Haryana Civil Judge (Mains) 2013

Civil Law I · compulsory paper

Time allowed: 3 hours · Maximum marks: 200

Question 1

1. (a) The decisions of the foreign courts in the scheme of CPC are treated with respect but not as sacrosanct. Elaborate on the statement, supporting it with case law. 15 Marks

1. (b) The constitutional spirit of Public Interest Litigation is also present in the scheme of CPC, though in a restricted sense. Respond to the statement by referring to the relevant provisions and case law. 15 Marks

1. (c) 'A' files a suit against 'B' for breach of contract by 'B'. The suit is dismissed for default of appearance. Decide if the decision of the court dismissing the suit qualifies as a Decree? Give reasons for your answer. 10 Marks

Question 2

2. (a) 'A' files a suit against 'B' for evicting 'B' from a piece of land. 'B' puts up the contention that no notice was given to 'B' for eviction and that the land being 'X' land, he cannot be evicted. The court dismissed the suit on the basis of the fact that notice was not given to evict. The court also concludes that the subject land is not 'X' land. Subsequent to this, 'A' gives a notice to 'B' asking him to evict the land and on the failure of 'B' to comply, institutes a suit against him. In the suit, 'B' seeks to contend that the land being 'X' land, he cannot be evicted. Decide if the second suit by 'A' is barred by Res Judicata, dealing therein the contentions to be raised by 'B' in this suit that it is so barred?

2. (b) The rules in relation to rejection of a plaint are based as much on substantive grounds as on procedural reasons. Elaborate.

2. (c) (i) What are the conditions necessary for granting a claim of set-off?
(ii) What is the difference between a necessary Party and a Proper Party.

Question 3

3. (a) Aman's parents died in a road accident when he was 12. Since then Aman has been in the care and custody of Bhim, his uncle and his guardian as per the will of Aman's mother. Chaman, a friend of Aman's father and a partner in a reputed firm engaged in the business of storage of goods, decides to help out Aman by admitting him to the benefit of Chaman's partnership firm. He speaks to his partners and they decide by majority to approve the proposal by Chaman. Dev, Eddy and Farhan do not agree with this proposal and they note their dissent. Thus, starting from the age of 15, Aman has been admitted into the benefits of the partnership. Aman turned 18 on 03/02/2013. Three months after the said date, Aman is informed that he had been so admitted into the benefits of a partnership and that all benefits accrued over the years can be accessed by him through a Trust set up for this purpose. On 03/09/2013, Aman issues a notice confirming his intention to become a partner in the firm. He sends a notification in the Indian Express, a national daily which has the highest circulation in his locality. Mithun read the notification in Indian Express. Mithun knows Aman from childhood and has always been impressed by his smartness and his deep faith in religion. Aman is a devotee of Lord Shiva like Mithun and because of that he has a soft corner for Aman. Mithun approaches Aman to provide him with some business and requests him to store around 1 lakh worth of antique furniture till Mithun finds a suitable buyer. Subsequently it comes to light that as per the arrangement in the

partnership firm, only persons who have been partners for more than 5 years can sign up a new client. Neither Mithun nor Aman had any idea about this restriction. Already upset with the introduction of Aman, Dev, Eddy and Farhan raise objections to the agreement between Aman and Mithun and also to the validity of Aman's status as a partner. Identify the relevant legal issues arising in the case and determine the controversy involved therein.

3. (b) Ajay and Binny are partners in running a fast food shop. The partnership agreement does not contain any clause as to its duration. It also does not contain any clause spelling out the conditions on which the partnership may be determined. Ajay institutes a suit on 10/05/2013 for dissolving the partnership firm. Binny objects to the suit saying that Ajay has not given any notice to him in relation to his intention of dissolving the firm. The contention of Ajay is that the institution of the suit is sufficient notice. Decide the matter as to the date on which the firm would be dissolved and also comment on whether the court has the power to set any other than 10/05/2013 as the date on which the firm would be dissolved.

3. (c) The right of stoppage in transit begins where the right of lien ends. Comment on this statement and write a critical note on the duration of transit.

Question 4

4. (a) Distinguish between the concept of 'condition' and Warranty' by referring to the various implied conditions and warranties under the provisions of the Sale of Goods Act. Assess the implications of Section 62 of the Sale of Goods Act on the concept of Implied Conditions and Warranties.

4. (b) Decide as to the Court in which appeal shall lie in case of the following decrees:-

(i) A decree in 1960 where the original suit is valued at Rs. 4,000/-?
(ii) A decree in 2007 where the original suit is valued at Rs. 2,50,000?

4. (c) The idea of "landlord' has been approached with pragmatism and not with the rigid rules of "ownership'. Respond to the above statement.

4. (d) Pursuant to a dispute between 'A', the landlord and 'B', the tenant, 'B' approaches the Controller for fixing the fair rent for the rented building on 10/09/2011. After considering the case, the Controller fixed the fair rent of the said building to be Rs. 12,000/- on 08/10/2011. 'B' dies on 20/10/2011. 'C', B's son disputes the decision of the Controller on two grounds:-

(i) The decision is as between 'A' and 'B'. Thus it is not binding on 'C'.
(ii) Even if the decision is to take effect, the rent of Rs. 12,000/- is payable only from 08/10/2011.

Question 5

5. (a) Amit makes a statement in an article in a newspaper that both Balwant and Charanjit have been involved in syphoning off lakhs of rupees which were supposed to be for the development of a children's park. Balwant and Charanjit work as secretaries in the same department of the government with Charanjit being the junior of Balwant. Amit claims that the syphoning off happened as a result of a conspiracy to which only Balwant and Charanjit were parties who managed to hoodwink the entire department. Amit makes a further claim that he has sufficient trail of documents in his possession to prove the joint involvement of Balwant and Charanjit. Balwant and Charanjit institute separate proceedings against Amit suing him for compensation. The suit instituted by Balwant is adjudicated first wherein Amit is held liable for defamation as he could not produce sufficient evidence to prove

that his allegations were true. Amit is ordered by the court to pay damages of Rs. 5 lakhs to Balwant. charanjit 's lawyer tries to bring this decision to the notice of the Court. Determine whether the said decision can be a relevant fact in the suit by Charanjit.

5. (b) Rakesh and Dinesh enter into an agreement wherein Rakesh agrees to sell to Dinesh a brand new Wagon-R car of LXI model which is red in colour. It turns out that Rakesh has two cars in his possession, a Wagon-R LXI of white colour and another Wagon-R VXI of red colour. Determine whether oral evidence may be given in order to determine the meaning of the clause.

5. (c) Krishan and Som enter into a contract for the sale of a house under construction. Som promises to Krishan that the house would be handed over to Krishan by 07/01/2013 at a price of Rs. 20,00,000/-. The agreement to sell is duly registered. Subsequently, Krishan enters into a contract with Ramesh wherein Ramesh agrees to buy the same house from Krishan by paying 20% extra on the contract price. Krishan and Som have reached a verbal understanding that due to a slide in the market, Krishan will now pay Rs. 15,00,000/-.

(i) Decide if the subsequent verbal agreement between Krishan and Som can be proved in a suit between them.
(ii) Decide if the subsequent verbal agreement between Krishan and Som can be proved in a suit between Ramesh and Krishan.