Odisha Judicial Service (Mains) 2018

Procedural Laws · compulsory paper

Time: 2½ hours. Full marks: 150. 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

1. (a) "Bail is the rule whereas jail is an exception." Please justify this statement with the help of some of the prominent decided cases. (b) An order for release by a Magistrate was returned by a Sub-Inspector on the ground that it should be communicated through the Superintendent of Police. Analyse the validity of such an act. (c) Whether a bail should be granted to a re-arrested accused that had jumped bail and had absconded and has applied for the bail on his re-arrest? [8 marks] [8 marks] [9 marks]

2. (a) What do you mean by the term "First Information Report (F.I.R.)"? Explain its importance in the Indian Criminal Jurisprudence. (b) Discuss the evidentiary value of a Second F.I.R. in respect of some cognizable offence. (c) An informer, while furnishing false information to the Police defamed another person. Discuss the liability of such an informer. [8 marks] [8 marks] [9 marks]

3. (a) "It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without reasonable satisfaction reached after some investigation as to the genuineness and bona-fides of a complaint and a reasonable belief both as to the person's complicity and even as to the need to effect arrest." In the light of the above statement, discuss the rights of a citizen who is subject to arrest and the various checks available under the Code of Criminal Procedure on the police personnel going to arrest such a person. [12 marks] (b) A Chief Judicial Magistrate who had been policing the Police by his judicial powers was assaulted, arrested and handcuffed with an object to work vengeance and humiliation. What are the remedies available to such Chief Judicial Magistrate after the event? [13 marks]

4. (a) What are the principles to be considered while exercising the inherent powers under Section 482 of the Code of Criminal Procedure by a High Court in respect of the following? (i) Quashing of a F.I.R. (ii) Quashing of a Complaint (iii) Quashing of Cognizance (b) Whether a High Court can order holding of proceedings in camera under Section 482 of the Criminal Procedure Code? (c) Do you agree with the statement that lower court do not have inherent powers under criminal jurisprudence? Discuss. [9 marks] [8 marks] [8 marks]

Section B

5. "Whether a court has jurisdiction or not has to be decided with reference to the initial assumption of jurisdiction by that court." What are the various factors to decide the jurisdictional issues of a civil court? Please highlight the various limitations to it. [25 marks]

6. "In a suit under Section 92, no relief such as the recovery of possession or ejectment or rendition of account can be granted against third parties such as trespassers or alienees of the trust properties and vice versa a suit for such reliefs against such third persons can be brought in the ordinary manner without following procedure under Section 92." Critically examine this statement. [25 marks]

7. (a) "For the purpose of granting injunction, inherent powers are to be exercised in very exceptional circumstances for which the Code of Civil Procedure lays down no procedure." Comment. (b) Whether an injunction can be granted in favour of a riparian owner and against the municipal [8 marks]

corporation on the ground that the corporation has discharged insufficiently treated sewage into the river? (c) Whether an injunction can be sought against operation of a baking oven even before it is put in actual operation and where remedy to appraoch the municipal authorities against the grant of licence is available? [8 marks] [9 marks]

8. The general rule is that all rights of action and all demands whatsoever existing in favour of or against a person at the time of his death survive to or against his legal representatives. Please comment and decide whether the right to sue survives in the following case: (a) Right to sue in personal actions. (b) Suit by a widow entitled to a life estate for possession of property, if by an award or on a compromise, a fixed sum has been awarded in lieu of her interest. (c) Suit in respect of torts. (d) Right to sue on contracts. [25 marks]

Section C

9. (a) "What is admitted by a party to be true must be presumed to be true unless contrary is shown." Considering this statement, please highlight the need and importance of admission as a piece of evidence. (b) In a dispute between X and Y on the question as to whether X agreed to purchase land from Y on certain date, a statement in support of Y in a letter written by Y to third party was tendered in evidence against X. Decide the admissibility of such a statement. (c) An accused himself lodged a First Information Report (FIR) which contained both exculpatory as well as inculpatory statements. Decide the evidentiary value of such an F.I.R. [8 marks] [8 marks] [9 marks]

10. (a) "If a dying declaration passes the test of scrutiny, it can be relied on as the sole basis of convictions." While discussing the evidentiary value of a dying declaration, please highlight the important points to the 'Test of Scrutiny'. (b) An Income Tax Officer is trying to use an admission made by Mr. X regarding his undisclosed asset evading tax before Mr. X entered an operation theatre in which he died. Please advise the Income Tax Officer regarding evidentiary value of such a statement. (c) Decide the evidentiary value of the statement made by a person who went in coma after making such a statement but who died after two weeks. [8 marks] [8 marks] [9 marks]

11. (a) Please highlight the law relating to "Burden to Prove". How is it different from 'Onus to Prove'? (b) Whether burden to prove can shift on a court to prove a fact? (c) In a case where goods consigned to a carrier are burnt, who is under a burden to prove negligence on the part of the carrier out of the following three? (i) The Consignor (ii) The Consignee (iii) The Carrier [8 marks][8 marks] [9 marks]

12. (a) Critically examine the statement "Section 137 does not define 'examine' to mean and include the three kinds of examination of a witness; it simply defines: Examination in Chief; Cross Examination; and Re-Examination. (b) "A person who made a dying declaration is not available for cross examination but still his statement is considered to be relevant." Discuss. (c) What do you mean by the term 'Hostile Witness'? [8 marks] [9 marks] [8 marks]