Odisha Judicial Service (Mains) 2022

Procedural Law · compulsory paper

2½ hours · Full marks: 150

The figures in the right-hand margin indicate marks. Answer six questions, selecting two questions from each Section.

SECTION—A

1. (a) A Superintendent of Police was dismissed from service by the Deputy Inspector General. He challenged the said decision by filing a writ petition in the High Court on the ground that he was not afforded a reasonable opportunity, but the petition was dismissed. He then filed a suit and raised an additional plea that he was appointed by Inspector General of Police and Deputy Inspector General was not competent to pass an order against him. The State contended that the suit was barred by constructive res judicata. All the courts including the High Court held against the State and State appealed to the Supreme Court. Examine whether the plea taken by the State is valid. Explain by quoting the relevant legal provisions, principles and case laws. [15]
(b) A filed a suit against B to recover possession of a house. He values his claim in the plaint at ₹10,000. The suit is filed in Court C, which has jurisdiction to try suits of a value up to ₹20,000. The market value of the house is ₹22,000, but B does not object to the jurisdiction of the court. The decree is passed in favour of A. Whether B can take the objection about the pecuniary jurisdiction of Court C, in the appellate court? Explain by quoting the relevant legal principles, provisions and case laws. [10]

2. (a) A filed a suit against B in the court of Bhubaneshwar, claiming ₹60,000 alleged to have been misappropriated by B, while he was in A's service at Bhubaneshwar. B did not appear at the hearing. An ex-parte decree was passed against him. B was a native of Bangladesh. In 1982, he left Bhubaneshwar and went to Faridkot to take up service under A. But in 1998, he left A's service and returned to Bangladesh. The present suit was filed against him in 2022; when he neither resided at Bhubaneshwar nor was he domiciled there. Explain whether the court of Bhubaneshwar has jurisdiction to enter a suit against B. [15]
(b) Situation 1 : A entered into an agreement jointly with B and C to sell 100 tins of oil. A, thereafter, refused to deliver the goods.
Situation 2 : A agreed to sell and deliver 100 tins of oil to B at a particular rate on 1st January 2022. He also agreed to sell and deliver a quantity of oil on the same day at the same price to C.
Whether B and C can join as plaintiffs in one suit against A in both situations 1 and 2? [10]

3. (a) A sues B for rent. The suit is dismissed on finding that A was not the landlord, but A and B were tenants-in-common. Whether a subsequent suit by A against B for partition of property is barred? [10]
(b) A holds ₹50,000 claimed by B and C adversely to each other. A institutes an interpleader suit by joining B and C as defendants. It is revealed that A had a secret agreement with B before the institution of the suit that if B succeeded in the suit, he would accept ₹40,000 in full and final satisfaction of his claim. Whether A can bring an interpleader suit? [10]
(c) Explain the distinction between legal and equitable set-off. [5]

4. (a) A was insured with an insurance company. One of the terms of the policy was that the policy would be void if the insured committed suicide. A actually committed suicide by shooting himself with a pistol and thereupon an action was brought against the company on the policy. During inquiry, it was

found that A was melancholy for weeks, that he bought a pistol a day before his death, shot himself with the said pistol and that a letter was found with him addressed to his wife stating that he intended to kill himself. In the given facts, which can be pleaded and why? Explain. [10]
(b) Explain the distinction between Appeal, Review and Revision, while defining all the three terms by quoting the relevant legal provisions, principles and case laws. [15]

SECTION—B

5. (a) Mr. A was accused of offences under Sections 457, 380, 457(2), 380(2), 411(2) and 414(2) of IPC and had been in custody for 73 days, without filing a charge sheet. The appellant filed an application before the High Court of Odisha for default bail in terms of Section 167(2). The Single Judge of the High Court dismissed the application holding that due to Covid-19 breakdown, there is a proclamation of emergency, therefore, the right to release on bail cannot be availed even on lapse of the period stipulated under Section 167(2). Mr. A appealed to the Supreme Court. Explain whether Mr. A can be granted bail as per the existing law of CrPC. Explain by quoting the relevant statutory provisions, legal principles, and case laws. [15]
(b) Mr. A was arrested by police. Police discharged him on their own responsibility without the order of the Magistrate. Whether police violated any of the provisions of CrPC? Explain by quoting the relevant statutory provisions and case laws. [5]
(c) What are the five major differences between bailable and non-bailable offences? [5]

6. (a) Explain the concept of plea bargaining by quoting the relevant statutory provisions and case laws. [15]
(b) The offence of forgery and fabricating of a false document was committed within the local jurisdiction of court X. The said document had stated that the resignation of the complainant was accepted and that his services were terminated. On the complainant's request, a copy of the document was sent to the complainant who received the same within the local jurisdiction of court Y. Whether court Y has jurisdiction to try that offence by considering the fact of receiving the copy of the document consequently necessary to constitute the offence? [10]

7. (a) Whether the Sessions Judge is having the power under Section 193 of CrPC to summon the accused exonerated by the police in their report, without taking further evidence? [10]
(b) A threatened B on 19th December 2022 at 10.00 am over telephone. A further threatened B on the same date at 12.00 pm at B's house. C was threatened by A on the same date at 5.00 pm at the beach. All the threats were related to injury to their persons with intent to cause alarm to them. Explain whether A is to be charged and convicted separately for each of the three offences or he can be charged at one trial for all the three offences collectively. [15]

8. (a) What are the different modes of trial and methods of determining the mode of trial? Explain the basic features which every trial shall consist of as per CrPC. [10]
(b) A & B aged 23 years and 20 years respectively got married against the wishes of their parents. B was confined by her parents, who were against the marriage. A approached the court for issue of search warrant. What provisions of CrPC can be applied in this case to grant relief to A? Explain the relevant statutory provision by quoting the relevant case laws. [15]

SECTION—C

9. (a) A, accused for the murder of a girl, gave to a police officer a knife saying it was the weapon with which he committed the murder. He also said that he threw down the girl's anklets at the scene of the murder and would point them out. On the following day, he accompanied the police officer to the place where the girl's body was found and pointed out the anklets. Whether the confession made by A is admissible? Explain by quoting the relevant legal provisions and case laws. [10]
(b) A agrees in writing to sell a house to B for ₹40 lakh or ₹50 lakh. Whether evidence can be given to show which price was to be given? [10]
(c) Husbands and wives are competent witnesses for or against each other in civil as well as criminal proceedings. Explain. [5]

10. (a) A and B sold a property to C, which they obtained under a partition, and subsequently colluded with D and denied the partition as well the sale. C submitted the statements made by A and B in a petition and written statement filed by them in certain previous suits, which showed that there had been a partition. Explain whether this evidence is admissible as per the Indian Evidence Act, 1872. [10]
(b) A invited B and C to a pub to drink alcohol with him. A murdered B over a heated argument between them. A alleged that his act was due to the mix of some kind of drugs into his drink by C, who is not only a common friend of A and B, but also is having vengeance against B due to the personal conflict occurred between them two days before the occurrence of the incident. Explain whether the burden of proof lies on A or C by quoting the legal reasoning and relevant case laws. [10]
(c) Whether questions tending to corroborate evidence of relevant fact is admissible? Explain. [5]

11. (a) A, who was hit by bullet, stated in the hospital in the presence of a Magistrate that B had fired at him. But A did not die of the injury. Is the statement of A made in the presence of the Magistrate admissible in evidence against B? [10]
(b) Whether electronic evidence, without being supported with the certificate under Section 65B, is admissible? Discuss with the help of statutory provisions and judicial decisions. [10]
(c) A ordered certain goods from B through Filpkart. Whether the delivery of goods by Flipkart on behalf of B is a relevant fact? Explain. [5]

12. (a) A and B are wife and husband and have no children. A sold B's property to C for ₹30 lakh, when B was on deathbed and struggling to survive. At the time of the contract, A stated to C that she is the widow of B and is having the full ownership over the property as she is the single living heir of B. After the death of B, A wanted to set aside the sale on the ground that, at the time of the sale, she had no title. Explain whether A can be allowed to prove her want of title, by quoting the relevant legal provisions and case laws. [15]
(b) A girl not more than ten years old was the only eyewitness of the murder of B. At the trial proceedings, according to the trial Judge, she answered frankly and quickly without hesitation,to all the questions posed by him. But she was not able to understand the nature of the oath. Explain whether the girl's statement, which is unsworn, is admissible. [10]