UP PCS-J (Mains) 2015

Law Paper II: Procedure and Evidence · compulsory paper

1.(a) On 04.07.2000 Radhey Shyam entered into an agreement with Ram Kumar for purchase of a piece of land of 5 acres at ₹ 26,000 per acre i.e., for a total consideration of ₹ 1,30,000. On that day itself, Radhey Shyam had paid ₹ 20,000 to Ram Kumar towards advance with a specific understanding to pay the entire balance of sale consideration within four months and obtain a regular registered sale deed for the land in his name. Radhey Shyam paid the balance of sale consideration on 28.08.2001 and the possession of the land was delivered to him. Thereafter, Ram Kumar executed a possessory sale agreement dated 28.08.2001 in favour of Radhey Shyam confirming his possession over the said land. On 04.01.2014 the Murti Bank had got issued a legal notice to Radhey Shyam stating that the said land was under equitable mortgage with Murti bank. Then Radhey Shyam got issued a reply notice setting out his right, title and interest and also possession over the said land and also making an accusation that Ram Kumar had cheated him by suppressing the mortgage in respect of the said land with the Murti Bank.

Draft a plaint on behalf of Radhey Shyam on the basis of aforesaid facts claiming all types of reliefs whether primary or alternative, which could be claimed against the defendants, in this matter. 20 Marks

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

OR

On 10.06.2014, Ram Kishan and his nephew Rajeev were going on a motorcycle carrying ₹ 1,50,000 with them in the dicky, for purchasing a piece of land. While they were near a Farm in Gajraula, Jyotiba Phule Nagar District of Uttar Pradesh at around 10 A.M., two accused persons – Ranjeet and Rajender came from behind in Maruti Car. They brandished country made pistol and asked them to stop and as they stopped, Ranjeet and Rajender asked them to hand over the money. Ram Kishan and Rajeev handed over the key of the motorcycle to them. Ranjeet and Rajender took out the money from the dicky and sped away. Ram Kishan gave the information of this incident to ASI Akhilesh Kumar whom he met on the way to the Police Station. On the basis of this information an FIR was registered at Gajraula Police Station.

Location of the mobile phones of Ranjeet and Rajender was traced near the place of crime on the date and time of incident. Recording of Closed Circuit Camera showed that the Maruti Car used for crime passed and paid toll at N.H. 24 toll booth situated at Gajraula half an hour before the incident. This car was registered in the name of accused Ranjeet. Ranjeet and Rajender also made confessional statement before the Investigation Officer and said that they have spent ₹ 94,000 out of the looted money and the remaining amount of ₹ 56,000 is lying at the house of Ranjeet. The amount of ₹ 56,000 was recovered from the house of Ranjeet.

Ranjeet and Rajender also made disclosure statement before the police thereby alleging the role of two employees at the firm of Ram Kishan, Rajesh and Raman as the informers of the group and said that Rajesh and Raman had informed Ranjeet and Rajender of the fact that Ram Kishan is carrying the money in a motorcycle and that they could loot him. It is further alleged that they received a share of ₹ 10,000 each from the looters. Further, the evidence against Rajesh and Raman is their own disclosure statement to the police pursuant to which, allegedly, the police recovered ₹ 5,000 (Rajesh's share left

unspent) and ₹ 4,000 (Raman's share left unspent) from them.
Ranjeet and Rajender denied having made any disclosure statement before the police and also denied the charge and stated that they were not present in Gajraula on the day of incident and pleaded that they did not commit the robbery. During the trial Rajesh and Raman also denied having made the disclosure statement and pleaded false implication.
The accused were charge-sheeted for the offence punishable under Sections 120-B, 392, 397 of the Indian Penal Code and Section 25 of the Arms Act.
On the basis of facts stated above write a judgment of conviction. 40 Marks

Section A

2.(a) Explain the essential ingredients of Summon. What are the different modes of service of summons to the defendant? 10 Marks

2.(b) What is meant by ex-parte decree? Examine the circumstances where an ex-parte decree may be set aside. 10 Marks

2.(c) What do you understand by inter-pleader suit? Explain the conditions and procedure relating to inter-pleader suit. 20 Marks

3. Answer the following problems with reasons and relevant provisions:

3.(a) 'B' appoints 'A' as Factory Representative of his Firm for Chennai territory for appointing dealers of his products there. Firm's Head Office is situated at Kolkata. 'B' posted a letter at Kolkata terminating the appointment of 'A' as Factory Representative, which was received by 'A' at Chennai. 'A' wants to file a suit against 'B' for damages and accounts. What is the proper place of suing in this case? 10 Marks

3.(b) A Junior Engineer of Public Works Department was dismissed from service by the Superintending Engineer. He challenged the said decisions by filing a writ petition in the High Court on the ground that he was not afforded a reasonable opportunity of being heard. The writ petition was dismissed. He then filed a civil suit and raised an additional plea that he was appointed by the Chief Zonal Engineer and, therefore, Superintending Engineer being lower in rank, was not competent to pass this order against him. In this civil suit, contention of State is that the suit was barred by res judicata. Decide. 10 Marks

3.(c) 'A' files a suit in the name and on behalf of his minor ward 'B' against 'C' under order 32. During pendency of the suit 'B' attains majority and seeks your advice for further course of action. Advice 'B'. Will it make any difference if 'B' happens to be a Co-plantiff? 10 Marks

3.(d) 'A' filed a suit for damages on account of defamatory article published in a periodical. 'A' dies during the pendency of suit. Can legal heirs of 'A' continue the suit? 10 Marks

4.(a) What are the main principles which guide the court, while dealing with an application for temporary injunction? 10 Marks

4.(b) Discuss the provisions in respect of attachment of property in execution of decree. 15 Marks

4.(c) State the duties and powers of first appellate court with reference to:
(i) Remand
(ii) Framing of additional issues
(iii) Additional evidence
(iv) Modification of decree 15 Marks

Section B

5.(a) What is meant by 'relevancy of facts'? When are opinions of third persons relevant? Discuss in brief. 15 Marks

5.(b) 'A' is accused of raping a seven years old girl 'B'. The evidence against 'A' is the testimony of 'B', which was recorded in the court without administering oath. The mother of 'B' has deposed that 'B' narrated the whole thing to her after four hours of incident. Are these two evidences admissible? Can 'A' be convicted on the basis of this evidence? Give reasons in support of your answer. 15 Marks

5.(c) 'A' is accused of the murder of 'B'. 'A' wrote a letter addressed to his friend 'C' stating that he had committed that crime. The letter fell into the hands of a police officer. Are the contents of this letter relevant as evidence against 'A'? 10 Marks

6.(a) Explain the doctrine of estoppel and distinguish between admission and estoppel. 20 Marks

6.(b) 'A' taken a house on lease from 'B' and lives there as tenant. 'B' made a demand to 'A' for payment of arrears of rent for three months. 'A' contends that 'B' is not the owner of the house. Can 'A' be permitted to deny the title of 'B' in the said house? Give reasons for your answer. 10 Marks

6.(c) Explain the doctrine of Res Gestae. 10 Marks

7.(a) Discuss the essential elements of 'dying declaration'. When is dying declaration relevant? Can dying declaration form the sole basis of conviction? 20 Marks

7.(b) 'A' is accused of defamation of 'B' by publishing a defamatory article about 'B' in a magazine. Is the evidence of publication of defamatory statement by 'A' about 'C' in the previous issue of same magazine admissible? Give reasons for your answer. 10 Marks

7.(c) 'All facts except the contents of document may be proved by oral evidence, which in all cases be direct'. Discuss in brief. 10 Marks

Section C

8.(a) What is the procedure to be followed in executing a warrant beyond the jurisdiction of court which issued it? 10 Marks

8.(b) When the warrant against an accused is not executed, what is the next step for compelling his appearance before the court? 10 Marks

8.(c) Is the Magistrate bound to take cognizance of an offence on the basis of the final report filed by the police under section 173(2) of Cr.P.C.? Is there any restriction for taking such cognizance? Discuss with case law. 20 Marks

9.(a) A police investigation officer, while investigating cognizable offence concluded that only a non cognizable offence was committed and accordingly submits his report before the Magistrate after completion of investigation. What course shall the Magistrate adopt? 10 Marks

9.(b) Discuss the provisions related to maintenance of wife, children and parents under the Code of Criminal Procedure. 20 Marks

9.(c) Explain the nature and procedure of summary trial. 'A' commits theft by stealing property of 'B' worth ₹ 500. Can this offence be tried summarily? 10 Marks

10.(a) "For every distinct offence, of which any person is accused, there shall be separate charge and every such charge shall be tried separately. Discuss. Are there any exceptions to this rule? 20 Marks

10.(b) 'A' committed theft at the house of 'B' on 28 August, 2015 and committed second theft on the same date at the house of 'C' and again committed theft at the house of 'D' on 30 August, 2015. Can he be prosecuted for all three offences in one trial? Discuss with reasons. 10 Marks

10.(c) Distinguish between:
(i) Cognizable and non-cognizable offence
(ii) Bailable and non-bailable offence 10 Marks

De Facto IAS