Himachal Pradesh Civil Judge (Mains) 2017

Civil Law I · Paper I · compulsory paper

Time: 3 Hours. Maximum Marks: 200.

Part A is compulsory. Answer three questions from Part B. Support your answers with relevant statutory provisions and appropriate judicial pronouncements as may be desirable. Answers to all the parts of a question may be written at one place in continuity.

Part A

Q1.

(a) What is a 'judgment'? Mark the differences between 'judgement' and 'decree'. [6 Marks]

(b) "Any particular judicial determination of a court may be either a 'decree or an 'order'. To find out whether it is a decree or an order is a matter of substance. Moreover, whether or not an expression of the court qualifies to be a decree, the pleadings of the parties and the proceedings leading up to the passing of the order will have to be duly taken into account." Elaborate and discuss this statement in the light of the leading case law on the matter. [8 Marks]

(c) "In order to determine whether a suit is of a civil nature or not, the relevant determining factor is not the status of the parties to the suit but the subject matter of the suit." Applying this criterion, give an illustrative account of the rights of civil nature and the suits of civil nature. [10 Marks]

(d) A is engaged in the business of transportation and B hired the services of A for transporting goods from Delhi to Shimla for full truck loads. B was to make payment of the freight charges on delivery of the goods at Shimla but B avoided the said payment at Shimla, and the consignee at Shimla informed A that the payment will be made by B at Delhi. Accordingly A approached B for making payment of the said freight charges, but B avoided the same. In this regard :

(i) suggest steps for taking legal action in the matter for the recovery of freight amount. [6 Marks]

(ii) draft a plaint and written statement based on same facts. [10 Marks]

Q2.

(a) In an assertion that a particular document is a Will made by a person namely X. Shall for substantiating that claim the status of the property of X and his family at the date of the alleged Will be relevant facts or not ? Justify your answer with reference to the relevant provision of the Indian Evidence Act, 1872. [10 Marks]

(b) A is accused of dishonest misappropriation of certain property which he had found. He contends that at the time of appropriation of that property he believed in good faith that the real owner of the property could not be found. Are, for the purpose of looking into this contention, the following facts relevant for consideration ? [12 Marks]

(i) A public notice of the loss of property was given in the place where A was showing that he did not believe in good faith that the real owner of the property could not be found. (ii) A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, showing the fact that A s knowledge of the notice did not disprove his (A's) good faith. Support your answer with reference to the provisions of Section 14 of the Indian Evidence Act, 1872.

(c) Regarding a "deed", A affirms that it is genuine while B affirms that it is forged. Under Section 21 of the Indian Evidence Act, 1872, A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged. Discuss in the light of the principle laid down in the given section. [12 Marks]

(d) Give an account of the penal provisions under the Indian Stamp Act. 1899 as applied in the State of Himachal Pradesh. [6 Marks]

Part B

Q3.

(a) Trace out the genesis and development of the doctrine of res judicata. What is the present state of judicial precedent that has evolved in India on the application of the doctrine of res judicata in its magnitude and application to suits and writs ? Support your response with an analytical view of the case law. [10 Marks]

(b) A, B and C were three reversioners. A and B filed a suit for possession and half of the property sold by a Hindu widow D. In the suit C was made a co-defendant with the buyer E. The suit was decreed and it was held that the sale was not for any legal necessity. Later C filed another suit against E to obtain possession of other half of properties on the ground that the finding in the previous suit regarding legal necessity was not binding on C as C did not contest the previous suit. Can the former suit operate as res judicata on the later suit ? Support your answer with reasons. [10 Marks]

(c) Attempt a lucid description of the provisions of Code of Civil Procedure Code dealing with the determination of the appropriate forum having jurisdiction for filing a civil suit. [10 Marks]

(d) A contract of partnership was entered into by Firm A having Head Office at Amritsar with Firm B also having Head Office at Amritsar. Firm A was to purchase wool at X in Patiala District and to send it to Amritsar to Firm B for sale. The accounts of the partnership firm were kept at Amritsar. A suit for the dissolution of partnership was filed in a court at X. Whether the court at X has jurisdiction to try the suit ? Describe the position under relevant provisions of the Code of Civil Procedure. [10 Marks]

Q4.

(a) In State of Himachal Pradesh V. Lekh Raj, AIR 1999 SC 3916, the Supreme Court of India held that if discrepancy in the evidence of an eye witness is trivial and does not amount to any contradiction it does not render the prosecution evidence doubtful. Explain in the light of judicial precedent. [10 Marks]

(b) In Shamsher Singh V. State of Haryana, AIR 2002 SC 3480, the Supreme Court opined that in case of proof for a murder it is not necessary that all witnesses at the time of occurrence should be examined. A mere non-examination of one of the witnesses to speak on the same point does not impair the prosecution when the eye-witnesses examined fully support the prosecution case. Examine the opinion critically. [10 Marks]

(c) In the case of Kalawati V. State of Himachal Pradesh, AIR 1953 SC 546 it was held by the Supreme Court that Article 20(3) of the Constitution was no bar in using a retracted confession against the accused. It does not contemplate the suppression of truth. Give an accurate and concise appraisal of the position of law on the subject as it stands now. [10 Marks]

(d) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C". The court may consider the effect of this confession as against B. In another situation, A is on his trial for murder of C. There is evidence to show that C was murdered by A and B. and that B said— "A and I murdered C". This statement may not be taken into consideration by the court against A, as B is not being jointly tried. Discuss with reference to the principle as set up by Section 30 of the Indian Evidence Act. 1872. [10 Marks]

Q5.

(a) Will a statement in the diary of a deceased solicitor, regularly kept by him in the course of business, that, on a given day, the solicitor attended X at a place mentioned, in Shimla, for the purpose of conferring with him upon specified business, be relevant to determine the presence of X in Shimla on a given day ? Support your answer with relevant provisions of law. [10 Marks]

(b) Can the testimony of a raped woman be accepted without corroboration ? Answer with reference to judicial precedent. [10 Marks]

(c) Give an appraisal of the position and powers of the authorities under the Indian Stamp Act, 1899, as applied in the State of Himachal Pradesh, regarding 'references' and 'revision' of any matters/issues arising for determination under the Act. [10 Marks]

(d) Give a systematic appraisal of the classification, composition and jurisdiction of Subordinate Civil Courts under the Himachal Pradesh Courts Act, 1976. [10 Marks]

Q6.

(a) Plaintiff filed suit against W (widow of his brother) for declaration of title to suit property, to put him in possession and for arrears of rent with further mesne profits. Suit was decreed on 05.09.2003. Three days thereafter, the plaintiff sold the suit property to P. The widow filed appeal. During the pendency of the appeal P was impleaded as respondent under Order 22 Rule 10 CPC, since the property in suit had been assigned to him. The plaintiff filed an application for dismissing the suit as not pressed as he had compromised the dispute with W and wanted the compromise to be recorded. It is opposed by P contending that he being transferee-pendente- lite was virtually interested in the decree remaining intact. The plaintiff contended that under Order 23 Rule 1 CPC, he has right to compromise suit with W against whom he had filed suit and he cannot be forced by any of the parties to continue to prosecute the suit. Decide the plaintiffs application. [10 Marks]

(b) In a land acquisition matter the Reference Court enhanced the land value from ₹ 3 lakh to 25 lakhs vide award dated 13.12.2000. The State filed appeal against the award without noticing that the sole respondent in the award had died before filing the said appeal. On 23.05.2002, an application was filed quoting Order 1, Rule 10 CPC for joining names of legal representatives of the deceased respondent, alleging that government came to know about the death of the sole respondent only when notice of appeal was returned unserved stating that he is no more. The application is contested by the proposed legal representatives on the ground that Order 22, Rule 4 CPC is the relevant provision to be invoked and the application for the impleadment of the legal representatives should have been filed within 90 days after the death of the sole respondent as per Article 120 of the Limitation Act and one officer of the government knew about the factum of death and therefore, the appeal abates. The government contends that Order 1, Rule 10 CPC is relevant and there is no specified period of limitation for making such an application and if at all any such application is necessary, the same

could be filed within 3 years under Article 137 of the Limitation Act and in this case, the application was filed much ahead of that time. Decide taking a due note of the contentions of the parties in the matter. [15 Marks]

(c) A agreed to sell a plot of land to B for Rs.45 lakhs. An advance of Rs.15 lakhs was paid by B to A. After another month, B paid further amount of Rs. 20 lakhs to A On such payment, A put B in possession of the plot of land and the balance amount of Rs.10 lakhs to be paid by B to A on the completion of the paper work and registration of the sale deed. B failed to keep his commitment, and A filed a suit for specific performance of contract which was decreed by court allowing B two months more time to make the balance payment. But B failed to make payment of Rs.10 lakhs to A within the time allowed by the court. On the basis of these facts :

(i) Prepare an application for A to seek rescission of the decree and the contract. [5 Marks]

(ii) Discuss the fate of the application of A under the applicable provisions of law. [10 Marks]

Q7.

(a) Is school certificate accepted as a positive proof of the age for the purposes of the determination of juvenile status of a child ? Refer to latest judicial trends. [6 Marks]

(b) Can a suit, though of civil nature, be barred from the cognizance of Civil Court on the ground of Public Policy ? [6 Marks]

(c) Can a court in India consider whether conclusions reached in a foreign judgement are supported by the evidence or are otherwise correct ? Substantiate your answer. [8 Marks]

(d) Do as required in the following :

(i) A files a suit against B for property E and court passes a decree for property F. When the time to appeal had elapsed, the mistake is detected. Advice A. [6 Marks]

(ii) X wants to recover his property which was sold in execution of a decree against Y. Advice X. [6 Marks]

(iii) A court allows a plaintiff to withdraw the suit filed by him with liberty to bring a fresh suit on the same cause of action. The defendant challenges the validity of the order in the fresh suit so instituted. Decide. [8 Marks]

Q8.

(a) Explain the requisites of granting Temporary, Perpetual and Mandatory Injunction under the Specific Relief Act, 1963. [10 Marks]

(b) P was in possession of a shop for the last 20 years. Q forcibly dispossessed P of the shop. After 60 days of dispossession P filed against Q a suit for recovery of the shop. Q defended the suit denying forcible dispossession by him and also contended that the suit for possession did not lie without proof of title. He further pleaded that a prior trespasser cannot eject a later trespasser. P failed to produce his title deeds to the shop. Decide the case applying the provisions of law and principles of formal adjudication. [10 Marks]

(c) Explain the requirements for filing suits against government. [10 Marks]

(d) What is mediation as an alternative mechanism for the resolution of disputes of civil nature ? Highlight the merits of mediation and its requirements for success. [10 Marks]