Odisha Judicial Service (Mains) 2012

Procedural Laws · compulsory paper

JS – 12/2 · 2½ hours · 150 marks

Answer six questions, selecting two from each of Sections A, B and C.

Section A

1. (a) Draw distinction between Executive and Judicial Magistrate. What are the powers of an Executive Magistrate and a Police Officer in dispersing an Unlawful Assembly ? [10 marks]
(b) Define Arrest. When a Police Officer can arrest a person and what precautions he must follow while taking a person into Police Custody. Explain with the help of decided cases from the Supreme Court of India. [15 marks]

2. (a) Enumerate the ways of process to compel a person to appear in Court ? How long does a Warrant of Arrest remain in force ? [10 marks]
(b) Define Suspension, Remission and Commutation. What are the powers given to the Government to suspend, remit and commute sentences ? [15 marks]

3. (a) What are the necessary contents of a Judgement ? Can a Criminal Court alter or revise its own judgement after it is signed and delivered ? [10 marks]
(b) Briefly explain, when a Criminal Court can order to pay compensation to the Injured or Aggrieved Person ? [15 marks]

4. Explain with reasons and relevant Provisions of Law: 5 × 5 = [25 marks]
(a) A 9 year old son was living with his father who is a habitual offender. On the petition of the Child's Mother, can the Magistrate issue a search warrant against the Father considering such custody as wrongful confinement and an offence ?
(b) On 12th May, 2009, 'B' informs the Police that 'A' is planning to murder him on 18th May, 2009 at New Hotel, Buxi Bazar, Cuttack. On 18th May, 2009 Police arrested 'A' from the said Hotel. Is the Preventive arrest of the police is legal ?
(c) A Magistrate orders 'Z' to pay maintenance of Rs. 500 per mensem to his unemployed and disabled Father under Section 125 of Cr. P. C. 1973. Can 'Z' prefer an Appeal or Revision against such order ? If so, in which Court ?
(d) On 23rd April, 2009, a Police Sub-Inspector while on Night Patrol duty arrested 'M' for selling illicit liquor, 'N' for prostitution and 'Q' for extortion. Can M', N', and 'Q' be tried jointly ?
(e) Do you think a Magistrate can tender a pardon to an accomplice under Section 306 of Cr. P. C.,1973 ?

Section B

5. (a) Explain briefly the Rules relating to Appearance of Parties and Consequence of Non-Appearance under Order IX., Code of Civil Procedure, 1908. [15 marks]
(b) When the court may allow and refuse the Amendment of Pleadings ? [10 marks]

6. (a) Enumerate the Supreme Court's guide line for the grant of Temporary Injunction. [10 marks]
(b) Draw distinction between Second Appeal and Revision. Can the High Court suo motu exercise the Revisional Jurisdiction ? [15 marks]

7. Explain with relevant provisions of law: 5 × 5 = [25 marks]
(a) Whether 'Equitable Execution' is mandatory or discretionary ?
(b) An American Court passed an order for payment of Matrimonial Maintenance against an Indian Husband currently residing in India. Can this order be executed by an Indian Civil Court ?
(c) Can a Civil Court through Review of Judgement alter it's own Judgement ?
(d) X' wants to sue 'Y' an I.A.S. officer. Do you think X' is bound to give notice under Section 80 of CPC to 'Y' ?
(e) Do you think parties to the Civil Suit are entitled to get a copy of the Judgment free of cost?

8. Explain with relevant provisions of law: 5 × 5 = [25 marks]
(a) Do you think every Civil Court has inherent power to decide the question of its own jurisdiction ?
(b) X' files a suit against 'Z' for declaration that he is entitled to certain landed property as the legal heir of 'M'. The suit is dismissed Can X' claim the same property on the ground of adverse possession in a subsequent suit ?
(c) Do you think all Civil Courts can suo motu transfer suit, appeal and other proceedings to another Court ?
(d) A' and 'B' co-plaintiffs obtain a decree for Rs. 1000 against 'C and 'C obtains a decree for Rs. 1000 against B'. Can C treat his decree as a cross decree ?
(e) Can a substantive suit be filed to set aside a decree passed by a Court on an objection as to the place of suing ?

Section C

9. (a) Can a Court of Sessions convict an accused solely on the basis of Circumstantial Evidence ? Discuss briefly the Rules of Circumstantial evidence as enumerated by the Supreme Court of India. [15 marks]
(b) It is trite to say that every confession must necessarily be an admission, but, every admission does not necessarily amount to a confession. Explain the evidentiary value of 'Retracted Confession'. [10 marks]

10. (a) Define'Secondary Evidence'. Explain the kinds of Secondary Evidence. Do you think that secondary evidence is not admissible until the non-production of primary evidence is satisfactorily proved ? Discuss with case laws. [15 marks]
(b) Explain the evidentiary value of 'Polygraph Examination' and 'Narco-Analysis Techniques' with the help of relevant provisions of law and decided cases. [10 marks]

11. (a) Draw distinction between'Burden of Proof and 'Onus of Proof. Enumerate the Rules of Burden of Proof. [15 marks]
(b) What questions can not be asked to an accused or Witness during Cross Examination? [10 marks]

12. Estimate the evidentiary value of the following: 5 × 5 = [25 marks]
(a) Testimony of an accomplice
(b) Relevancy of facts forming part of same transaction
(c) Professional Communication
(d) Oral Evidence
(e) Medical Evidence