Odisha Judicial Service (Mains) 2013

Procedural Laws · compulsory paper

JSM – 13/2 · 2½ hours · 150 marks

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

Section A

1. (a) It is one of the cardinal principles of criminal jurisprudence that a criminal trial should be completed without delay. Discuss the provision of the Criminal Procedure Code, 1973 where this principle has been incorporated. [15 marks]
(b) Can the time limit be a ground for terminating the criminal proceedings ? Please, support your answer with the help of the decided case law. [10 marks]

2. (a) Sabeena was working at a call centre. One day her boss Ranjit offered her lift. On the way, they stopped at a restaurant for having cold drink. Ranjit mixed some sedative in the drink of Sabeena and took her to a room where he raped her. He also clicked some objectionable photographs of Sabeena and threatened her not to disclose that incident failing which he would paste her photographs in the office. Thereafter, he raped her several times. However, two months later, when Sabeena learnt that she was pregnant, she disclosed the matter to her mother who got a First Information Report (FIR) registered against Ranjit. Ranjit was arrested and was charge-sheeted under Sections 376 and 507 respectively of the Indian Penal Code, 1860. The Trial Court found Ranjit guilty of both the offences and accordingly convicted him. The High Court, however, reversed the decision and acquitted him on ground of delay in lodging the FIR. The State is to go in appeal against the aforesaid decision. Please advise. [10 marks]
(b) In the proposition enlisted above, can Sabeena as a victim also go individually in appeal ? [5 marks]
(c) Can a police officer refuse to register an FIR on the ground that the said police station where he is posted did not have the territorial jurisdiction over the place of crime ? [5 marks]
(d) Can an anonymous telephonic call be treated as an FIR? [5 marks]

3. (a) What is the authenticity and relevance of a “Case Diary” to be kept under Section 172 of the Code of Criminal Procedure, 1973 ? [10 marks]
(b) Can a police officer seize the bank account of a person while conducting investigation in a case relating to corruption ? [5 marks]
(c) Whether a detailed speaking order is required to be passed before framing of charges by a Court of Sessions ? [5 marks]
(d) Rahman was charged under Section 337 of the Indian Penal Code, 1860 for causing grievous hurt to Rahim by doing an act so rashly and negligently as to endanger human life. After the evidence had been recorded, both Rahman and Rahim moved the Court for permission to compound the said offence. The magistrate refused permission on ground that the compensation paid by Rahman to Rahim was meagre. Discuss the legality of the order. [5 marks]

4. (a) Vinni and Anand are married to each other. After seven years of marriage Anand leaves Vinni and starts staying with Sunita in a rented accommodation. After five years, he leaves Sunita and moves back to his house to take care of his family business as his father dies in a road accident. Sunita has a son, Sumit, aged 3 years. Sunita files an application under Section 125 of the Code of Criminal Procedure, 1973 and claims maintenance for herself and for her son. Will she succeed ? [15 marks]

(b) Can a Muslim married woman who has been deserted by her husband claim maintenance under Section 125 of the Code of Criminal Procedure ? Also discuss the provision in a case where she has been divorced. [10 marks]

Section B

5. (a) What is the public policy behind the principle of 'Res-Judicata'? [5 marks]
(b) Whether the provisions contained in the Code of Civil Procedure, 1908 on Res- Judicata are exhaustive ? [5 marks]
(c) Whether a judgment operates as Res- Judicata between co-defendants ? [5 marks]
(d) Whether the principle of Res-Judicata applies to an execution proceedings ? [5 marks]
(e) A plaintiff who is entitled to sue for possession and damages files a suit for possession only. The suit is decreed. Can he file a suit for recovery of damages ? Give reasons in support of your answer. [5 marks]

6. (a) Discuss the statement that an executing court cannot go behind the decree. What are the questions that may be determined by the court executing the decree ? [15 marks]
(b) After the arbitration proceedings were over, an execution application was filed before the competent executing Court. A dispute arose as to the requirement of stamping and registration of the arbitration award. Whether this falls within the scope of executing Court ? [10 marks]

7. (a) Discuss the scope of the rule relating to amendment of a plaint Can there be an amendment after remand ? [15 marks]
(b) A filed a suit for recovery of rent against B on the ground that B was his tenant and has not paid rent for the past two years. In his written statement filed, B admitted that he was the tenant of A, but he pleaded that he had paid the rent without any receipt being issued to him. During the trial, B filed an application seeking permission to amend the written statement and instead pleaded that he was not a tenant of A. Decide after assigning reasons. [10 marks]

8. (a) Discuss the nature and scope of 'Foreign Judgments'. [15 marks]
(b) A and B got married at Delhi. Thereafter, they got work permit and shifted to Atlanta in the USA. A daughter, C was born to them within one year of their stay. Shortly thereafter, A found that his wife had developed illicit relationship with Z who was holding a green card. B got pregnant through Z. When A found out all this, she aborted the child. By now A had ample evidence of B's misdemeanor. Thereafter, A came back to India with his daughter who is three years old now. A has filed a suit for being appointed the guardian of C before the Guardian Court at Delhi. Meanwhile, having learnt that A had fled with her daughter to India, B filed a criminal case against A in the USA. B also filed a custody petition in the USA wherein the court granted an ex-parte decree in her favour. B has come to Delhi and has applied for the execution of ex-parte custody decree in the court of civil judge. B has also raised the said decree in defense to the guardian proceedings initiated by A. Examine the case. [10 marks]

Section C

9. Write short notes on the following: [25 marks]
(a) Injured Witness
(b) Chance Witness
(c) Child Witness

(d) Hostile Witness
(e) Rustic Witness OR Discuss the credibility of witness in the following circumstances:. [25 marks]
(a) Delay in Examination of Witness
(b) - Murder Cases
(c) Other Criminal Cases
(d) Civil Cases
(e) Accident Claim Cases

10. (a) Explain the term 'Explanatory Facts' with special reference to facts establishing identity of persons. [15 marks]
(b) Mr. Rakesh and Mr. Salim were two police constables attached with police station of Area A. They were involved in identification parade to be held by investigation agency of Area B. To avoid any criticism, the identification parade took place at Area C which was around hundred kilometers away from Area A and B. However, photographs of accused persons were shown to both the constable-witnesses before such identification parade and such parade took place In lock up at Area C. Discuss the legitimacy of such an identification parade. [10 marks]

11. (a) Explain the facts of which court must take judicial notice. [15 marks]
(b) Mr. Ram Prakash (Member of Parliament) made a speech in the Lok Sabha about a crime in a certain part of India and desired that the ruling party must take action. Later on when a case was brought in the court of competent jurisdiction, the crime was desired to be proved by relying on the speech made by Mr. Ram Prakash. The prosecution laid stress on the fact that the court is bound to take judicial notice of the proceedings of the Legislature but the court refused to admit the speech as an evidence for the commission of crime. Examine the evidence. Support your answer with the examples from the decided case law. [10 marks]

12. (a) The difference between direct evidence and circumstantial evidence is that in case of former, the proof goes directly to establish the culpability of the accused person in the commission of offence, however the latter brings the guilt home to him by placing certain circumstances from which the inference is absolutely irresistible that the accused has committed the offence.' Examine this statement while discussing difference between Direct evidence and Circumstantial evidence. [15 marks]
(b) Whether failure of an advocate to object to the admission of evidence, which otherwise is capable of rejection as hear say, makes it binding? [10 marks]