Odisha Judicial Service (Mains) 2014

Procedural Laws · compulsory paper

JSM – 14/2 · 2½ hours · 150 marks

Answer six questions, selecting two from Section A, two from Section B and two from Section C.

Section A

1. (a) A was tried for causing grievous hurt to B and was convicted. Later, B succumbed to his injuries. A is now tried for culpable homicide of B. Decide, giving reasons, whether he is guilty or not. [10 marks]
(b) Discuss the justification of Plea Bargaining in criminal trials. [10 marks]
(c) Distinguish cognizable offences from non-cognizable offences. [5 marks]

2. (a) What factors should be taken into consideration while considering a bail application in non-bailable offences ? [10 marks]
(b) The parents of A lodged a complaint with the school and also the local police wherein they alleged that their minor son was sodomized by B, the warden of the school hostel. B, apprehending arrest, moved an application for anticipatory bail under Section 438 Cr. P. C. Will he succeed ? [10 marks]
(c) An accused is arrested in a bailable offence and he is released on the bail. During trial, he absconds and non-bailable warrants are issued against him. Later, the police arrested him and produced him before the Court. In Court the defence counsel pleads for the release of his client on bail under Section 436(1), Cr. P. C. which provides that a person accused of a bailable offence shall be released on bail ? Can the Court in such circumstances, refuse to release him on bail ? Give reasons briefly. [5 marks]

3. (a) State the formalities to be observed in recording a "confession". [10 marks]
(b) What is a Police Diary and what are its objects ? Also state as to how the Police Diary can be used by an accused. [10 marks]
(c) A is charged of double-murder and while in police custody A made a statement wherein he stated that "I accept that I had killed W, my 2nd wife, and D, my step daughter. Later, I buried their dead bodies in the courtyard of my house". Discuss the relevance of such confession made by A while in police custody. [5 marks]

4. (a) Describe briefly the principal features of a fair trial. [10 marks]
(b) Discuss the rights of the arrested person with the help of constitutional and other statutory provisions and their interpretation by the Supreme Court of India. [10 marks]
(c) A took a bi-cycle on hire from B at Cuttack after entering into a written contract. Later, instead of returning it to B, he deposited it with C at Bhubaneshwar as a security for an advance of Rs. 150. Has the Court at Cuttack jurisdiction to try him for the offence of criminal misappropriation and criminal breach of trust. [5 marks]

Section B

5. (a) State and elucidate the essential features of the rule of res-judicata. [10 marks]
(b) A suit is filed by W against her husband under Section 9 of the Hindu Marriage Act claiming restitution of conjugal right. Her husband contested this suit and contended that their marriage stood dissolved by a decree of divorce. In support of this contention he filed in Court a certified copy of a "foreign judgement" which had dissolved their marriage. Sate the circumstances under which a

"foreign judgement" would not operate as "res judicata". [5 marks]
(c) A landlord filed a civil suit for possession against T, a trespasser, in the Court of the District Judge. Later he filed another suit against T in the same Court claiming mesne profits. In the 2nd suit T contends that the suit is not maintainable in the light of Section 12 read along with O. 2, Rule 2, C. P. C. [10 marks]

6. (a) Discuss the rules and well established principles relating to transfer of a civil suit. [10 marks]
(b) Discuss where the suit will lie in case of breach of a contract. [10 marks]
(c) Discuss the rules relating to service of summons on a pardanashin lady. [5 marks]

7. (a) What do you understand by the term "mesne profits" ? For what period of time the plaintiff can recover "mesne profits" from the defendant and what are the principles for calculation of "mesne profits" ? [10 marks]
(b) What is an ex-parte decree and how is it passed? [10 marks]
(c) When does an auction sale in execution of a decree become absolute ? [5 marks]

8. (a) Explain, with the help of illustrations, the principle of restitution. [10 marks]
(b) Discuss the meaning, objects, nature and scope of inherent powers of the Court. [5 marks]
(c) Elaborate the salient features of "Summary Trial" as contained in Order 37, C. P. C. [10 marks]

Section C

9. (a) With the help of illustrations, explain and distinguish between Primary and Secondary Evidences. [10 marks]
(b) X wrote a letter to Y asking him to supply inflammable explosives for blowing up a Government hospital. Y took some time in sending it. In the meantime, X wrote another letter to Y seeking reasons about the delay. However, before the second letter could reach Y, X received the inflammable explosives sent by Y and X used the same in blowing up a hospital. In case of conspiracy, prosecution wants to produce both these letters. Discuss and decide whether they are admissible or not ? [10 marks]
(c) A and B are being prosecuted for murder of C by a pistol and in the Court the prosecution 'proves that A and B had plotted to kill C. In defence, A pleads that he is not guilty of murder of C as the fingerprints on the murder-weapon are only of B. Decide, giving reasons. [5 marks]

10. (a) Explain, with the help of illustrations, the doctrine of "estoppel". Differentiate "estoppel" with "promissory estoppel". [10 marks]
(b) "There can be no estoppel against statute. " Elucidate with the help of illustrations. [5 marks]
(c) "A" filed a paternity suit against "P", a prominent politician. During trial "A" filed an application in the Court seeking directions for DNA test of "P" to prove that "P" is his biological father. Discuss the Indian law on this issue. [10 marks]

11. (a) Can a wife be compelled to give evidence against her husband in a civil case and also in a criminal case ? [10 marks]
(b) What are "professional communications" ? Explain with the help of illustrations. What professional communications between a client and his legal adviser are protected from disclosure ? [10 marks]
(c) Who is an expert ? What are the subjects on which an expert is competent to testify ? [5 marks]

12. (a) What is a "fact"? How is it different from "fact in issue" ? Explain with the help of at least two examples. [10 marks]

(b) “There is no absolute Rule of Law or even a rule of Prudence that dying declaration unless corroborated by other independent evidence is not fit to be acted upon and made the basis of conviction." Discuss this statement with the support of case law. Explain, with the help of illustrations, any two rules, except the rule of dying declaration, relating to relevant facts. [10 marks]
(c) Can the statement made by the one partner bind all partners in a dispute between partnership firm and third party ? Explain, giving reasons, the relevant provisions of the Evidence Act. [5 marks]

De Facto IAS