Himachal Pradesh Civil Judge (Mains) 2019

Civil Law I · Paper I · compulsory paper

Time Allowed: 3 Hours. Maximum Marks: 200.

This question paper contains eight questions.

Part 'A' is compulsory.

Answer any three questions from Part 'B'.

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

Question of 08 marks be answered in 250 words.

Question of 12 marks be answered in 400 words.

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.

Re-evaluation / Re-checking of answer book is not allowed.

Part A

Q1.

(A) "The scope of the principle of res judicata is not confined to what is contained in section 11 of CPC but is of more general application. Res judicata could be as much applicable to different stages of the same suit as to findings on issues in different suits." Explain the concept of res judicate, and distinguish it from res sub-judice? (08 Marks)

(B) Write a note on the power of the Chief Justice to transfer pending suits, appeals or proceedings to the subordinate civil courts under the Himachal Pradesh Courts Act, 1976. (08 Marks)

(C) What is 'Doctrine of Forum Convenience'? Explain the concept in the light of provisions prescribed under the Code of Civil procedure, 1908. (12 Marks)

(D) "Rule of Estoppel appertains to equity and fairness in action." Explain and illustrate with decided cases. (12 Marks)

Q2.

(A) Discuss the mode of payment of Stamp Duty under the Stamp Act, 1899. (08 Marks)

(B) Explain the Rule making powers of High Court under the Himachal Pradesh Courts Act, 1976. (08 Marks)

(C) Describe the scope and nature of presumption against the accused under Section 105 of Evidence Act, 1972. Elucidate the answer with the help of judicial decisions. (12 Marks)

(D) Expound the conditions under which jurisdiction of 'declaratory decree' may be exercised under the Specific Relief Act, 1963. (12 Marks)

Part B

Q3.

(A) Under what circumstances, the foreign judgments would be inconclusive, and shall not be executable in India as per the provision of the Code of Civil Procedure, 1908? (08 Marks)

(B) Explain the adjudication mechanism prescribed under Stamp Act, 1899 for adjudicating undervalued stamp and related disputes. (08 Marks)

(C) Discuss the scope of the Order IX Rule 13, of the Code of Civil Procedure, 1908. What is the meaning and scope of 'sufficient cause' for not being able to attend the hearing of the suit on the relevant date? Elucidate with relevant cases. (12 Marks)

(D) What are the prerequisites of admitting electronic evidence under Indian Evidence Act, 1872. (12 Marks)

Q4.

(A) City Municipal Corporation, a statutory body, permitted dumping of garbage at a specified place, which resulted into general inconvenience to people of that locality. Mr.A and B, resident of two different colonies of the City, files suit against theMunicipal Corporation. Municipal Corporation resisted the suit on the ground that 'no specific damage caused to either of the plaintiff is mentioned the plaint? Decide the question raised by the Municipal Corporation as per the provision of Code of Civil Procedure, 1908. (08 Marks)

(B) The Department of Public Works invited tender for the construction of a over bridge. After opening of tender, the offer made by M/S P& Z Construction was approved as per the rules. However, the construction company fails to complete the construction work within the stipulated time period. The Department of Public Works files a suit against the company for the specific performance. Decide the suit. (08 Marks)

(C) Discuss the Rule regarding right to file caveat, and the rule set out by Himachal High Court? (12 Marks)

(D) Explain the conditions under which statement by the third party could be taken as 'admission' under the Indian Evidence Act, 1872. (12 Marks)

Q5.

(A) What are the exceptions wherein the general rule of Notice may be waived under Section 80 of the Code of Civil procedure, 1908? Explain. (08 Marks)

(B) What is hearsay evidence? What are the exceptions to the rule of hearsay under the Indian Evidence Act, 1972? (08 Marks)

(C) Explain the scope of second appeal as prescribed under the Code of Civil Procedure, 1908. (12 Marks)

(D) Discuss the cases wherein oral evidence may be adduced to contradict or vary terms of a written contract which is strictly required by law to be in a writing? (12 Marks)

Q6.

(A) With a view to obtain 'expert opinion', who could be treated as 'Expert', under the Indian Evidence Act, 1872? (08 Marks)

(B) Discuss the power of court to grant interlocutory injunction under Rule 3 of Order XXXIX of the Civil Procedure Code, 1908. (08 Marks)

(C) Mr. X has filed money suit against Mr. Z for the recovery of Rs.50 Lakhs together with interest and the said suit was decreed ex-parte. Execution petition was filed for execution of the decree. The Mr. Z, the defendant files application under order IX Rule 13 for restoration of suit, along with a request to condone the delay of 250 days in filing the application to set aside the ex-parte decree. In the said application, he stated that he was residing at Place 'A', whereas the notice was served at place 'B' and therefore, he did not have knowledge about the filing of the said suit. The request for condonation of delay in filing the application to set aside the ex-parte decree was dismissed. A revision application, and later on, the special leave petition, filed by Mr. Z were dismissed. Thereafter, Mr. 'Z' preferred the first appeal with the application to condone the delay of 500 days in total i.e. a delay of 250 days in filing the application to set aside the ex-parte decree, and remaining 250 days in pursuing the revision application and SLP. In the application for condonation of delay, of course, the appellant has raised the very same ground, which was taken in the application filed under Order IX, Rule 13, Revision Application and SLP. Decide the appeal on the basis of provisions contained in Code of Civil Procedure, 1908 and judicial precedents. (12 Marks)

(D) Discuss the scope and limits of the privilege grated to the communications made between husband and wife. What are exceptions under which the said privilege may be withdrawn? (12 Marks)

Q7.

(A) "The principle of restitution based on the notion that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost." In the light of the statement explain the doctrine of restitution provided under 144, Code of Civil Procedure, 1908. (08 Marks)

(B) Explain the rule and judicial guidelines regarding admissibility of test identification parade (TIP) under Indian Evidence Act, 1872. (08 Marks)

(C) Discuss the circumstances under which execution court can pass attachment before judgment order under the Code of Civil Procedure, 1908. (12 Marks)

(D) Discuss the scope of expression 'discover' under Section 27, Indian Evidence Act, 1872. Elucidate with the help of judicial decisions. (12 Marks)

Q8.

(A) What are the distinctions between 'preliminary decree' and 'final decree'? (08 Marks)

(B) Whenever, a person is wrongfully dispossessed of his property, the law aims to restore it back." Explain the statement in the light of provisions contained in the Specific Relief Act, 1963. (08 Marks)

(C) Mr. A & B, both were arrested for an alleged offence of theft in a moving train by the Railway protection Force. The arrests were made from two different compartments. Later on, accused 'A' was brought to Railway Police Station, wherein in the presence of Judicial Magistrate (Railway), he made a confession about his offence as well as about the offence of 'B'. Discuss the relevancy and admissibility of the confession made by A, against himself and against 'B' as well. (12 Marks)

(D) "The executing Court has no power to entertain any objection as to the validity of the decree or as to the legality or correctness of the decree." Discuss the jurisdiction of Execution Court as prescribed under Code of Civil Procedure, 1908 and decided case. (12 Marks)