Assam Judicial Service Grade III (Mains) 2017

Paper IV · Law II · compulsory paper

100 marks · 3 hours · 13 March 2018 (2017 recruitment)

Part A — The Indian Penal Code

1(a). A, a Zamindar, tortures a rayat in order to compel him to pay his rent. Is A guilty of any offence? If so, under what provision of the IPC — (a) section 323 (b) section 329 (c) section 330 (d) section 327.

1(b). A holds "Z" down and fraudulently takes Z's money and jewelry from Z's clothes without Z's consent. What offence A is liable for — (a) Theft (b) extortion (c) robbery (d) criminal misappropriation.

1(c). "Z" the door keeper of "Y", is standing in Y's doorway. "A" commits house trespass by entering the house having deterred Z from opposing him by threatening to beat him at 8.20 P.M. What offence of IPC, A will be liable for? (a) section 446 (b) section 448 (c) section 450 (d) section 456.

1(d). A causes cattle to enter upon a field belonging to Z intending to cause damage to Z's crop. What offence of the IPC, A is liable for? (a) section 426 (b) section 427 (c) section 432 (d) section 434.

1(e). A knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction and thereby misleads the Magistrate with intent to facilitate the commission of the offence. Dacoity is committed at B in pursuance of the design. What offence of the IPC, A is liable for? (a) section 117 (b) section 118 (c) section 395 (d) section 396.

2(i). Distinguish between (any two) — fraudulently and dishonestly. (2 marks)

2(ii). Public nuisance and private nuisance.

2(iii). Rashness and negligence.

3(i). Write short notes (any three) — Criminal intimidation. (2 marks)

3(ii). Cruelty with special reference to section 498A of IPC.

3(iii). Criminal conspiracy.

3(iv). Culpable homicide not amounting to Murder.

4. What are the different kinds of punishment? Discuss about the description and limit to imprisonment for nonpayment of fine. (5 marks)

5. What is defamation under the Indian Penal Code? Discuss the exceptions. (5 marks)

Part B — Code of Criminal Procedure (CrPC)

6(i). Choose the correct answer. Period of limitation for taking cognizance of an offence U/S 376 IPC, where such offence consists of sexual intercourse by a man with his own wife being under 15 years of age — (a) Six months (b) One year (c) Three years (d) No limitation.

6(ii). On being empowered by C.J.M the second class Magistrate can take cognizance of — (a) Any offence irrespective of his power to enquire into or try such offence. (b) Such offence as are within his competence to enquire into or try. (c) Such offence as are authorized by C.J.M.

6(iii). When taking cognizance of offence, the Magistrate finds that the accused is residing at a place beyond the area in which he is exercising jurisdiction — (a) Magistrate may, if he thinks fit, postpone the issue of process against the accused and either enquire into the case himself or direct an investigation to be made by police officer or any other person. (b) Magistrate shall postpone the issue of Process against the accused and either enquire into the case himself or direct an investigation to be made by police officer or any other person. (c) Return the complaint U/S 201 CrPC. (d) None of the above.

6(iv). When a witness is called for the defence in an enquiry or trial, whose statement has been recorded under section 161 CrPC, any part of his statement, if duly proved, may be used to contradict such witness in the manner provided under section 145 Evidence Act, by — (a) The accused (b) The prosecution (c) The prosecution with permission of the court (d) None of the above.

6(v). As provided by section 315 CrPC, an accused is a competent witness in a criminal proceeding and he may give evidence on oath in disproof of the charge against him or any person charged together with him at the same trial, therefore, (a) He may be called as a witness by the court or Magistrate, if, it/he deems fit for proper adjudication of the case. (b) He shall not be called as a witness except on his own request in writing. (c) He may be called as a witness on his request either orally or in writing. (d) He shall not be allowed to cross-examine by the prosecution without consent of the court.

6(vi). The power to commute a sentence of imprisonment for life, for imprisonment for life, for imprisonment for a term not exceeding fourteen years or fine, lies with the — (a) Governor (b) High Court (c) The court which imposes the punishment (d) Appropriate Government.

6(vii). What is the maximum period, for which a bail bond executed U/S 437 A CrPC shall remain in force — (a) Three years (b) One year (c) Six months (d) Three months

7(a). Write short note (any two) — Continuous offence. (3 marks)

7(b). Inherent power U/S 482 CrPC.

7(c). Forfeiture of personal bond (section 446 of CrPC).

8. Discuss the procedure to be followed by a complainant for lodging complaint in respect of offence mentioned in section 195 CrPC. (6 marks)

9. Discuss briefly the procedure for trial by Magistrates of a warrant case instituted on a complaint. (6 marks)

Part C — Law of Torts

10(i). Choose the correct answer. There is a contract between A and B and as a result of the breach of contract by A, injury is caused to C, the question is; can C who is a stranger to the contract, bring an action against A. (a) C cannot bring an action for the tort committed to him because rule of privity of a contract is essential for an action in Tort. (b) C can bring an action as, action in Tort is independent of a contract. (c) C has to join with B to bring an action for Tort against A.

10(ii). The Doctrine "qui facit per alium facit per se" means — (a) He who does an act through another does himself. (b) Let the principal be liable or the superior must be responsible. (c) Where there is a wrong there is a remedy.

10(iii). Justification is not a defence to an action for defamation — (a) True (b) False.

10(iv). "Tort is a right in rem of a private individual giving a right of compensation at the suit of the injured party". Defined by — (a) Winfield (b) Salmond (c) Fraser (d) None of the above.

10(v). Doctrine of vicarious liability applies when there is a — (a) Relationship of principal and agent (b) Relationship of partners (c) Relationship of master and servant (d) All of the above.

11(a). Write short note (any four) — Injuria sine damno. (2 marks)

11(b). Ubi jus ibi remedium.

11(c). Doctrine of alternative danger.

11(d). Last opportunity rule.

11(e). Damnum sine injuria.

12(a). Distinguish between (any three) — Tort and breach of contract. (2 marks)

12(b). Malice in law and malice in fact.

12(c). Volenti non fit injuria and contributory negligence.

12(d). Contributory negligence and composite negligence.

13. What are the essential of a tort? Discuss remedies for which the plaintiff can sue in an action for tort. (6 marks)

Part D — Law of Evidence

14(i). Write short notes (any five) — Hostile Witness. (2 marks)

14(ii). False in uno falsus in omnibus.

14(iii). Res Gestae.

14(iv). Hearsay Evidence.

14(v). Admission.

14(vi). Circumstantial evidence.

15(i). Choose the correct answer — Burden to prove the plea of alibi is on the (a) Accused (b) Prosecution (c) On both (a) and (b) (d) Either (a) or (b).

15(ii). Which section of the Evidence Act provides that no particular number of witness shall in any case be required for the proof of any fact. (a) Section 118 (b) Section 135 (c) Section 134 (d) Section 136.

15(iii). (a) Leading question may be asked in cross-examination. (b) Leading question must not be asked in examination-in-chief if objected by adverse party. (c) Leading question must not be asked in re-examination except with the permission of the court. (d) All the three (a), (b) and (c).

15(iv). A made a confession — "I myself and B murdered X". During investigation after enlargement on bail A absconded and he could not be apprehended. Eventually trial proceeded against B alone — (a) Court can take into consideration such confession as against B (b) Court can take into consideration such confession as against B only if corroborated by other evidence (c) Court cannot take into consideration such confession at all as against B.

15(v). Which of the following communication to an Advocate is protected from disclosure under section 126 of the Evidence Act as professional communication — (a) "I have committed forgery, I wish you to defend me". (b) "I wish to obtain possession of a property by the use of a forged deed on which I request you to sue". (c) "I am going to kill my brother because he has ruined me. You please arrange for my bail as early as possible".

16(a). Answer any two — Explain the rule of evidence relating to exclusion of oral evidence by documentary evidence under the Indian Evidence Act. (5 marks)

16(b). What is secondary evidence? Discuss the rules as to notice to produce document under section 66 of the Evidence Act. (5 marks)

16(c)(1). Distinguish between — May presume and shall presume.

16(c)(2). Not proved and disproved.