UP PCS-J (Mains) 2013

Law Paper II: Procedure and Evidence · compulsory paper

Candidates attempt Question No. 1 and four more questions. At least one question must be attempted from each group.

1. (a) The ancestral house in which Hariom resides has one window each in west sides in rooms of the first floor and the second floor through which air and light ingress in the house. In April 2013 Mahesh Kumar purchased the plot which lay on the western side of Hariom's house and so constructed his new house that he erected a wall in front of the aforesaid two windows, due to which the ingress and egress of air and light through these windows was totally stopped. Hariom suffered not only the physical comfort and pleasure of his living due to the aforesaid act of Mahesh Kumar, but the value of his property was also decreased. Draft a plaint on behalf of Hariom on the basis of the aforesaid facts claiming all types of reliefs whether primary or in the alternative, which could be claimed against Mahesh Kumar, in this matter. 20 Marks

1. (b) Draft a written statement on behalf of Mahesh Kumar in reply to the aforesaid plaint, in which all the defences possible in reference to the aforesaid allegations be taken. 20 Marks

OR

1. (c) On 23-10-2011 complainant Rahim filed an F.I.R. at police station Sarsawa, alleging that on 12-10-2011 at about 7 p.m. his minor daughter 'Victim' aged about 14 years had gone to the fields for stool with her younger sister Farzana. After some time Farzana returned home and told that two boys have forcibly taken away the 'Victim'. Upon enquiry being made villagers Gayyur and Ashfaq told the complainant that Arif son of Ishaq Ali and Riyasat son of Farzand Ali, both residents of Village Tipri, Raigarh had taken away plaintiff's daughter on a motorcycle. A case was registered against Arif and Riyasat on the bases of plaintiff's report at No. 248 of 2011 under Sections 363 and 366 I.P.C. Investigation was conducted by sub-inspector T.P. Tiwari. On 22-12-2011 the 'Victim' and Arif together were arrested from bus stand Nakur. In her statement u/s 161 Cr.P.C. 'Victim' told that she had been repeatedly raped by Arif. On this basis offence u/s 376 I.P.C. was also added in the case. After medical examination 'Victim' was sent in the custody of her father. On completion of investigation chargesheet was filed in the Court of Chief Judicial Magistrate, Saharanpur u/ss. 363, 366 and 376 I.P.C. The main defence of accused Arif was that the age of the girl was above 18 and that sexual intercourse was done with her consent. Riyasat denied his role in the matter. On the basis of the facts stated above write a judgement of conviction. 40 Marks

Group A

2. (a) When plaint is liable to be returned? Describe the alternative procedure which the court may adopt after such order. Whether an order for the return of the plaint is appealable? Reply by mentioning provisions. 20 Marks

2. (b) Under which other provisions of the Code of Civil Procedure besides Section 11, a second suit has been barred? Discuss briefly. 10 Marks

2. (c) Distinguish between the discretionary, inherent and amending powers of court under the Code of Civil Procedure. Illustrate. 10 Marks

3. Answer the following problems with reasons and relevant provisions (10 marks each):
(a) 'A' files a suit against 'B', at Meerut. 'B' moves an application before the Supreme Court directly and requests for the transfer of the suit to any other court outside Meerut. 'A' challenges 'B's right of filing such application directly to the Supreme Court.
(b) 'A' who has purchased an immovable property at an auction sale conducted during the execution of a decree against the judgement debtor 'B', is resisted in obtaining possession of such property by 'X', on the ground that he was the true owner of the property and not the judgement debtor 'B'. 'A' objects his claim and asks 'X' for filing a fresh suit of title against 'B'.
(c) A civil court of original jurisdiction passes an order in a suit against the defendant. Although such an order is appealable before the District Judge, but the defendant files revision petition against such order before the High Court. The High Court after hearing both the parties reverses the aforesaid order.
(d) The Court of Civil Judge, Allahabad, decrees a suit on March 1, 2012, on the ground of a question of law, in favour of the plaintiff. On March 2, 2012 Allahabad High Court in another case, which was pending before it since 15 years, reverses its earlier view on the aforesaid question of law. The defendant files a review application before the aforesaid Civil Judge on the aforesaid ground. 40 Marks

4. (a) Which suits and proceedings are considered as 'matters concerning the family' under the Code of Civil Procedure? Who for this purpose are treated as constituting the 'family'? 20 Marks

4. (b) Under what circumstances a court may dispose of a suit at the first hearing? 10 Marks

4. (c) Describe the rights and options available, under the Code of Civil Procedure, to a minor plaintiff on his attaining majority and the procedure thereof. 10 Marks

Group B

5. (a) In what circumstances statements made by persons who are dead or who otherwise cannot be called as witnesses, may be proved in a case? 20 Marks

5. (b) 'A' is being tried for the murder of 'C'. Evidence is given to show that 'C' was murdered by 'A' and 'B' and 'B's statement admitting that "'A' and 'B' murdered 'C'", is also proved. Whether this statement may be considered by the court against 'A'? 10 Marks

5. (c) 'A' the captain of a ship, is tried for casting her away. Evidence is given to show that the ship was taken out of her proper course. 'A' produces a book kept by him in the ordinary course of his business showing observations alleged to have been made by him from day to day and indicating that the ship was not taken out of her proper course. Whether 'A' may be allowed to prove the aforesaid statement recorded by him in his own favour? 10 Marks

6. (a) What are privileged communications under the Evidence Act? When are such communications protected from disclosure and when not? 20 Marks

6. (b) On the application of the plaintiff a person is summoned in the court to produce a document. When he appears before the court and files the document, the defendant's counsel puts a question to him whether the document was given in his possession by the plaintiff or by the defendant? The plaintiff's counsel opposes defendant's right of putting such question to him. Decide. 10 Marks

6. (c) Describe the provisions of the Evidence Act which empower the court to report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or

attorney is subject in the exercise of his profession. 10 Marks

7. (a) Under what circumstances evidence of an oral agreement or statement contradicting, varying, adding to or subtracting from its terms is not excluded? 20 Marks

7. (b) 'A' took on hire lodging of 'B', and 'B' gives him a card on which is written "Rooms, ₹ 200 a month". Whether 'A' may prove a verbal agreement that these terms were to include partial board? 10 Marks

7. (c) Write short notes on any two of the following (5 marks each):
(i) Who may testify?
(ii) Public document
(iii) Patent and latent ambiguity
(iv) Re-Examination 10 Marks

Group C

8. (a) Describe briefly the major changes introduced in the Code of Criminal Procedure by the Criminal Law (Amendment) Act, 2013 (No. 13 of 2013) with special reference to certain offences against females. 20 Marks

8. (b) Discuss briefly the distinction between the procedure of investigation by a police officer in cognizable and non-cognizable offences. 10 Marks

8. (c) Which property may be seized by a police officer, without the court's order? Describe the procedure to be followed by such officer, after such seizure. 10 Marks

9. (a) What is plea bargaining? Briefly describe its procedure. Whether these provisions apply in respect of all types of offences and all types of victims? 20 Marks

9. (b) Describe briefly the procedure of trial by a Magistrate in complaint cases. 10 Marks

9. (c) In what circumstances and in respect to which offences a Sessions Court or a Judicial Magistrate may order for obtaining security for keeping peace from a person? 10 Marks

10. (a) Whether it is compulsory to release an accused on bail in bailable offences? When bail may be taken in case of non-bailable offences? What conditions may be imposed by the court upon such bail? 20 Marks

10. (b) Nanakchand was tried along with others on the charge of Section 302 I.P.C. read with Section 149. At the end of the trial the applicability of Section 149 was not established and the trial court convicted him under Section 302 read with section 34 I.P.C. Whether the conviction is valid? Reply with reasons and support of leading cases. 10 Marks

10. (c) 'B' is tried for causing grievous hurt to 'A' and convicted. While 'B' was undergoing his sentence in jail, 'A' dies on account of the aforesaid grievous hurt. Whether the aforesaid case may be re-opened or 'B' may be tried again on a second case for causing culpable homicide? Reply with the help of provisions and leading cases. 10 Marks