Himachal Pradesh Civil Judge (Mains) 2016 (II)

Paper III · Criminal Law · compulsory paper

Himachal Pradesh Judicial Services Main Examination 2016 (II) · 3 hours · 200 marks

Attempt five questions in all. Question Nos. 1 and 2 under Part A are compulsory questions. Attempt other three questions from Part B and Part C selecting at least one question from each Part. Each question carries 40 marks. Write legibly quoting provisions of law and the relevant case laws. Each part of the question must be answered in sequence in the same continuation. Give reasons in support of your answer.

Part A

1.

(a)(i) A, an Indian (Hindu male) citizen, who has a wife and three children living in India, goes to the United States for higher studies. After acquiring the citizenship of the United States, he gets married to an American girl. On return to India, can he be prosecuted for bigamy in the Indian court as bigamy is an offence under IPC ? Give reasons, case laws and legal provisions in support of your answer. [5 marks]

(a)(ii) The accused lived with her aunt aged 73. The aunt was suffering from a disease and during the last ten days of her life, was supplied neither food nor medical attendance by the accused, whereby her death was accelerated. What offence, if any, has been committed by the accused ? Give reasons in support of your answer. [5 Marks]

(b)(i) A, an accountant, fraudulently paid money to B, to be kept in a deposit for payment to Y. On demand by Y, the accused made false reports to the effect that Y's money held as a revenue deposit, was to be transferred to the Civil Court, upon which a cheque for making the transfer was drawn up, which the accused altered to conceal his previous fraud. What offence, if any, has been committed by A ? Give reasons and case law in support of your answer. [5 Marks]

(b)(ii) There was a long-standing dispute over the land between the accused and the deceased X. One morning the accused, while working in their field saw two labourers going to the field of X to work there. The accused shouted at them not to do so, but the labourers paid no heed and walked on. Thereupon the accused rushed at them and began belabouring them with the handles of their spears. Meanwhile X arrived and intervened and the accused attacked him. First B and C attacked him on his legs and he fell down. Then A stabbed X in the head with his spear. He then put his leg on X's chest to extract the spear blade which had stuck in X's jaws. The blow had gone through the skull and injured the brain, so that X died on the spot. What is, if any, the criminal liability of A, B and C under law ? Give reasons and case law in support of your answer. [5 Marks]

(c)(i) The accused, a boy of twenty-one years of age, was charged for committing the murder of his father. The accused was living with his sister, mother and father. The relations between father and mother were strained, and his father frequently used to quarrel with his mother, whom he believed to be unfaithful. In the night, when the fatal incident took place, there was a quarrel between the father and the mother of the accused. The accused's mother called out 'murder' and the father forced the mother's to the top of the stairs and threatened to knife her. Believing that his mother's life was in danger, the accused shot and killed him. There was no evidence that the father had a

knife. Decide. What offence, if any, has been committed by the accused under law ? Refer to case law and legal provisions. [5 Marks]

(c)(ii) The accused party were in actual possession of the disputed land after purchase and were sought to be dispossessed by the complainant party, who trespassed on the land armed with lathis. The accused party in defending their possession caused the death of one of the dispossessors, inflicting on him 72 injuries. Can the accused party claim the plea of right of self-defence ? Give reasons and point of law in support of your answer. [5 Marks]

(d)(i) A, a registered Homeopath, administered 24 drops of mother tincture stramonium and a leaf of dhatura to Smt. Deoki aged 20 years, who had been suffering from guinea worm for six weeks. She, accompanied by her mother, uncle and aunt went to the clinic of the accused A, in pursuance of the advertisement made by the accused, that he treated 'Naru' "Guinea worm'. After taking this medicine, she started feeling restless and fell ill and ultimately died at 5 p.m- Chemical examination of the stomach contents, and pieces of liver, spleen and kidney could detect no poison in any of these organs. What offence, if any, Has been committed by the Homeopath ? Discuss with the help of case law and legal provisions in support of your answer. [5 Marks]

(d)(ii) Sunita Kumari married to Rakesh Kumar on 9th July, 1985, was found dead on 23rd October, 1988 at the residence of her in laws at Batala in Punjab. The death was found to have occurred not under ordinary circumstances but was the result of the asphyxia. On postmortem it was found that the deceased had injuries on her person including the ligature mark on the front, right and Left side of neck, reddish brown in colour starting from left side of neck, 2 cm below the left angle of jaw passing just above the thyroid cartilage. The parents of the deceased were allegedly not informed about her death. It was shocking occasion for Ram Karan, brother of the deceased when he came to deliver some customary presents to his sister on the occasion of Karva Chauth, when He found the dead body of his sister lying at the entrance room and all the family members of the husband were making preparations for cremation. Noticing ligature marks on the neck of her sister, he immediately telephonically informed his parents about the death. What offence/offences if any, has/have been committed by the husband, his parents and family members under law ? Give reason, case laws and legal provisions in support of your answer. [5 marks]

2.

(a)(i) Explain the terms 'Inquiry' and 'Investigation'. Distinguish between the two. [5 Marks]

(a)(ii) Which are the different criminal courts under the Criminal Procedure Code ? How is a court of session established and what are its powers and jurisdiction ? [5 Marks]

(b)(i) Write a brief note on the preventive action of the police under the Cr.P.C. [5 Marks]

(b)(ii) Under what circumstances the public is bound to aid and assist the magistrate and the police including giving informations of commission of certain offences under section 39 of Cr.P.C. ? [5 Marks]

(c)(i) Discuss briefly the circumstances under which security can be taken by the court for keeping peace and maintain good behaviour from the criminals under the Cr.P.C. [5 Marks]

(c)(ii) Discuss briefly the procedure to be followed by a magistrate in complaint cases under Cr.P.C. [5 Marks]

(d)(i) What are the contents of charge ? Can the court alter or add to the charge ? When can different persons may be charged and tried jointly in the same trial ? [5 Marks]

(d)(ii) What is bail ? In what cases direction for grant of bail to any person apprehending arrest, may be given under section 438 of the Cr.P.C. ? [5 Marks]

Part B

3.

(a) What defences are available to the drawer of the cheque to escape punishment under section 138 of the Negotiable Instruments Act, 1881 ? Discuss. Refer to Case law, if any. [10 Marks]

(b)(i) What kind of presumption lies under section 139 of the Negotiable Instruments Act, 1881, in favour of holder of a cheque ? [5 Marks]

(b)(ii) Which provision was inserted into Section 141 of the Negotiable Instruments Act, 1881 by the Act 55 of 2002 ? [5 Marks]

(c) Discuss the objects and reasons for the passing of Amending Act of 2002 to the Negotiable Instruments Act, 1881. What amendments were affected in chapter XVII by this amendment particularly in section 138 of the Act ? [10 Marks]

(d) Discuss the provisions of section 143 of the Negotiable instruments Act, 1881, which provides for the power of court to try cases summarily ? [10 Marks]

4.

(a)(i) Explain the meaning of the following terms under the Himachal Pradesh Excise Act, 2011 : [5 Marks] (1) 'Excise revenue' (2) 'Vehicle'.

(a)(ii) Discuss briefly the provision of section 10 of the H.P. Excise Act, 2011 which provides for the powers of Excise Officer to search, seizure etc. [5 Marks]

(b)(i) Under what circumstances and by whom the liquor vends may be ordered to remain closed under the H.P. Excise Act, 2011 ? [5 Marks]

(b)(ii) Discuss the powers of the financial commissioner to establish or order closure or licensing of distilleries, breweries, winery or warehouse etc. in the state ? [5 Marks]

(c)(i) Discuss briefly the procedure for withdrawal of licences etc. and of surrender of license under the H.P. Excise Act, 2011. [5 Marks]

(c)(ii) What is the 'penalty for rendering' or attempting to render denatured spirit fit for human consumption ? [5 Marks]

(d)(i) How is the consumption of liquor in public places punishable under the H.P Excise Act, 2011 ? What is the penalty under law for such act ? [5 Marks]

(d)(ii) Discuss briefly the procedure of composition of offences committed under the H.P Excise Act, 2011. [5 Marks]

Part C

5.

(a) Explain and illustrate the meaning of the following terms under the Wildlife (Protection) Act, 1972 : [10 Marks] (i) 'Animal' (ii) 'Meat' (iii) 'Land' (iv) 'Weapon'.

(b)(i) Under what circumstances the chief wildlife warden can permit the hunting of wild animals? Whether killing of wild animals in self-defence is permissible ? Discuss. [5 Marks]

(b)(ii) Which are the main authorities to be appointed or constituted under the Wildlife (Protection) Act, 1972 ? What are their powers ? [5 Marks]

(c)(i) who are the persons who may enter or reside in a sanctuary ? Which are the duties of a person who resides in a sanctuary ? Discuss. [5 Marks]

(c)(ii) For which specific purposes, the chief wildlife warden may permit any person to enter and reside in a sanctuary ? [5 Marks]

(d)(i) Under which provision of the Wildlife (Protection) Act, 1972 the central government has the power to declare any areas as sanctuaries or national parks ? What procedure is followed by the central government for such purpose ? [5 Marks]

(d)(ii) What is the composition of central Zoo Authority ? On what grounds the central government can remove the members of the Central Zoo Authority. [5 Marks]

6.

(a)(i) Discuss the procedure to be followed for granting a license to any person dealing in trophy and animal articles. [5 Marks]

(a)(ii) Within how much period and to whom appeal shall lies against the order of suspension or cancellation of a licence or refusing to grant or renew a licence ? [5 Marks]

(b) What do you mean by power to compound of offences ? Discuss the procedure for exercising this power under the Wildlife (Protection) Act, 1972. [10 Marks]

(c)(i) How and in what manner an offence committed against the Wildlife (Protection) Act, 1972 ? If committed by a company are punishable ? Discuss. [5 Marks]

(c)(ii) How far the Wildlife Act protects the actions of the officers or other employees taken in good faith ? [5 Marks]

(d) Write a short note on the "Penalties" which can be imposed on any person for contravention of any provision of the Wildlife (Protection) Act, 1972. [10 Marks]

7.

(a) Which of the acts are prohibited in reserved forests ? What punishment is prescribed under the Indian Forest Act 1927 for doing such Prohibited Acts ? [10 Marks]

(b)(i) Discuss the power of the state government to constitute 'Protected Forests'. [5 Marks]

(b)(ii) which of the matters may be regulated by making rules by the state government in protected forests ? [5 Marks]

(c) Discuss the power and the procedure to be followed in imposing duty on timber and other forest-produce by the central government under the Indian Forest Act, 1927. [10 Marks]

(d)(i) Discuss the power and procedure as laid down under the Indian Forest Act, 1927 regarding seizure of property liable to confiscation and the power to release property so seized. [5 Marks]

(d)(ii) What is the penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks ? [5 Marks]

8.

(a)(i) Explain and illustrate the meaning of the following terms under the IPC : [5 Marks] (1) 'Counterfeit' (2) Public servant.

(a)(ii) What do you mean by 'solitary confinement' ? What is the maximum limit of solitary confinement under the IPC ? [5 Marks]

(b)(i) What criminal immunities have been granted to children under seven years of age and children above seven and under twelve, under the IPC ? [5 Marks]

(b)(ii) What do you mean by 'Right of Private Defence' ? When the right of self-defence of property extends to causing of death ? [5 Marks]

(c)(i) Distinguish between "Rioting" and "Unlawful Assembly". [5 Marks]

(c)(ii) Distinguish between "giving false evidence" and "Fabricating false evidence". What is punishment for false evidence ? [5 Marks]

(d)(i) Distinguish between "Wrongful restraint and "wrongful confinement". [5 Marks]

(d)(ii) Distinguish between "Dishonest misappropriation of property" and "criminal breach of trust". [5 Marks]

De Facto IAS