Uttarakhand Civil Judge (Mains) 2008

Law-II (Evidence and Procedure) · compulsory paper

SPB-4 · Time allowed: Three Hours · Maximum Marks: 200

Note: (i) Candidates should attempt Question No. one and four more. At least one question must be attempted from each section. In all, five questions are to be answered.
(ii) Marks carried by each question have been indicated against the question.

1. (a) Draft a plaint, giving details, for the recovery of damages for malicious prosecution. 15

1. (b) Draft a written statement on behalf of the defendant in the suit mentioned above in Question No. 1 (a). 15

1. (c) Frame issues on the basis of the pleadings in Question No. 1 (a) and (b) mentioned above. 10

OR

Write a judgement convicting the accused of an offence under Section 307 (attempt to murder) of the Indian Penal Code after framing appropriate charge for the offence. 40

Section — A

2. (a) Distinguish between 'Review and Revision' and 'Revision and second appeal'; and explain whether
(i) a court can review suo motu its own decision ?
(ii) a superior court can direct a subordinate court to review its decision ?
(iii) an appeal can lie from every original decree or order ? 20

2. (b) Explain the meaning of the suit of civil nature and state with reasons whether the following suits are of civil nature or not :
(i) Suit for specific relief
(ii) Suit for right to hereditary office
(iii) Suit for upholding mere dignity or honour
(iv) Suit involving purely religious rites or ceremonies 20

3. (a) Discuss the doctrine of 'Res-judicata' referring to statutory provisions and relevant case law. 15

3. (b) How is the doctrine of 'Res-judicata' different from the doctrines of 'Res-subjudice', 'Constructive-Res-judicata' and 'Estoppel' ? Explain. 15

3. (c) A files a suit against B for a property C. However, the court in this case passes a decree by mistake for property D. This mistake is detected only after the expiry of time to appeal in this case. Advise A in this matter. 10

4. (a) Critically explain the law relating to 'Notice' as provided under the code of Civil Procedure. What will be the effect of absence of the said notice upon suits against the Central Government, State Governments or their officers ? 15

4. (b) What is an 'inter-pleader suit' ? When and by whom such suit can be instituted? 15

4. (c) A, B and C were chosen by a community to represent it in a suit against M, but X, Y and Z, the other members of the same community supported the defendant, M. Does it affect the representative character of the suit ? Answer with reasons. 10

Section — B

5. (a) "For every distinct offence there should be a separate charge and each charge should be tried separately." Critically examine this statement. 15

5. (b) While referring to relevant provisions of the code of Criminal Procedure 1973, explain with reasons as to which court shall have jurisdiction to try the following cases ?
(i) A is kidnapped from Ghaziabad and he is recovered from a house in Meerut.
(ii) Physical injuries were caused to B at Sultanpur and he dies of those injuries at Lucknow, where he was brought for treatment.
(iii) A dacoity was committed in Dehradun city and the dacoits were arrested at Haridwar. 15

5. (c) A person is produced before a Judicial Magistrate to make a statement under Section 164 of the code of Criminal Procedure, 1973, where he refuses to make statement. The Magistrate authorizes the police to keep him in remand under Section 167 of the said code for a period of seven days. Decide. 10

6. (a) "Persons once convicted or acquitted can not be tried again for the same offence." Critically examine this statement. 20

6. (b) A was tried for the murder of B but he was acquitted of that charge and convicted for causing the grievous hurt to B. A appealed to the High Court against this conviction. Can the High Court convict A on the charge of murder ? Answer with reasons. 10

6. (c) In the trial of a warrant case proceedings have been instituted upon complaint. On the date fixed for hearing, the complainant remains absent. What orders can be passed by the Magistrate in this matter ? Answer with reasons. 10

7. (a) "Mandatory bail under Section 167 of the code of Criminal Procedure 1973 has become a paradise for criminals." Examine this statement in the light of relevant case law. 20

7. (b) A first class Judicial Magistrate punished an accused with fine of rupees twenty only. The accused wants to file an appeal in this matter. Advise him with reasons. 10

7. (c) The Chief Judicial Magistrate of Nainital granted anticipatory bail to an M.L.A. as he was apprehending arrest in a murder case and issued necessary directions. Examine the validity of this order. 10

Section — C

8. (a) "All facts, except the contents of a document, may be proved by oral evidence, which in all cases must be direct." Critically examine this statement. 20

8. (b) On whom does the burden of proof lie in the following cases ? Answer with reasons.
(i) A files a suit against B for money due on a bond. B accepts the execution of the bond, but he says that the said bond was obtained by fraud. [5]
(ii) A, who is accused of murder says that due to grave and sudden provocation, he was deprived of the power of self-control. [5]
(iii) A is charged with travelling without ticket, but he denies it. [5]
(iv) A is in possession of a house. B claims to be its owner and files a suit against A to get the said house. [5] 20

9. (a) Explain 'inculpatory statement' and 'exculpatory statement' of confession and discuss the law relating to admissibility of such statements. 20

9. (b) A was the wife of B. Two months after the death of B, A remarries. Five months after the said marriage, a son C is born to A. Who is legally the father of C ? Answer with reasons. 8

9. (c) A, client says of B, an advocate, "I wish to obtain possession of a property by use of a forged deed. I request you to sue on the basis of this deed." Is this communication protected ? Answer with reasons. 6

9. (d) A agrees to sell to B his white horse for rupees five thousand. A has two white horses. Can evidence be given to show which of the two horses was meant ? Answer with reasons. 6

10. (a) While referring to statutory provisions and relevant case law, discuss the meaning and evidentiary value of 'dying declaration.' Can an accused be convicted on the basis of such declaration alone ? 20

10. (b) A sues B for the price of goods sold and delivered to B. C says that A delivered the goods to B. But evidence is offered to show that, on a previous occasion, C said that A had not delivered the goods to B. Is this evidence admissible ? Answer with reasons. 8

10. (c) The question for consideration is, whether A robbed B ? The fact that after B was robbed, C said in A's presence that the police was coming to look for the man who had robbed B. Immediate after that A ran away. Whether this fact is relevant ? Answer with reasons. 6

10. (d) Stolen goods are recovered from the possession of an accused just after a few days of the theft. What presumptions can be made against the accused ? Answer with reasons. 6

De Facto IAS