Uttarakhand Civil Judge (Mains) 2012

Law II (Evidence and Procedure) · compulsory paper

Time allowed : Three Hours · Maximum Marks : 200

Notes: (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. The parts of same question must be answered together. (ii) Marks carried by each question have been indicated against the question. However, all questions carry equal marks.

1(a). Draft a plaint giving details, in suit for the recovery of damages for malicious prosecution. [30 marks]

1(b). Draft a written statement in reply to the above plaint in Question No. 1 (a). [10 marks]

1 (OR). Write a judgment convicting the accused for an offence under Section 325 Indian Penal Code (Voluntarily causing grievous hurt) after framing appropriate charge for the offence. [40 marks]

Section A

2(a). When can a temporary injunction be granted by a Civil Court ? [10 marks]

2(b). What is an interpleader suit ? When and by whom can it be instituted ? [10 marks]

2(c). In what circumstances can the property of defendant be attached before judgement ? [10 marks]

2(d). What is a representative suit ? By whom and under what circumstances can such a suit be filed ? [10 marks]

3(a). State the provisions which govern the determination of place of suing. Support your answer with the illustrations. [20 marks]

3(b). Who can file a pauper suit ? [10 marks]

3(c). Analyse the grounds, procedure and powers of the High Court in relation to reference and revision under Civil Procedure Code. [10 marks]

4. How will you decide that a suit is of civil nature ? Discuss. Are the following suits of civil nature ?
(i) Right to take out religious procession. [10 marks]
(ii) Right of a Pardanashin lady to observe Parda. [10 marks]
(iii) Right to vote. [10 marks] [40 marks]

5(a). Define and distinguish between preliminary and final decree. [20 marks]

5(b). Explain the enlargement of time and right to lodge a Caveat as prescribed under Civil Procedure Code. [20 marks]

Section B · Question 6 · Referring to statutory provisions, discuss the validity of the following

6(a). Where investigation cannot be completed within 24 hours the police officer produces the accused before an Executive Magistrate upon whom the power of Judicial Magistrate has been conferred. Such Magistrate remands the accused to 10 days police custody. [10 marks]

6(b). A Magistrate in a summary trial proceeding on conviction passes sentence order for 4 month's imprisonment. [10 marks]

6(c). A person arrested on accusation of bailable offence is not released on bail by the police officer, though the person is ready to furnish bail. [10 marks]

6(d). For complaint against the accused without reasonable cause Magistrate orders payment of compensation in favour of accused. For default in payment of compensation passes an order of sentence for 60 days imprisonment. [10 marks]

7(a). Define 'charge' and enumerate the contents of charge. [10 marks]

7(b). Is a defective charge necessarily fatal to conviction ? [10 marks]

7(c). Can a Court alter charge ? If so, how and upto what stage ? [10 marks]

7(d). What are the cases in which an accused person may be convicted of an offence which is not specified in the charge sheet on which he has been tried ? [10 marks]

8(a). Explain the scope of examination in chief, cross examination and re-examination under the Indian Evidence Act. State briefly their objects. [20 marks]

8(b). Write short notes on the following :
(i) Hearsay evidence
(ii) Hostile witness
(iii) Leading question
(iv) Public document [20 marks]

9(a). In a trial for an offence, the prosecution adduces evidence of bad character of the accused. The accused objects to the admissibility of prosecution evidence on the ground that he has not given evidence of his good character. Decide. [10 marks]

9(b). 'A' is tried for the offence of dowry death under Section 304-B of the Indian Penal Code. Advise the prosecution as to what evidence is required to be produced so as to raise the presumption under Section 113-B of the Indian Evidence Act, 1872. [10 marks]

9(c). Point out whether in the following cases the facts sought to be proved are relevant.
(i) 'A' is charged with shooting at 'B' with intent to kill him. In order to prove A's intention the prosecution wants to prove the fact that 'A' has to earlier shot on 'B'. [10 marks]
(ii) A is tried for rioting and is proved to have marched at the head of mob; the prosecution wants to prove that the mob was shouting. [10 marks] [20 marks]

10(a). What is confession ? Distinguish between judicial and extra judicial confession. [15 marks]

10(b). State the exception to the rule that 'confession by an accused in police custody is not admissible in evidence.' [15 marks]

10(c). 'A' an woman whose throat had been cut by some sharp edged weapon indicated by gesture before her death that 'B' was the person who has cut her throat. Is this statement of 'A' made by gestures admissible as evidence against 'B' ? [10 marks]