Himachal Pradesh Civil Judge (Mains) 2019

Civil Law II · Paper II · 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.

The answers should refer to the Himachal Pradesh Urban Rent Control Act (HPURCA), 1987, wherever applicable, as amended in 2012.

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.

Write notes on the following with the help of the decided cases and relevant law:

(A) Effect of Fraud or Mistake on the Law of Limitation. (10 Marks)

(B) Communication of Acceptance under Contract Act, 1872. (10 Marks)

(C) Grounds under which a Hindu wife can claim separate residence and maintenance from the husband (10 Marks)

(D) Difference between Vested and Contingent interests. (10 Marks)

Q2.

(A) The object of rent law is to balance the competing claims of the landlord on the one hand to recover possession of building let out to the tenant and of the tenant to be protected against arbitrary increase of rent or arbitrary eviction, when there is acute shortage of accommodation. Does the Amended Act of HP Urban Rent Control Act, 2012 (HPURCA) really balance the rights of both the landlord and tenant as mentioned in the statement of objects and reasons? Comment in view of any recent judgment of the High Court or Supreme Court on HPURCA. (25 Marks)

(B) Explain the provisions relating to the Landlord's duty to keep the building or rented land in good repairs. (15 Marks)

Part B

Q3.

Discuss the rights of the parties to the contract in the following situations:-

(A) Somya, a famous singer, enters into an agreement with Mr. Abhijit, the manager of a Theatre Group, to sing at his theatre workshop for three nights every week during next two months. Mr. Abhijit

agrees to pay to her Rs.20,000/- for each night's performance. On the fifth night, Somya wilfully absents herself from the theatre workshop. As a result, Mr. Abhijit rescinds the contract. (14 Marks)

(B) A group of Himachal Pradesh Government employees acquired land for a Cooperative Group Housing Society (CGHS). One of the rules of the CGHS provided that no flat owner shall ever sell the flat to any buyer who is not an Himachal Pradesh Government employee. Decide with reference to the relevant provisions of the Transfer of Property Act, 1882 and the decided case law. (13 Marks)

(C) Mr. Harish is enfeebled by age and illness. Ms. Priya, the nurse, who attended to him, uses her personal influence and induces Harish to transfer his property X to her in lieu of her professional services. After recovering from illness, Harish wants to avoid the contract. Advise him in view of the relevant provisions of the Contract Act, 1872. (13 Marks)

Q4.

(A) Ramesh Chandra is owner of three fields F1, F2 and F3. His son, Somesh Chandra has now separated from him and gets F1 and F2 after partition. The third field, F3 has been retained by Ramesh. Somesh, representing himself to be the owner of F1, F2 and F3, sells all the three fields to Bhupesh. While the contract of sale is still subsisting and has not been rescinded by Bhupesh, Ramesh Chandra dies. On his death, Somesh inherits F3. When Bhupesh comes to know of this, he sues Somesh for delivery of possession of F3. Discuss rights of Bhupesh in the light of the relevant provisions of the Transfer of Property Act, 1882 and the decided case law. (14 Marks)

(B) Mukesh filed a suit against Vijay for specific performance of a contract of sale of a property X for execution of its sale deed. During the pendency of the suit, Vijay sold and executed the sale deed of X in favour of Rakesh. Decide the right and title of Rakesh in the property X. (13 Marks)

(C) Law as well as justice should try to prevent unjust enrichment. Critically examine this statement with reference to the Quasi-Contracts. (13 Marks)

Q5.

(A) Examine the validity of the following adoptions under the Hindu Adoption and Maintenance Act, 1956: Somdutt, a Hindu male, has divorced his wife, gives his only son in adoption without the consent of his wife. (14 Marks)

(B) Krishna, a Hindu male, works with Infosys at Chandigarh while Seema, a Hindu female, works as an HR executive at Tata Motors, Jaipur. After being in relationship for few years, they enter into a pre-nuptial agreement. Finally, they get married as per Hindu traditions and customs. One of the terms of the agreements stated: That both of them shall continue with their present jobs and join each other during holidays whenever possible. However, immediately after marriage, Krishna starts forcing Seema to leave her job and join him at Chandigarh permanently. Seema does not agree to this and tells him that this is violation of the agreement between them. Krishna files a petition for Restitution of Conjugal Rights against Seema. Decide with reference to the relevant case law and provisions of Hindu Law. (13 Marks)

(C) Explain Privity of Contract and Privity of Consideration. (13 Marks)

Q6.

(A) The limitation period to file an appeal expired on 08.10.2018. However, Ms. Manisha filed the said appeal on 10.09.2019 before the Shimla High Court with an application under Section 5 of the

Limitation Act, 1963 seeking condonation of delay. The said application mentioned the following reasons for the delay: (i) Manisha suffered a heart attack on 08.08.2018 and was hospitalized till 25.12.2018. (ii) She had to go abroad on 28.12.2018 in relation to her urgent business assignment till 30.06.2019. (iii) From 01.07.2019 to 06.09.2019, due to her counsel's mistake, she kept litigating before the wrong forum. Decide whether the High Court will condone the delay? Will there be any change in the above answer if instead of filing an appeal, the delay had been there in filing a suit under similar circumstances? (14 Marks)

(B) Law of limitation extinguishes the remedy but does not extinguish rights. (13 Marks)

(C) Shweta and Subhash got married in 2018 in Delhi. During Covid-19 pandemic, Shweta discovered that Subhash was already married to Khyati at the time of their wedding. Shweta wants to file a case for maintenance from Subhash. Advise Shweta while discussing the relevant provisions of maintenance. (13 Marks)

Q7.

(A) Ram Lal and Sham Lal are very close friends. Ram Lal executes transfer of his property Z in favor of Sham Lal with the following conditions: (i) That the consideration of Rs.25 Lakh shall be paid after one year of the registration. (ii) That Sham Lal will have to pay an extra amount of Rs.5 Lakh if he uses Z for gambling purposes. After 8 months, Sham Lal uses Z for gambling purposes. Discuss the rights of Ram Lal. (14 Marks)

(B) X made a gift of her property to her nephew's daughter Y for her life and then to Y's male descendants absolutely, if she had any. In case, if she had no male descendants, then to Y's daughter without any power of alienation. In case, Y had neither male nor female descendants, then the property was to revert back to her nephew. Y died without any child. Find out the validity of the gift. (13 Marks)

(C) Discuss the provisions relating to Cutting off or withholding essential supply or service as per the Himachal Pradesh Urban Rent Control Act (HPURCA). (13 Marks)

Q8.

(A) Yudhishthir, a Hindu male, governed by Mitakshara Law dies in Delhi as an undivided coparcener in 2018 survived by the following: Father F, Mother M, Widow, Stepmother FW, Brother B1, A Married sister 'Sis' who has a son 'SisS' and a daughter 'SisD', Two Sons S1 and S2 and a daughter D1, S1is married to S1W and has a son S1S and a daughter S1D, D1 is married to H and has a son D1S and a daughter D1D Determine the shares of each of these family members as per the law. (14 Marks)

(B) Discuss the time requisite for obtaining a copy of the decree under Section 12 of the Limitation Act, 1963. (13 Marks)

(C) Penalties as per Section 30(3) under the Himachal Pradesh Urban Rent Control Act (HPURCA). (13Marks)