Himachal Pradesh Civil Judge (Mains) 2015

Paper I · Civil Law I · compulsory paper

Himachal Pradesh Judicial Services Main Examination 2015 · 3 hours · 200 marks

Part A is compulsory and answer three questions from Part B. Give reasons for your answers supported by relevant statutory provisions. Cite case law wherever it is desirable. Write all parts of a question at one place in continuity.

Part A

1. 'A' alleges that he entered into an agreement with 'B' on January 10, 2014 at Shimla. In the agreement 'B' contracted to sell to 'A' his house for rupees ten lakh. An amount of rupees fifty thousand was paid by 'A' to 'B' as earnest money at the time of agreement. 'A' also alleges that he was ready and willing to perform his part of the contract and on May 15, 2014. he tendered rupees nine lakh fifty thousand, the balance amount of consideration to 'B' and called upon him to execute a sale-deed. But 'B' refused to do so. 'B' denied that he entered into any agreement to sell his house to 'A' on January 10,2014 or any other date. He also denied about any earnest money paid to him by 'A'. 'B' further alleges that he already entered into an agreement with 'C' for selling his house on December 15. 2013. 'A' wants to file a suit.

(a) Draft a plaint on behalf of 'A'. [10]

(b) Draft a written statement on behalf of 'B'. [10]

(c) Write judgment deciding the suit. [20 marks]

2.

(a) "Presumptions may be looked as the bats of law, flitting in twilight but disappearing in the sunshine of actual facts." Explain while discussing the different kind of presumptions recognised by the Indian Evidence Act. (20)

(b) An estoppel is where "a man's own act or acceptance stopeth or closeth, up his mouth to allege or plead the truth". Explain with reference to the Indian Evidence Act. (20)

Part B

3.

(a) Explain 'res judicata' and 'stare decisis'. Distinguish between them. (10)

(b) Explain the preliminary decree in 'suits for foreclosure'. What the court may directs while passing such decree ? (10)

(c) What questions are to be determined by the court under Section 47 of the Code of Civil Procedure ? (10)

(d) 'X' obtains a decree against 'A' and attaches A's property in execution of the decree. 'Y', who holds a decree against 'A' and 'B' applies for the execution of his decree by attachment and sale of A's property which is attached in execution of X's decree. Whether 'Y ' is entitled to share in the proceeds of the sale of A's property.(10)

4.

(a) "Once a judgement is signed and pronounced by the court it becomes 'functus officio'. " Explain with exceptions. (10)

(b) Discuss the procedure for setting aside the sale under the execution of a decree. (10)

(c) 'A' files a suit against 'B' for the property 'X' and the court passes a decree for the property 'Y. When the time of appeal had elapsed the mistake is detected. Advise 'A'. What options are available to him ? (10)

(d) Explain the term 'caveat'. Discuss the right to lodge a caveat. (10)

5.

(a) Explain the definitions of 'Civil District'. 'District Judge', 'Government' and 'Small Cause' under the Himachal Pradesh Courts Act, 1976. (10)

(b) Explain the provisions regarding 'instruments, not duly stamped inadmissible in evidence' under the Indian Stamp Act, 1899. (10)

(c) Explain the 'Specific performance of part of contract' under the 'Specific Relief Act, 1963. (10)

(d) Explain the 'recovering possession of property' under the Specific Relief Act, 1963. (10)

6.

(a) '"Evidence has to be weighed and not counted." Explain. (10)

(b) An accused, whilst in police custody, gives information to the investigating officer that he purchased the murder weapon from a particular dealer. Then the accused went with the investigating officer to the place of the dealer and point him out. Whether the information given by the accused and the evidence of the investigating officer regarding this are admissible ? (10)

(c) What do you mean by primary and secondary evidence ? Explain the distinction between Sections 64 and 91 of the Indian Evidence Act. (10)

(d) Where a party fails to question his opponent's witness, the presumption is that his evidence is accepted. ' Explain. (10)

7.

(a) Explain the principle contained in Section 32 of the Indian Evidence Act. What observation was made by the Supreme Court in regard to the 'dying declaration' in the case of P.V. Radhakrishna Vs. State of Karnataka, A.I.R. 2003 S C. 2859 ? (10)

(b) What kinds of facts are to be taken as relevant under Section 7 of the Indian Evidence Act ? (10)

(c) 'X' was the wife of 'Y'. Two months after the death of 'Y', 'X' marries 'Z'. five months after the marriage, a son was born to 'X'. Who is legally the father of the son ? (10)

(d) Explain the 'impeachment of credit of a witness'. Under the Indian Evidence Act; how can the credit of a witness be impeached ? (10)

8.

(a) What extensive changes have been made in the Code of Civil Procedure by the amendments of the years 1999 and 2002 for reducing the delay in civil litigation ? What are your suggestions for reducing the delay in civil litigation ? (10)

(b) 'A' files a suit against 'B' for permanent injunction restraining 'B' from demolishing the common gate of adjoining houses of 'A' and 'B'. The court restrained 'B' vide an interim order. While 'B' was abroad, his wife 'C' demolishes the common gate in violation of interim injunction. 'A' files an application under Order 39, Rule 2-A of the Code of Civil Procedure, against 'C'. Whether 'C' is liable under Order 39, Rule 2-A of the Code of Civil Procedure ? What is to be proved by - 'A ' in that case ? (10)

(c) 'A' is accused of murdering a woman 'X'. It is sought to be proved that two years ago he (A) murdered his wife 'Y'. So 'A' had the mens rea to murder 'X'. Is the evidence relevant and admissible ? (10)

(d) When may a witness be called hostile ? What is the evidential value of such a witness ? (10)

De Facto IAS