Odisha Judicial Service (Mains) 2016

Procedural Laws · compulsory paper

2½ hours · 150 marks

The figures in the right-hand margin indicate marks. Answer six questions, selecting two from Section A, two from Section B and two from Section C.

Section A — Code of Criminal Procedure, 1973

1. An FIR was lodged against certain journalists of a national TV channel that they had demanded money from the company of a rival national TV channel for not telecasting its alleged involvement in the scam of the allocation of coal blocks by the Union Government The Police Officer conducting the investigation searched the studios of both the channels, recovered several recordings, had the recordings containing the voice of the journalists typed out and asked the witnesses to such recordings, to sign these. Further, with the consent of the journalists he organized a voice test by the Central Forensic Science Laboratory. For the voice test he asked the journalists to read out from a script containing sentences from the recordings inculpating them. Comment on the legality of the search, the signing by the witnesses to the recordings and the nature of the voice test ? [25 marks]

2. (a) Can a substantial amendment to a criminal complaint on the basis of subsequent events be allowed by a court ? Discuss the law on such an amendment in the light of the latest judgment of the Supreme Court? 15 [25 marks]

(b) What are the contents of a plea bargaining application and how does a court ensure that the application is voluntary ? 10

3. In the case of a person arrested without a warrant, why are the following orders of a Magistrate, legal or illegal; explain in short. [25 marks]

(a) Authorising the person's custody by the police on his first production before him by electronic video linkage. 5

(b) Authorising detention of the person in judicial custody for a total period of fifty days, where the investigation relates to an offence punishable with death, life imprisonment or a minimum jail sentence of ten years. 5

(c) Ordering stoppage of further investigation into a summons case in which investigation has not been completed within six months of the arrest of the accused. 5

(d) Ordering a woman accused, of less than eighteen years, produced before him, to police custody. 5

(e) Ordering police custody of an accused without stating reasons. 5

4. (a) What is an extra judicial confession and how is it treated as evidence by a court. Discuss with relevant Supreme Court judgments ? 15 [25 marks]

(b) Can a Magistrate take cognizance of an offence on his own knowledge and if so, does he have a duty towards the accused before taking evidence ? 10

Section B — The Code of Civil Procedure, 1908

5. Why are the following legal or illegal ? Explain. [25 marks]

(a) Mesne profits of property include the profits received by a person in wrongful possession of property due to improvements made by such a person to the property. 5

(b) A preventively detained person, whose evidence is material in a suit, cannot be ordered by a court to be produced for giving evidence. 5

(c) Cause of action is very piece of evidence which is necessary to prove each fact in support of the right to the judgment of the court. 5

(d) Share in a corporation does not include debentures. 5

(e) In the absence of any specific contrary provision in the Civil Procedure Code, the recovery of rent by a landholder of agricultural land from the produce of such land cannot be had under the remedy provided by the local law. 5

6. (a) What are the conditions for a court to state a case and refer it to the High Court? 10 [25 marks]

(b) When does an appeal lie to the Supreme Court from a civil proceeding of a High Court? 8

(c) State the categories of cases in which a High Court is prohibited from exercising its revisional power. 7

7. (a) State the particulars that must be contained in a plaint generally and in suits for money and immovable property specifically. 5 [25 marks]

(b) A suit is dismissed for non compliance with an order for discovery of documents. Explain, whether a minor plaintiff in the suit can bring a fresh suit for the same cause of action as in the dismissed suit. 5

(c) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase money by C against B, B claims a set off of the debt against the purchase price. Decide the validity of his claim. 5

(d) What are the conditions for a valid counter claim to be entertained by a court ? 5

(e) What are the rules of a plaint or a written statement which apply to claim for a set off or a counterclaim ? 5

8. (a) Describe the plaint particulars, the procedure for the appearance of the defendant and for the defendant to defend the suit, in a summary suit. 10 [25 marks]

(b) The recording of a finding as to the existence of a triable issue can be said to be the backbone of the entire procedure under Order XXXVII. Comment with relevant Supreme Court Judgments. 15

Section C — The Indian Evidence Act, 1872

9. Why are the following propositions legal or illegal; discuss in short. [25 marks]

(a) Evidence may be given of any fact. 5

(b) A fact in issue is any fact arising in a case. 5

(c) Oral evidence means any statement made by a witness. 5

(d) Presumption of facts as raised in the various clauses of Section 114 of the Indian Evidence Act, 1872, is evidenced by itself. 5

(e) The court can presume that the originator of an electronic message was the person who sent the message to the addressee. 5

10. What is a chance witness, what should be the court's approach to the testimony of such a witness and whether the conduct of such a witness subsequent to the incident in question can be taken into consideration by the court ? Analyse with reference to Supreme Court judgments. [25 marks]

11. In a dowry death case, the key prosecution witness was not confronted with his written statement, recorded by the Police under Section 161 Cr. P. C. His statement marked for the purpose of contradiction, was not read out to the Investigating Officer. Discuss, with reference to relevant Supreme Court judgments, whether the court can look into the written statement of the witness for discrediting his testimony and the prosecution version ? [25 marks]

12. (a) The term “hostile”, “adverse”, or “unfavourable” witnesses are alien to the Indian Evidence Act, since they are all terms of English law. State the difference(s), if any, between the Indian and English law in terms of Sections 154 and 155 of the Indian Evidence Act, 1872. 15 [25 marks]

(b) Under the Indian Evidence Act, 1872, what is the difference, if any, between taking judicial notice of facts under Sections 57 and 56, on the one hand, and presumption by the court of the existence of certain facts under Section 114? 10