# Himachal Pradesh Civil Judge (Mains) 2016 (II)

## Paper I · Civil Law I · compulsory paper

Himachal Pradesh Judicial Services Main Examination 2016 (II) · 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 gave Rs. 50,000 to 'B' on 10-3-2015 by pronote for one year and it was agreed that after one year 'B' will pay to him Rs. 60,000 for the discharge of the debt. 'B' alleges that on 1-4-2016 there was an agreement between him and A's son, 'C' and it was agreed that 'B' would pay Rs. 50,000 to 'C' for the full discharge of debt of 'A'. 'B' also alleges that he paid Rs. 50,000 to 'C' by cheque. 'A' denied any agreement between 'B' and 'C' regarding his debt and also alleges that payment by 'B' to 'C' of Rs. 50,000 was on account of debt of 'C'. Now 'A' wants to file the suit against 'B' for the recovery of Rs 60,000 :

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

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

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

**2.**

**(a)** 'Substantive law is different from procedural law.' Explain by giving reference to the Indian Evidence Act. 1872. [20 Marks]

**(b)** 'Confession must be taken as a whole or rejected as a whole,' Explain with exceptions. What is evidentiary value of confession ? [20 Marks]

### Part B

**3.**

**(a)** Explain the rule of res judicata. Differentiate between direct res judicata and constructive res judicata. [10 Marks]

**(b)** Discuss the territorial jurisdiction of the courts for the suits in respect of immovable and movable property. [10 Marks]

**(c)** Explain the provisions of the code of civil procedure which deal with inherent powers of the courts. What are the limitations on these powers ? [10 Marks]

**(d)** 'A', 'B' and 'C' are the co-owners of a house. They jointly mortgaged the house to 'X'. 'X' files a suit against 'A','B' and 'C' to recover the mortgage money. Summons is served to 'C' but not to 'A' and 'B'. None of them appears and ex parte decree is passed against all. 'A' and 'B' apply to set aside the decree. Whether decree can be set aside against 'A' and 'B' only or against all 'A', 'B' and 'C' ? [10 Marks]

**4.**

**(a)** Explain the rules relating to the appeals to the Supreme Court under the Code of Civil Procedure. What is the effect of forty fourth constitutional amendment in this regard ? [10 Marks]

**(b)** Explain the garnishee order. What is its object ? What conditions are necessary before passing of garnishee order ? [10 Marks]

**(c)** Explain the summary suits. What is the test to allow these suits ? [10 Marks]

**(d)** 'A' files a suit against his brother 'B' for the share in the house which is in possession of 'B'. 'A' claimed that the house was belonged to his father and after the death of the father, he is entitled to the share in the house. 'B' claimed in his 'written statement' that the father during his life time gifted the house to him. During the trial 'B' wants to amend his 'written statement' that the father made the will and he only is entitle to the house. Whether 'B' can be allow to amend his written statement by the court ? Give reasons. [10 Marks]

**5.**

**(a)** Explain the appellate and revisional jurisdiction in civil cases under the Himachal Pradesh Courts Act, 1976. [10 Marks]

**(b)** Explain the 'reference and revision' under the Indian Stamp Act, 1899. [10 Marks]

**(c)** Explain the 'cancellation of instruments' under the Specific Relief Act, 1963. [10 Marks]

**(d)** Explain when the perpetual injunction can be granted under the Specific Relief Act, 1963. [10 Marks]

**6.**

**(a)** What is meant by dying declaration ? Explain the principles on which dying declaration is admissible in evidence despite being hearsay evidence. [10 Marks]

**(b)** Discuss the circumstances in which opinions of third persons are relevant. How can the handwriting of a person be proved ? [10 Marks]

**(c)** Explain the ways by which credit of a witness may be impeached under the Indian Evidence Act. Differentiate between section 145 and clause (3) of section 155 of the Indian Evidence Act. [10 Marks]

**(d)** 'A', the Bank Manager and 'B' the accountant of the Bank are being tried for conspiracy to cheat 'C' by wrongfully taking Rs. 50,000 from the Bank account of 'C'. After the transaction 'B' made an entry in his diary, showing both 'A' and B had profited of Rs. 25,000 in the said transaction. Whether the entry can be used as evidence admissible against 'A' under section 10 of the Indian Evidence Act ? [10 Marks]

**7.**

**(a)** Explain when the court may presume existence of certain facts under section 114 of the Indian Evidence Act. Explain with illustrations. [10 Marks]

**(b)** What is the best evidence rule ? Discuss the circumstances when oral evidence can be given regarding a document. [10 Marks]

**(c)** Explain 'introductory facts' and "explanatory facts under the Indian Evidence Act. What is the evidentiary value of 'identification parades' ? [10 Marks]

**(d)** 'A' prosecutes 'B' for stealing a buffalo from him. 'B' is convicted. 'A' afterwards sues 'C' for the buffalo which 'B' had sold to him before his conviction. Whether the judgement against 'B' is relevant between 'A' and 'C' ? [10 Marks]

**8.**

**(a)** Explain direct and circumstantial evidence. What are the tests required when a case rests entirely on circumstantial evidence ? [10 Marks]

**(b)** X was tried for the murder of 'Y' and 'Z'. 'X' made a statement to the police "About 15 days ago, I and the people of my party were waiting for 'Y', 'Z' and others at about sunset time at the river side. After arriving them we all beat 'T' and 'Z' to death. The remaining person ran away. 'A' who was in our party, received blows on his hands He had a spear in his hands. He gave it to me then I hid it and my stick, near the river side. I will show you if you come." The spear and the stick was recovered near the river side. Whether the statement of 'X' or what part of the statement is relevant ? [10 Marks]

**(c)** Explain the compromise of suit. What conditions must be satisfied before a consent decree is passed ? [10 Marks]

**(d)** 'X' purchased a computer from the shop 'A & Co.' for Rs.50,000. The price to be paid by 'X' within one month of sale. During this time the shop was purchased by 'B & Co.', 'A & Co.' and 'B & Co.' both claimed the price of computer from 'X'. 'X' wants to institute an interpleader suit against 'A &. Co' and 'B & Co.' for deciding the claims. It is revealed that before institution of suit, 'X' had a secret agreement with 'A & Co.' that if A & Co.' succeeded in the suit, 'A & Co.' would accept Rs. 40.000 in full and final satisfaction of his claim. Whether 'X' can institute an interpleader suit ? Give reasons. [10 Marks]