Odisha Judicial Service (Mains) 2015

Procedural Laws · compulsory paper

JSM – 15/2 · 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) X, a person commits an offence of murder in the presence of few persons. Then he tries to evade from the place of murder but in vain as he was captured by one of the passer by who later informed the Police of such arrest. Examine the nature and validity of this arrest with special reference to the provisions of Criminal Procedure Code. [15 marks]
(b) Metro related construction work is in progress on M. G. Road, Kolkata. C, a person notices that there are few iron rods that are hanging dangerously from the top where large number of commuters were frequently using the road. He immediately informs to the authorities of Metro, local corporation and the jurisdictional police. No action has been taken by the above named authorities. Advise. [10 marks]

2. (a) Rani is the wife of Mahesh and they have a daughter named Vanisree. Mahesh and his family members were continuously making demands for dowry. Rani and her parents could not comply with the unending demands. Mahesh brought a woman by name Sheela to their house and began to reside with her as man and wife. Rani protested against this behaviour of Mahesh but in vain. Requirements for maintenance for food, clothing and other necessities of Rani and her daughter were not taken care of by Mahesh and finally he refused to maintain them. Rani along with her daughter went back to her natal family and started residing with her parents. Rani filed a criminal miscellaneous petition on the file of the Family Court claiming separate maintenance from the respondent at Rs. 5,000 per month for each of them. Explain the significance of Sec. 125 of the Code of Criminal Procedure and state the essential ingredients to be mentioned before the court to seek a remedy as aforesaid. [10 marks]
(b) Comment on the provisions of Criminal Procedure Code relating to attendance of persons confined or detained in prisons. [5 marks]
(c) Mr. Jaan was convicted for an offence punishable with death penalty as his case in the opinion of the Sessions Court fell within the rarest of the rare case. Explain the procedure for confirmation of death sentence. [5 marks]
(d) Explain the procedural safeguards to be followed while a Magistrate is recording Confession. [5 marks]

3. (a) Comment on the provisions dealing with appeals under the Code of Criminal Procedure, 1973. [10 marks]
(b) Distinguish between Reference and Revision. [5 marks]
(c) Death penalty was confirmed by the Supreme Court as against one Mangubhai, a pregnant lady. Explain the provision and procedure to be followed in execution of death sentences in this case. [5 marks]
(d) Write a short note on irregular proceedings. [5 marks]

4. (a) Write a note on the contents of Charge, alteration of charge and joinder of charges. [15 marks]
(b) X, a person is accused of rape. A medical practitioner employed in a hospital run by a Government

was requested by the jurisdictional Police Officer to examine X. State the procedures to, be followed in the examination of person accused of rape by medical practitioner. [10 marks]

Section B

5. (a) Explain the difference among Decree, Order and a Deemed decree. [5 marks]
(b) Explain the concept of Constructive Res Judicata under Section 11 of Civil Procedure Code with an illustration. [5 marks]
(c) Explain the rules relating to the granting of Ex-parte injunction with special reference to the decision in Morgan Stanley Mutual Fund v. Karthick Das. [5 marks]
(d) Explain the significance of an Interpleader Suit. How is it different from an ordinary suit ? [5 marks]
(e) Write a note on Doctrine of Cypres. [5 marks]

6. (a) Explain the concepts of substantial question of law and substantial question of law of public importance with illustrations/case laws. [15 marks]
(b) Rajeev borrowed from Ram a sum of Rs. 2,00,000 agreeing to repay the same within 6 months and executed the pro-note. Rajeev failed to pay the same, even after the expiry of the agreed period, in spite of demands made by Ram, including issuing a notice of demand. Rajeev did not reply to the notice. Ram filed a suit for a sum of Rs. 2,60,000 stating that Rs. 2,00,000 principal and Rs. 60,000 interest calculating @ 10% per annum for 3 years as per commercial usage. Rajeev contended that there is.no agreement to pay the interest and therefore he is not liable to pay Rs. 60,000 claimed as interest. The court on merits of the case adjudicates and passes a decree in favour of Ram for Rs. 2,00,000 and costs. The court has not stated anything on the judgement and decree relating to the claim of interest. Therefore Ram has filed another suit claiming Rs. 60,000 towards interest. Rajeev has contested seeking the suit as not maintainable. Ram disputes the same. Decide the case as to whether the suit is maintainable or not. [10 marks]

7. (a) Explain the procedures involved when a suit is filed by an indigent person. [15 marks]
(b) Raghav has filed a suit against Ramesh seeking declaration of his title to the site and to restrain B by permanent injunction from disturbing plaintiff's possession and enjoyment. The suit has reached the trial stage and it was for hearing on 20.09.2015 for recording evidence of the parties. The defendant's advocate reported to the court that the defendant had died on 18.04.2015 and that his son has brought that information to him. The question is as to what Raghav should do to continue the suit in order to obtain a decree or order for aforesaid reliefs. Explain the procedures involved in this matter invoking the relevant provisions of CPC. [10 marks]

8. (a) Discuss the scope of Cross Decrees referred to under Order 21 under the Code of Civil Procedure with illustration. [15 marks]
(b) Munni filed a suit against Rajjo in the court of Civil Judge Senior Division for declaration of title to 5 acres of garden land situated at Deonar, Mumbai and for possession and Mesne profits. On contest by Rajjo the court adjudicated upon on the merits of the case and decreed the suit in favour of Munni. Munni executed the decree and took possession of the property. Rajjo preferred an appeal in the High Court and on contest by Munni the High Court heard and disposed of the appeal on merits allowing the appeal and setting aside the trial court's decree. Munni preferred an appeal before Supreme Court but the same was rejected at the admission stage itself. Now that the proceedings of the court in respect of the litigation are concluded Rajjo wants to obtain possession of the garden land from

Munni. What is the procedure and course of action to take possession of the said land by Rajjo ? [10 marks]

Section C

9. Write short notes on the following : [25 marks]
(a) Expert evidence
(b) Leading Questions
(c) R vs. Bedding field
(d) Accomplice evidence
(e) Without prejudice admissions
OR
'Wills on the Law of Evidence' observes "whenever a person's death is the subject of a criminal charge any statement made by the deceased relating to the circumstances from which his death ensues is admissible in evidence, provided that it was made at that time when death was in fact impending and declarant had himself lost all hope of recovery." Examine this statement discussing the difference between the admissibility of dying declaration in the English and the Indian Law. [25 marks]

10. (a) Explain the significance and admissibility of proof of life and death under the Indian Evidence Act. [15 marks]
(b) Jairam killed his wife in revenge as she had illicit relations with his neighbour Ramsahay. Jairam was arrested and prosecution wanted to offer the evidence of a witness who had seen the accused going out of the house at 5 pm on the date of alleged murder soliloquying that he had finished his wife and thereby put an end to the daily quarrels. Is the intention to communicate necessary ? Refer judicial response in this regard. [10 marks]

11. (a) Explain the significance of presumptions related to matrimonial offences prescribed under the Indian Evidence Act. [15 marks]
(b) A criminal action was pending against a goldsmith Ram from whom stolen ornaments and molten silver were recovered. Ram and his friend Narain met the police inspector on the road and promised to pay him a bribe to get through the case easily. Ram and Narain were asked by the police officer to discuss the matter at the police station and the matter was informed to his higher officials. The very next day Narain alone went to the police station and offered the bribe to the Inspector and told him that Ram had sent the money to hush up the case. Is the offer of bribe to the police officer by Narain and his statment that Ram sent him and the money, admissible in evidence as against Ram. Explain the law and reasons in the context of decided case law on the point. [10 marks]

12. (a) Explain the significance of Character Evidence in civil and criminal cases under the Indian Evidence Act invoking relevant sections. [15 marks]
(b) Explain the rule of presumption to ancient document outlining the necessity and convenience it provides in the Indian context. [10 marks]