Himachal Pradesh Civil Judge (Mains) 2018

Civil Law II · Paper II · compulsory paper

Time: 3 Hours. Maximum Marks: 200.

Attempt five questions in all.

Question Nos.1 & 8 are compulsory. Attempt the remaining three questions from the rest of six questions.

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

Write legibly quoting provision(s) of law and the relevant case law(s) in support of your answer. Give reasons in support of your answers also.

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.

Q1. With the help of decided cases, discuss the following:

(a) A and B are husband and wife. A son C. is born to them in 1945. C has got some separate property of his own. A is the natural guardian of property and person of C. A dies in the year, 1958 leaving his widow and his minor son C. Before his death, A executed a will and thereby he appointed his brother D as the guardian of C. After his death, a dispute arose between B and D about guardianship of C. Decide. [10 Marks]

(b) A, a lawyer practising in Delhi went to Singapore with his wife B during the court vacation. There she became sick and was unable to return to Delhi. A consequentially promised orally to send her an allowance of Rs.20,000/- per month till she recovered and joined him. A failed to make the payment. She sent a legal notice to A threatening to sue him. Could A be made liable. Discuss with relevant case laws. [10 Marks]

(c) A sells his plot of land with a small hut thereon to B by an unregistered sale deed. B took formal delivery of possession and constructed a two room house thereon. A sold the same land to C under a registered sale deed on receipt of cash consideration and put him in formal possession. The sale deed in favour of B recited that from the date of sale, B would possess the land as an absolute owner. B filed a suit against C. Decide referring to Section 54 of the Transfer of Property Act and judicial decisions. [10 Marks]

(d) A is a landlord and B is his tenant. A terminates the tenancy of B by way of a notice. Later B dies leaving behind the following:-

(i) His spouse who was staying in her parental home after a decree of judicial separation and was also holding a governmental job. (ii) His married son C, who was having his job in another town and was living there with his wife and two children. They used to visit B for festivals. (iii) B's second son D who was studying and staying in hostel. (iv) B's young unmarried daughter was staying with B.

(v) B's parents. Who out of the above will succeed to the tenancy. Refer to statutory provisions of the Himachal Pradesh Urban Rent Control Act, 1987 (HPURCA) and decided cases? [10 Marks]

Q2.

(a) Mr P, Karta of a Joint Hindu family died in 1971 leaving behind him five sons and their respective families. PS being the eldest son, became the Karta of the joint family. Y is the eldest daughter of PS. As time passed all the five sons also died. Later one of the son X of the younger brother of PS declared himself as the Karta by virtue of being the eldest male member of the family. This claim of X was challenged by Y that after death of her father and her uncles, she being the senior most member of the Joint Hindu family, is entitled to be the Karta of the family. Decide, in the light of recent developments of Hindu Law. [14 Marks]

(b) A, a minor girl aged 13 years was married off by her parents to B. who is aged 21 years. A was not ready to get married as she wanted to pursue her studies. Hence A was not happy in this marriage. Later, her friend's father, who is a lawyer, advised her to seek divorce. Discuss the provision of the Hindu Marriage Act. 1955 under which A can claim divorce from B. Also refer to all the grounds available to a wife for claiming divorce. [13 Marks]

(c) In a case between P and Q, judgement was passed on 10-07-2002. (the decree prepared on 25-07-2002). P is preparing to file an appeal. Hence an application for certified copy was made by P on 11-07-2002 and the certified copy was ready on 01-08-2002 and delivery of certified copy was taken on 05-08-2002 by P. Taking into consideration the time required for filing an appeal, which period should be excluded under Section 12, from the time required for filing an appeal under the Limitation Act, 1963? Discuss referring to decided cases. [13 Marks]

Q3.

(a) X. a person of 17 years of age by fraudulently misrepresenting himself to be of 19 years agreed to sell a plot of land to Y for Rs.10 lakhs and took an advance of Rs.2 lakhs from Y at the time of entering into an agreement to sell. The time of registration of sale deed was within 90 days from the date of agreement to sell. X later refused to execute and register the sale deed. Y filed a suit for specific performance of contract or refund of advance paid. Analyse the legal position of a minor's contract. Discuss the statutory provisions and refer to decided cases. [14 Marks]

(b) A, an old lady, granted an estate to her daughter B, with the condition that B should pay an annuity of Rs.5000/- to A's brother, C. On the same day. B made a promise vis-a-vis an agreement with her uncle C that she would pay the annuity as directed by her mother, A. Later B refused to pay the annuity on the ground that her uncle C had not given any consideration, he cannot claim the money as a matter of right. C sues B for breach of contract. Decide giving reasons. Also refer to decided cases. [13 Marks]

(c) A sells property to B for Rs.5 lakhs. The sale is subject to a mortgage encumbrance which was believed to be of Rs.2 lakhs. After the sale, it is discovered that the mortgage was invalid, so that B has got complete ownership for Rs.5 lakhs. A then sues B to recover Rs.2 lakhs as part of his purchase money. Decide about the fate of A's suit with reasons. Discuss in the light of the provisions of Section 55 of the Transfer of Property Act, 1882. [13 Marks]

Q4.

(a) Discuss how the Hindu Succession Act, 1956 revolutionised the concept of Women's Property from ‘Women's Limited Estate" to ' Absolute Ownership' over all her property, considered to be a step in the direction of gender justice. Referring to the relevant provisions of the 2005 Amendment Act, can we say that Hindu women have been totally empowered as far as their right to property is concerned? [14 Marks]

(b) A was in the business of selling cars which he kept on his farm. His uncle B came for a trip and visited his farm. A took him around and showed him the cars. B returned to his place and three days later sent a letter to A. The letter said, "If I do not hear from you about that black car, I shall consider it as mine for Rs.17,00,000/-." A did not reply back but instructed his manager not to put that black car for auction as it had already been sold to his uncle B. The manager followed the instructions diligently, as a result all the cars except that black car were sold. But B never came forward to make payment for that black car. A sues B to enforce the contract. Would A succeed? Decide. Discuss the rules regarding the communication of acceptance and revocation. [13 Marks]

(c) A is a landlord (a lawyer) and B is a tenant in respect of a residential building. A has a son X who is to get married as well as he has just finished his LL.B and wants to start practice. A files a petition for eviction against B. on the ground that A requires the building (I) for his own use as his family has grown, (ii) for X's marriage, (iii) for use as an office by his son X who intends to start practice. Decide referring to relevant provisions of the Himachal Pradesh Urban Rent Control Act, 1987 (HPURCA) and decided cases. [13 Marks]

Q5.

(a) What is a contingent contract? When is it enforceable? A agrees to pay B Rs.10,000 if B repairs his car. Is this a contingent contract? Explain with the help of legal provisions and decided cases. [14 Marks]

(b) A (husband) and B (wife) were highly qualified and both were gainfully employed in different towns i.e. A was employed in his home town, whereas B was employed out of that place. Unfortunately A was not so well employed as B was and thus B was getting higher salary than A. B proposed to A that he should resign and stay with her. On the other hand, A asked her to resign and live with him. A misunderstanding resulted on this issue. A filed a suit for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. Decide referring to the developments in the concept of 'matrimonial home' under Hindu law. [13 Marks]

(c) A, a landlord had determined the tenancy of his tenant B by way of a notice dated 07-07-1987. Thereafter, B continued in possession without payment of rent. Later, A went abroad and could not return for a number of years. A returned to India on 15-02-1999. After coming back to India, A was bedridden for a few months. Thereafter, A consulted his lawyer and filed a suit for possession against B on 17-11-1999. Decide referring to relevant provisions of the Limitation Act, 1963 and decided cases. [13 Marks]

Q6.

(a) The landlord A issued a 'notice to quit' under Section 106 of the Transfer of Property Act on 25- 11-1962 calling upon the tenant B to vacate the tenanted house in the month of October. 1962 otherwise the tenant would be treated as trespasser from 01-11-1962 in respect of the said house. Is the notice to quit valid under Section 106 of Transfer of Property Act? Decide referring to decided cases. [14 Marks]

(b) What are the kinds of mortgages under the Transfer of Property Act, 1882? Explain referring to relevant legal provisions. [13 Marks]

(c) The plaintiff bank alleged that on defendant's request on 07-11-1977, it remitted an amount of Rs.14,22,070/- to the defendant. The mistake was alleged to be detected on 09-12-1983, but no debit entry was made even on that date. Further, the bank filed a suit for recovery of the amount in the

month of March, 1985. Moreover, the remittance was for a sum of Rs.14,22,070/- whereas the defendant had only a sum of Rs.1,00,000/- in its account on that date. Decide whether the plaintiff bank was diligent enough to be entitled to the benefit of Section 17(c) of the Limitation Act, 1963. [13 Marks]

Q7.

(a) Whether the delay in the following cases be condoned by the Court on the ground of 'sufficient cause' under Section 5 of the Limitation Act, 1963?

(i) The plaintiff X was a rustic and illiterate villager residing in a remote village. He had appointed a counsel residing at a far off place and the Court was situated at a different place. The suit filed by X was dismissed in default due to non-appearance. There was a communication gap between him and his counsel and a delay of about 3 years took place in filing an application under Order IX, rule 9. CPC for condonation of delay. [07 Marks]

(ii) The substitution application for bringing on record the legal representatives of X was filed 3 years after the death of the plaintiff X, and application for condonation of delay was filed 7 years thereafter. The reason for the delay given by the applicant was that her husband who was practising on the criminal side did not know about the requirements of civil law. [07 Marks]

(b) A (lessor) entered into a deed of lease with B (lessee). It was stipulated that the lease would be for 10 years. In the first instance with an option to B to renew the same as long as desired. Before the expiry of the period of 10 years from the date of commencement of the lease, B wrote to A informing about his intention to renew the lease. A refused to comply with the request. B filed a suit for specific performance of the covenant in the lease for renewal. A contended that the condition relating to renewal was hit by Section 14 of the Transfer of Property Act, 1882. Decide referring to relevant provision and decided cases. [13 Marks]

(c) In a case, plaint was presented in a Court having no jurisdiction. The Court ordered the plaint to be returned for presentation to the proper Court. The plaintiff took the plaint back after expiry of 4 months from the date of the order. Whether the Court can condone the period of 4 months under Section 14 of the Limitation act, 1963? Decide. [13 Marks]

Q8.

(a) With the help of relevant provisions of the Himachal Pradesh Urban Rent Control Act, 1987 (HPURCA) and decided cases, explain the following:-

(i) Deposit of rent by the tenant. 04 Marks

(ii) Determination of fair rent. 06 Marks

(iii) Institution and disposal of applications. [04 Marks]

(b) Who is a ‘specified landlord'? Discuss the ‘Right to recover immediate possession of premises accruing to certain persons’ under the Himachal Pradesh Urban Rent Control Act, 1987 (HPURCA). [13 Marks]

(c) Discuss the special procedure for the disposal of applications for eviction on the ground of bona fide requirement under Section 14 and 15 of the Himachal Pradesh Urban Rent Control Act, 1987 (HPURCA). [13 Marks]