# UP PCS-J (Mains) 2018

## Law Paper II: Procedure and Evidence · compulsory paper

1.(a) On 2nd June, 2017, Ram Singh, a schoolteacher, was travelling from Lucknow to Gorakhpur by a motor bus no. 1540 of UPSRTC. He sustained serious injuries due to the negligence, misconduct and wrongful act of the driver of the bus, Mohd. Hakim, and the mechanic, attached with the bus by the corporation, Sunderlal (who was driving the bus at the time of accident). He with other casualties was admitted to Govt. Hospital of Gorakhpur. He lost one of his hands permanently. His medical treatment continued in different hospitals till 12.08.2018 and during this period, he could not perform his teaching work, household duties and cultivation. Now, Ram Singh wants to file a suit against the UPSRTC, the driver of the bus and the mechanic for a compensation of 25,00,000. Write a plaint for the plaintiff, Ram Singh, on the basis of the facts mentioned above. 20 Marks

1. (b) Prepare a written statement for the defendant no. 1, the UPSRTC, answering the plaint made above under Question No. 1. (a) in the light of the following : “The main plea of the defendant no. 1 is that the defendant no. 3, Sunderlal, is merely a mechanic of the bus and he was not authorised to drive the bus by the defendant no. 1. There occurred some mechanical defects in the bus suddenly and the defendant no. 3 was authorised only to cure the defects but after curing the defect, he took the steering wheel in his hands in order to check the bus without any authorization and the bus met with the accident when he was driving the bus. Therefore, the corporation is not liable vicariously." [20 Marks]
OR

1.(a) On 15.06.2018, the victim, a fourteen-year-old girl, was alone in her house situated at Lucknow and was preparing for her examination. The two accused named Dinu and Kallu were working in the house. They took advantage of the fact of her being alone. They raped her, strangulated her by using her undergarments and caused injuries on her person with a sharp weapon. They threw her body into a septic tank at the back side of the house, which showed a disregard of respect for human dead body. The prosecution has demanded for death penalty for them on the ground that the matter comes within the category of the rarest of the rare cases. On the other hand, the accused have argued against it. Prepare a draft of charge against the accused into the matter. 20 Marks

1.(b) On the basis of the facts in part (a), decide the matter and give your judgement. Also award the reasonable punishment. 20 Marks

### Section A

2. (a) Discuss the provisions of the Civil Procedure Code relating to the issue of Commission. Also give suitable illustrations. 20 Marks

2.(b) Explain the rule of 'notice' prescribed in Section 80 of the Civil Procedure Code, 1908. Whether a right to notice could be waived? 10 Marks

2.(c) On what grounds can a plaint be rejected by Court? Discuss. 10 Marks

3. (a) State the provisions which govern the determination of the place of suing in relation to the suits for compensation for wrong to person. In relation to the following, determine the place of suing : A, B and C Jointly take a loan from D at Prayagraj on a promissory note payable on demand. D resides in Varanasi. A, B and C reside in Bareilly, Ghaziabad and Noida respectively. A, B and C fail to repay the loan no demand. 20 Marks

3.(b) What do you understand by foreign judgement? When is it deemed to be conclusive? Discuss.

3.(c) What do you understand by the misjoinder and nonjoinder of the parties? A enters into a contract with B to supply 100 quintals of sugar on 15.10.2018. The same day he agrees to supply to C and D separately the same quantity of sugar. A fails to supply sugar to all the three. Can all the three, i.e., B, C and D, join together in one suit as plaintiffs against A? 10 Marks 10 Marks

4. (a) What is 'representative suit'? By whom and under what circumstances can such suit be brought? Is there any need to take consent of the persons who are to be represented? Discuss in the light of decided cases. 20 Marks

4.(b) (i) A, who was a treasurer of an association, misappropriates the funds of the association. By a resolution of the association, B, a member, was authorised to recover the amount misappropriated. Can B successfully sue A ? Give reasons for your answer. 10 Marks

4.(b)(ii) A, B and C were chosen by a community to represent them in a suit against K. But X, Y and Z, other members of the same community, supported the defendant K. Does it affect the representative character of the suit? Give reasons for your answer. 10 Marks

**Section B**

5. (a) Discuss the limits within which the rule of 'res gestae' operates. How far the ambiguities involved in this rule have been removed under the Indian haw? Explain. 20 Marks

5.(b) Whether a photograph of an original is a secondary evidence even though the two have not been compared, if so when? Discuss the provisions of Law. 10 Marks

5.(c) Discuss the meaning and utility of presumptions. Draw distinction between Rebutable Presumption of Law and Irrebutable Presumption of Law. 10 Marks

6. (a) Write exhaustive but brief notes on any two of the following :
(i) Hostile witness
(ii) Leading questions
(iii) Accomplice
(iv) Relevancy of custom [10*2=20 Marks]
(i) Hostile Witness
(ii) Leading Questions
(iii) Accomplice
(iv) Relevancy of Custom

6.(b)(i) Answer with reasons while mentioning the related decided cases : A, B and C are prosecuted for the murder and conspiracy to murder of D. As the principal evidence of the conspiracy, certain letters written by the accused to each other during the conspiracy are submitted. A statement made to the Examining Magistrate by B, giving an account of the conspiracy, after arrest, is also put in evidence. What is relevant—the letters or the statement or the both? 10 Marks

6.(b) (ii) Answer with reasons while mentioning the related decided cases : A is charged with travelling on a railway without a ticket. On whom the burden of proof that he had a ticket shall lie? 10 Marks

7. (a) Discuss the relevancy of judgements with the help of the provisions of the Indian Evidence Act, 1872 and reasonable illustrations. 20 Marks

7.(b) When the evidence of an expert is to be admitted? What are the differences between an Expert and an Ordinary Witness? Discuss. 10 Marks

7.(c) What do you understand by the word 'Court' used in the Indian Evidence Act, 1872? Discuss with the help of decided cases. 10 Marks

**Section C**

8.(a) What will be the venue of trial in the following?

(i) Where the offence has been committed in train during journey between Kolkata and Prayagraj. 05 Marks

8.(a)(ii) Where the offence has been committed in the nature of cheating through letters between two persons situated at Meerut and Agra. 05 Marks

8.(a)(iii) Where a boy is kidnapped from Prayagraj and first taken to Mumbai and then to Guwahati. 05 Marks

8.(a)(iv) A abets B at Prayagraj to commit murder of C at Mumbai. B committed murder of C at Mumbai. 05 Marks

8.(b) Discuss the modes of recording evidence in a Sessions' Trial. How does Summon Trial differ from Warrant Trial? Explain. 10 Marks

8. (c) A police officer has no definite knowledge or definite information that A is in possession of an instrument of housebreaking. The police officer arrests A. Is A's arrest illegal even though an instrument of housebreaking may actually be found on searching after the arrest? Answer with reasons. 10 Marks

9. (a) Under what circumstances is a Magistrate empowered to take action in connection with disputes concerning immovable property under Section 145 of the Code of Criminal Procedure, 1973? Explain. 20 Marks

9.(b) Discuss the powers of the District Magistrate under Section 144 of the Code of Criminal Procedure, 1973. 10 Marks

9.(c) What is the jurisdiction of the Criminal Courts in enquiries and trials under the Code of Criminal Procedure, 1973? 10 Marks

10. (a) (i) Whether a Magistrate can ask any accused to give specimen signature or handwriting? Discuss with exception, if any. 10 Marks

10. (a)(ii) Whether an accused in appeal from acquittal can be arrested and committed to prison pending the disposal of the appeal? Discuss. 10 Marks

10.(b) What irregularities committed by a Court do not vitiate trial? Also discuss when it vitiates. 10 Marks

10.(c) An accused is arrested in a bailable offence and he is released on bail. During trial, he absconds and non bailable warrants are issued against him. The police arrests him and produces him before the Court. The defence counsel pleads for his release on bail under Section 436 (1), Cr.P.C. which provides that a person accused of a bailable offence shall be released on bail. Can the Court, in such circumstances, refuse to release him on bail? Give reasons briefly. 10 Marks