Himachal Pradesh Civil Judge (Mains) 2018

Civil Law I · Paper I · compulsory paper

Time: 3 Hours. Maximum Marks: 200.

Attempt five questions in all.

Question Nos.1 & 2 of Part-A are compulsory. Attempt the remaining three questions from Part — B.

Each question carries 40 marks. Marks are divided and indicated against each part of the question.

Write legibly supporting your answers with relevant statutory provisions and appropriate judicial pronouncements as may be desirable.

Each part of the question must be answered in sequence in the same continuation. If questions are attempted in excess of the prescribed number only questions attempted first up to the prescribed number shall be valued and the remaining answers will be ignored.

Part A

Q1.

(a) Describe the features of a 'Judgment' as culmination of a civil suit supposed to be disposing of the matters in issue conclusively. Also underscore the foundational perspective to be possessed by a judge for writing a judgment. [10 Marks]

(b) The Supreme Court of India in Canara Bank vs. N.G. Subbaraya Setty, decided on 20th April, 2018 observed: "In the present case, a belated review petition was filed after arguments were heard and judgment reserved by the appellate Court. Would this Court have to await the outcome of the said review petition before deciding whether the judgment is res judicata?" Elucidate the main procedural issue involved in the matter as reflected by this observation in its possible facets and attempt a well reasoned resolution of the issue in the light of the law and judicial precedent. [10 Marks]

(c) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither. A obtains a decree against C for damages on the ground that C failed to make out his justification. Whether the fact will be relevant as between B and C also. Explain in the light of the relevant provision of the Indian Evidence Act, 1872 explaining its rationale as well. [10 Marks]

(d) The question is, whether a given letter is in the handwriting of A, a merchant in London. B is a merchant in Calcutta, who has written letters addressed to A and B received letters purporting to be written by him. C, is B's Clerk whose duty was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising him thereon. B, C or D never saw A write. Can the opinions of B, C and D on the question whether the letter is in the handwriting of A be relevant? Refer to relevant provisions of the India Evidence Act, 1872 in support of your answer. [10 Marks]

Q2.

(a) "Under Order 22 Rule 10, CPC, when there has been an assignment or devolution of interest during the pendency of the suit, the suit may, by leave of the court, be continued by or against person to or upon whom such interest has been assigned or devolved and this entitles the person who has acquired an interest in the subject matter of the litigation by an assignment or creation or devolution of interest

pendent lite or suitor or any other person interested, to apply to the court for leave to continue the suit. When the plaintiff assigns / transfers the suit during the pendency of the suit, the assignee is entitled to be brought on record and continue the suit. Order 22 Rule 10, CPC enables only continuance of the suit by the leave of the court. It is the duty of the court to decide whether leave is to be granted or not to the person or to the assignee to continue the suit." Elaborate and illustrate the principle with reference to the judicial trends, especially judgment of the Supreme Court of India in Life Insurance Corporation of India vs. Sanjeev Builders (Pvt.) Ltd. (decided on 24th October, 2017). [12 Marks]

(b)(i) Respond to the following with reason and judicial authority:- No appeal can lie against an order of stay under Section 10 of CPC. [04 Marks]

(b)(ii) Respond to the following with reason and judicial authority:- An application for revision can lie against an order of stay under Section 10 of CPC. [04 Marks]

(c) "Where evidence offered comes within the meaning of its definition, the court can act on it and need not concern itself with method by which the evidence in question was obtained". [Pushpadevi M Jatia vs. M.L. Wadhwan, SC 1987]. A confession made to a police officer was used in evidence in departmental proceedings. [Kuldip Singh vs. State of Punjab SC 1996]. But, where search and seizure was conducted by not observing the protective provisions of Section 50 of the NDPS Act, 1985, the seizure was held to be not proper and, therefore, not capable of creating presumption of wrongful possession. It was not admissible evidence by itself for proof of unlawful possession. [State of Punjab vs. Baldev Singh, SC 1999]. Analyse critically the positions taken by court in these cases and in the light of these judicial renderings give a synthetic position that can be deemed to have evolved out of them. [15 Marks]

(d) The rules of proof in civil and criminal cases are generally the same. But point out some differences which must be noted in the process of dealing with cases of civil and criminal nature. [05 Marks]

Part B

Q3.

(a) Courts in India exercise jurisdiction both in equity and as well as law, but exercise equity jurisdiction subject to the provisions of law. [Shiv Kumar Sharma vs. Santosh Kumari, AIR 2008 SC 171] Mitigate this conundrum by logical indulgence. [07 Marks]

(b) Underline the judicially evolved guideline and legislative processes which can be held to have defined the scope and ambit of the discretion of the courts in not enforcing contractual transactions under the Specific Relief Act, 1963? Illustrate with practical examples. [07 Marks]

(c) The Central Council, a representative body of ABC (a religious denomination) passed a resolution proposing the merger of the group with XYZ (another denomination of the same religion) to have a common management of the affairs of the religious places of two groups. Some members of ABC question the resolution and want to bring a civil suit to stop the proposed merger. What basic requirements will be necessary for them to file a suit on the matter? Decide the forum for filing the suit and draft the necessary pleadings for bringing the suit on both sides. [16 Marks]

(d) In a health care camp irreversible damage was caused to the eyes of a patient operated upon in the camp. Help the victim by drafting necessary pleadings required for claiming damages and to make a plea for payment of exemplary costs to him. 10 Marks

Q4.

(a)(i) 'A' deposits a box of jewels with 'B' as his agent. 'C' alleges that jewels were wrongly obtained from him by 'A' and claims them from 'B'. Can 'B' institute an interpleader suit against 'A' and 'C'? In another situation, 'A' deposits a box of jewels with 'B' as his agent. He writes to 'C' for the purpose of making the jewels a security for a debt due from himself to 'C'. 'A' afterwards alleges that 'C's debit is satisfied, 'C' alleges the contrary. Both claim jewels from 'B'. Can 'B' institute an interpleader suit against 'A' and 'C'? [10 Marks]

(a)(ii) On the basis of facts and circumstances draft necessary pleadings for institution of interpleader suits by "B' as may be required in the given circumstances. [10 Marks]

(b) Give a concise, lucid and axiomatic version of the process of execution of decrees under the Code of Civil Procedure, 1908. [14 Marks]

(c) "The penal provisions under the Indian Stamp Act, 1899 as applied in the State of Himachal Pradesh are largely outdated, disproportionate and inappropriate." Comment critically. [06 Marks]

Q5.

(a) Evaluate the operative and enforcement mechanism provided under the Indian Stamp Act, 1899, as applied in the State of Himachal Pradesh taking note of its workability in the changing administrative and business patterns in India after 1995. [10 Marks]

(b) Give an enumerative but summarised critique of the legislative efforts made by significant amendments of the Code of Civil Procedure, 1908 and any other related procedural law during the previous two decades to make justice delivery earnest. [15 Marks]

(c) Give a cogent exposition of the nature, functions and powers of the Subordinate Civil Courts established and regulated under the Himachal Pradesh Courts Act, 1976. [10 Marks]

(d) Define the qualities of a successful mediator in civil matters. [05 Marks]

Q6.

(a) "Any information contained in an electronic record which is printed on a paper. stored. recorded or copied in optical or magnetic media produced by a computer shall be deemed to be also a document, if the conditions mentioned [in the law] are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible." Locate the relevant section and examine the statement analysing with reference to relevant provisions of the Indian Evidence Act, 1872 along with the conditions specified in those provisions. [15 Marks]

(b) What are perpetual injunctions? Discuss the provisions of the Specific Relief Act related to perpetual injunctions. [10 Marks]

(c) Give an appraisal of the provisions of the Specific Relief Act, 1963 about rectification of instruments. [05 Marks]

(d) Illustrate the expression 'balance of convenience' for the purpose of grant of temporary injunctions with reference to case law. [10 Marks]

Q7.

(a) A agreed to sell a house to B for Rs.16 lakhs and an amount of Rs.02 lakh was paid by B to A. After a promise by B to A to pay him the remaining amount in a few days A put B in possession of the house and also completed the paperwork. B failed to keep his commitment. On the basis of these facts —

(i) What remedy, if any, is available to A under the Specific Relief Act, 1963? (ii) Prepare necessary documents for seeking relief to A under the Specific Relief Act, 1963. [16 Marks]

(b) Give a rational account of the provisions of Civil Procedure Code related to discovery and inspection of documents. [08 Marks]

(c) Describe the provisions of Order XLV of the Civil Procedure Code dealing with Appeals to the Supreme Court. [08 Marks]

(d) As mentioned in Section 57 of the Indian Evidence Act, enumerate and illustrate the facts of which Court must take judicial notice. [08 Marks]

Q8.

(a) Portray comprehensively the provisions of Order V of the Civil Procedure Code dealing with the "Issue and service of summons". [10 Marks]

(b) "Facts showing the existence of any state of mind such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person. or showing the existence of any state of body or bodily feeling are relevant, when the existence of any such state of mind or body or bodily feeling, is in issue or relevant." Explain and exemplify this statement with the help of illustrations and judicial decisions. [10 Marks]

(c) Give an exhaustive view of the motivations and practical purposes for the amendments incorporated in the Specific Relief Act, 1963 in 2018. [10 Marks]

(d) Give an appraisal and critical view of the provisions of the Indian Evidence Act related to confession. [10 Marks]