Himachal Pradesh Civil Judge (Mains) 2023

Paper I · Civil Law I · compulsory paper

Code: JSHP-23(M)-CIVIL LAW-1 · 18 September 2023 · Time Allowed: 3 Hours · Maximum Marks: 200

Question paper specific instructions

1. This question paper contains eight questions.

2. Part 'A' is compulsory.

3. Answer any three questions from Part 'B'

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

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

6. Each part of the questions must be answered in sequence in the same continuation.

7. If question are attempted in excess of the prescribed number only question attempted first up to the prescribed number shall be valued and the remaining answer will be ignored.

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

Part-A

(Both questions are compulsory)

Q.1

(A) Discuss the scope and depth of judicial inquiry while applying Order 7 Rule 11 of the Code of Civil Procedure, 1908 while rejecting a plaint. (08 Marks)

(B) Mr. Ram Prasad, the owner of a building (46000 Square feet), consisting of 30 rooms along with other facilities, in Shimla, Himachal Pradesh, rented the building to ABC University, Himachal Pradesh (a state University). The building was rented vide an unregistered lease deed, @120,000/ per month for 11 months, which may be extended up to a further period of 5 years, from 1st July 2017. The University converted the building into a boy's hostel. It was part of the agreement that either party can rescind the lease deed by giving one month's notice. The lease period was extended time and again till June 2022. In September 2022 Mr. Ram Prasad, being in need of the said premises so that he can convert the building into a homestay, approached the University twice for the vacation of the said building. However, the University Registrar, who was approached directly, did not agree to his demand, citing inconvenience to students during an ongoing academic session, and non-availability of any other suitable accommodation in the locality. Finally, Mr. Prasad served a legal notice in the month of October 2022 for vacation of the building. The University, even after receiving the said legal notice, neither vacated the premises nor showed any intention to vacate.

Draft a plaint for Mr. Ram Prasad against ABC University claiming the eviction of his residential property along with all other suitable remedies including compensation for wrongful possession of property. (12 Marks)

Also, draft a Written Statement for ABC University against the Plaint filed by Mr. Ram Prasad. (12 Marks)

(C) Mr. Z was contacted by Mr. A & B to kill Mr. V. For this purpose, Z was asked to prepare a plan and arrange some hire-assassin who would be paid Rs.10 lakhs. Z contacted Mr. C, a hired assassin, disclosed the assignment, and paid Rs 50,000 in advance. However, later, Mr. Z developed cold feet and withdrew himself from the plan. He informed the same Mr. A&B. After a month, he came to know from the newspaper that Mr. V had been shot dead. He further received a phone call from Mr. A that he would be finished if he discloses anything to anyone. A few days later, A, B, and C were arrested by the police. Mr. Z gave his statement to the police regarding whatever transpired between him and the other accused. He also stated the same to the magistrate and became a public witness during the trial. During the trial, Accused A makes an application under Section 319 of the Code of Criminal Procedure, 1973 to implicate Mr. Z as accused. The trial court dismissed the application quoting Section 132 of the Evidence Act, 1872. Examine the legality of the order. Substantiate your answer with decided cases. (08 Marks)

Q.2

(A) What is the legal framework for collection stamp duty on securities market instruments such as shares and mutual funds? (08 Marks)

(B) Discuss the power of the High Court with respect to determining the jurisdiction (territorial and pecuniary) of subordinate courts under the Himachal Pradesh Courts Act, 1976. (08 Marks)

(C) "The court should find out whether the crime was committed by the accused and the circumstances proved formed themselves into a complete chain, which clearly points to the guilt of the accused. If on the other hand, the circumstances proved against the accused are consistent either with the innocence of the accused or raise a reasonable doubt about the way the prosecution has alleged the offense is committed, the accused would be entitled to the benefit of the doubt." Considering the statement, discuss the essentials of circumstantial evidence rule as propounded by the Supreme Court of India through judicial decisions. (12 Marks)

(D) "Rule of fairness, equity, and justice demands that the 'one who has been dispossessed from his property must be restored without delay". Discuss the provisions of the Specific Relief Act, 1963 towards achieving the above objectives. (12 Marks)

Part-B

Q.3

(A) Who can file a pauper suit? 'A' filed an application as a pauper. 'A' dies before the disposal of his application. Can his legal representative continue with that application? Answer with the help of relevant statutory provisions and decided cases. (08 Marks)

(B) Mr. 'A' transfers his land, having residential property, to Mr. 'B' as agricultural land, and thus there is a deficiency in the stamp. In view of the Stamp Act, 1899 (along with Himachal Amendments), discuss the penal liability in this case under the Stamp Act. (08 Marks)

(C) With reference to Section 9 of the Code of Civil Procedure, 1908, discuss the principles evolved through Dhulabhai v. State of M.P. (1968) regarding the exclusion of the jurisdiction of the Civil Court. (12 Marks)

(D) 'A' allegedly poisoned his wife 'W'. During the investigation, police arrested Ms. 'Z' as an abettor for the said crime. During the trial, it was established that there was an extra-marital relationship

between 'A' and 'Z'. A letter written by Ms. 'Z' to 'A' was adduced as evidence suggesting their plan to marry soon. However, no other direct evidence is available to establish the alleged abetment on the part of Ms. 'Z'. The trial court, relying on other said letter, and the relevant motive, convicted Ms. 'Z' as an abettor for the said murder."
Write a critique of the conviction order with the help of relevant provisions of the Evidence Act, 1872, and the judicial decisions. (12 Marks)

Q.4

(A) What is a case Management Hearing? Discuss the scope of Order XVA of the Code of Civil Procedure, 1908 as applicable to commercial courts. (08 Marks)

(B) Discuss the situations under which specific performance could be permitted even though parties are unable to perform their contract in its entirety. (08 Marks)

(C) "The distinction between appeal and revision is a real one." Explain the distinction with the help of provisions contained in the Code of Civil Procedure, 1908, and decided cases. (12 Marks)

(D) A, B, C, D, and E joined a meeting through video conferencing to destroy a religious structure as a mark of their protest against a traditional religious belief. During the meeting, hate speeches were given and recorded as part of the proceedings. The conspiracy was executed, resulting in mob violence, injuries including deaths. Police arrested them all. A letter proved to be written by 'B' was recovered from 'A', wherein A was directed to purchase explosives for destroying the said religious structure. The recorded video conferencing was retrieved from a laptop possessed recovered from 'C'. After arrest while being in police custody, 'D' made a confession and stated the location of the place where all other arms and ammunition related to this violence were stored. Police raided the said place and recovered all the materials. During the trial, the prosecution adduced the letter written by 'B', the video conference proceedings, and the confession of 'D' against all other accused.
Discuss the relevancy and admissibility of the above three pieces of evidence against the maker as well as all other accused. Substantiate your answer with relevant provisions of the Evidence Act, 1872, and the decided cases. (12 Marks)

Q.5

(A) Discuss the applicability of resjudicata between co-defendants. Explain with the help of relevant provisions of law and decided cases. (08 Marks)

(B) What is 'privileged communication'? Whether cabinet-note placed for discussion before the Cabinet Ministers is immune from judicial scrutiny under Section 123 of the Evidence Act? Discuss with the help of decided cases. (08 Marks)

(C) What is an interpleader suit? Explain the scope of an interpleader suit. (12 Marks)

(D) 'A' was arrested for allegedly committing murder. The Police Officer in charge of his custody and investigation tried to obtain his confession but failed. The Superintendent of Police, who happens to visit the police station ona routine inspection, while interacting with the accused said, "Since the case is registered now, you should tell the truth to me, and I am sure I will do some favour to you". After this, 'A' made the confession to the Superintendent of Police.
Discuss the relevancy and admissibility of this confession. Substantiate your answer with relevant provisions of the Evidence Act, 1872, and the decided cases. (12 Marks)

Q.6

(A) Discuss the scope of Section 154 of the Evidence Act, 1872. (08 Marks)

(B) Discuss the procedure for the settlement of issues as prescribed under Order XVI of the Code of Civil Procedure, 1908. Under what circumstances, the court may initiate an examination of witnesses to settle the issue? (08 Marks)

(C) What are the consequences of the non-appearance of parties on the date fixed by the court? Explain with the help of provisions contained in the Code of Civil Procedure, 1908.
In a suit filed by 'A' against 'B' for recovery of money, the summons was duly served. However, on the fixed date, the defendant did not appear. The Court decided the matter ex-parte and treated all the claims made by 'A' as 'admitted' and passed a decree in his favour. Decide the legality of the proceedings. (12 Marks)

(D) What are the essentials of a dying declaration?
Five persons were arrested for causing dacoity with death. One of the accused got seriously wounded during his arrest. Later, he made a statement regarding the dacoity, and all other accused involved. However, after a few days, he died. The prosecution wishes to adduce his statement as a dying declaration under Section 32(1) of the Evidence Act, 1872. Discuss with the help relevant provisions and decided cases. (12 Marks)

Q.7

(A) Discuss the provisions relating to the government contracts relating to infrastructure projects under Specific Relief Act, 1963. (08 Marks)

(B) Who is an 'expert'? Discuss the relevancy of expert opinion under the Evidence Act, 1872. (08 Marks)

(C) Discuss the rule relating to abatement of civil suit under the Code of Civil Procedure, 1908. What are the remedies available where a suit abates due to the death of a necessary party? Can a court exercise inherent power to implead the legal representative after the death of a necessary party? (12 Marks)

(D) Discuss the law on the presumption of legitimacy under the Evidence Act, 1872.
A & B were good friends staying in the same building, though in a separate flat. 'A' got married to 'W' in November 2020. However, the relationship between the couple could not survive beyond 3 months. They go separated by mutual consent. 'B' marries 'W' in the month of April 2021. 'W' delivers a full-grown child in the month of July 2021. 'B' disputes paternity. Decide with the help of judicial precedents. (12 Marks)

Q.8

(A) Distinguish between legal set-off, equitable set-off, and counter-claim. (08 Marks)

(B) "In order to obtain a decree for specific performance, the plaintiff has to prove his readiness and willingness to perform his part of the contract and the readiness and willingness has to be shown throughout and has to be established by the plaintiff." In light of the statement, discuss the scope of Section 16 (c) of the Specific Relief Act, 1963. (08 Marks)

(C) Under the Code of Civil Procedure, 1908, what are the modes of the execution of a decree relating to immovable property? Whether court can appoint a receiver for property that is situated outside the

territorial jurisdiction of the court? (12 Marks)

(D) What are the circumstances under which oral evidence can be given regarding documentary evidence? Discuss with the help of decided cases. (12 Marks)

De Facto IAS