of limitation prescribed by the Code of Criminal Procedure for taking cognizance of offences? Is the Judicial magistrate empowered to extend the prescribed period of limitation in respect of offences under the Indian Penal Code? (4)

11. What is the scope and ambit of the inherent power of the High Court embodied under Section 482 of the Code of Criminal Procedure? (4)

12(a). Write short notes (any two) — Consent.

12(b). Mens rea.

12(c). Dishonestly.

13. 'S', a superintendent in a government department, removed a file and made it available to an outsider, who photocopied the documents kept in the file. 'S' brought back the file to the office the next day and kept it in the proper place. Has 'S' committed the offence of theft and if so how? (4)

14(a). Distinguish extortion from robbery. (3)

14(b). 'A' puts 'Z' in fear of hurt and dishonestly induces 'Z' to sign a cheque and deliver it to 'A'. 'Z' signs and delivers the cheque instantaneously. Whether it is extortion or robbery? Give reasons in brief. (2)

15. 'M', a chain snatcher, forcibly tried to pull the ear-rings from the ears of an old lady. In the process, one of the ear-lobes got torned and the old lady suffered from pain for three weeks. For what offence(s) can 'M' be prosecuted? Give reasons. (4)

16. What are the essential ingredients of the offence of criminal breach of trust punishable under Section 406 IPC? (3)

17. What do you understand by the term "rash or negligent act" as used in Section 304 A IPC? (3)

18. What is the principle of 'res ispa loquitor'? Explain with examples. (4)

19. Discuss the principal exceptions to the doctrine of 'volenti non fit injuria'? (4)

20. A contract was entered into between an airlines company and Hotel Taj Continental for the stay of the crew of the airlines as guests in the hotel. 'K', a pilot of the airline, stayed in the hotel for a few days. During his stay, one day, he took a dive in the swimming pool of the hotel, which was defectively designed. Due to the defective designing of the swimming pool, 'K' received severe head injuries and was paralyzed. In an action for damages by the plaintiff, 'K', the hotel took the defence that 'K' was a stranger to the contract as the contract was made between the airlines and the hotel. Whether the defence taken by the defendant is sustainable under the law of tort? Give reasons. (4)

21(a). Write short notes — injuria sine damnum. (3+3)

21(b). Absolute liability.

22(A). Fill in the blanks: Public Documents is described in Section _____ Evidence Act.

22(B). A dumb witness is a competent witness as provided under Section _____ Evidence Act.

22(C). An accomplice is a competent witness under Section _____ Evidence Act.

22(D). For raising presumption of death under Section 108 of the Evidence Act, the person shall be shown to have not been heard for a period of _____ years.

22(E). Judicial magistrate takes cognizance of the offence under Section _____ of the Code of Criminal Procedure.

22(F). The principle of double jeopardy is engrafted under Section _____ of the Code of Criminal Procedure.

22(G). A court may proceed to try a person as an accused even if he has not been charge-sheeted if the evidence recorded at a trial reflects his complicity. The power to proceed in such a manner against a person as accused is contained in Section _____ of the Code of Criminal Procedure.

22(H). The provision permitting to force a person, accused of the offence of rape to submit to medical examination have been made in Section _____ of the Code of Criminal Procedure.

22(I). The power of the police to investigate a cognizable offence flows from Section _____ of the Code of Criminal Procedure.

22(J). For offence of affray punishable under Section 159 IPC, the minimum number of persons required is _____.

22(K). The word tort has been derived from a Latin word which means _____.

23(A). Multiple Choice Questions: Tort is a violation of (a) right in rem (b) right in personam (c) neither (a) nor (b) (d) both (a) and (b).

23(B). Maxim 'Damnum sine injuria' means (a) violation of legal right without damage (b) violation of legal right with damage (c) damage with violation of legal right (d) damage without violation of legal right (e) None of the above.

23(C). Every person has a right of private defence (a) of his body (b) of his body and of those persons in whom he is interested (c) of his own body and the body of any other person (d) all the above (e) none of the above.

23(D). 10 (ten) persons were charged for offence under Section 302 read with Section 149 IPC. Out of them 6 (six) persons were acquitted, the remaining 4 (four) (a) cannot be convicted for offence under Section 302 read with Section 149 IPC (b) cannot be convicted for offence under Section 302 IPC (c) can be convicted for offence under Section 302 read with Section 149 IPC (d) None of the above.