Uttarakhand Civil Judge (Mains) 2013

Law II (Evidence and Procedure) · compulsory paper

Time allowed : Three Hours · Maximum Marks : 200

Note: Candidates should attempt question No. 1 which is compulsory and four more questions. At least one question must be attempted from each section. In all five questions are to be answered. Marks carried by each question have been indicated against the question. However, all questions carry equal marks. The parts of same question must be answered together.

1(a) [30 marks]

Ram Das, S/o. Sri Krishna Das, R/o. Sagara, District Kashipur, Uttarakhand was married to Sheela, D/o. Ram Krishna, R/o. Haldwani on March 20, 2002 at Dist. Haridwar. Even after six years of marriage Sheela did not give birth to any child. Relations between Sheela and Ram Das did not remain happy for this reason. They misbehaved with her. In 2008 Ram Das and his parents sent Sheela to her parents' house. During these five years Ram Das gave no maintenance to Sheela. Ram Das and his parents did not return her personal property also such as necklace and bangles. Under such situation Sheela wants to obtain a decree of dissolution of marriage.
Draft a plaint for dissolution of marriage in the above case on behalf of Sheela.

1(b) [10 marks]

In reply to the plaint draft a written statement on behalf of defendant Ram Das.

1 (OR) [40 marks]

A young man of considerable means 'A' developed friendship with a young girl 'B' of ordinary family living in his neighbourhood. The girl's mother had died and father usually had to go to his fields for working during the whole day. The girl gave birth to an illegitimate son from above mentioned young man. Before the illegitimate son was born there was proposal of marriage by the girl's father. The young man declined the offer of marriage and also refused to maintain her.
On the basis of the above facts write a judgement in the case.

Section A

2(a) [20 marks]

Distinguished between legal set off, equitable set off and counter claim. Discuss also how they are claimed and what are their effects.

2(b)(i) [10 marks]

'A' sues 'B' on a bill of exchange. "B" alleges that "A" has wrongfully neglected to insure B's goods and is liable to him for compensation, which he claims to setoff. Answer with reasons.

2(b)(ii) [10 marks]

'A' dies intestate and in debt to 'B'. "C" takes out administration to 'A's' effects and "B" buys part of the effects from 'C'. In a suit for purchase money by "C" against 'B' the latter wants to set off the debt. Answer with reasons.

3(a) [20 marks]

Discuss the concept of substantial question of law on which the second appeal is filed before the High Court under Section 100 of Civil Procedure Code, 1908.

3(b) [20 marks]

Whether the second appeal can be filed in following cases. Give correct answer with reasons.

(i) Exparte decree [5 marks]

(ii) Decision being contrary to law. [5 marks]

(iii) Legal inference drawn from finding of fact. [5 marks]

(iv) Usages having force of law. [5 marks]

4(a) [30 marks]

Discuss the doctrine of the restitution.

4(b) [10 marks]

Write a note on inherent power of Civil Court.

5(a) [20 marks]

Explain the principle of Res-Judicata in detail.

5(b) [20 marks]

When a foreign judgement is not conclusive ? Discuss

Section B

6(a) [10 marks]

Describe the law and procedure for maintenance of wife, children and parents under Code of Criminal procedure, 1973.

6(b) [10 marks]

Distinguish between Police Report and First Information Report.

6(c) [10 marks]

Explain the provisions of commutation of sentences as has been provided under the Code of Criminal Procedure, 1973.

6(d) [10 marks]

What are the petty offences for which no appeal has according to code of Criminal Procedure, 1973 ?

7(a) [20 marks]

Give a brief account of general provisions of trial in warrant cases as contained in Criminal Procedure Code, 1973. Distinguish between warrant trial and summon case trial.

7(b) [10 marks]

What is effect of non-appearance or death of complainant in a trial of summon cases by Magistrate ?

7(c) [10 marks]

Distinguish between investigation and inquiry.

8 [40 marks]

Discuss the procedure in case of disputes relating to immovable property under Section 145 of Criminal Procedure Code, 1973. Do you agree with the view that the proceeding under Section 145 is not punitive but preventive ? Discuss.

9(a) [10 marks]

What is fact in issue ? Illustrate your answer.

9(b) [10 marks]

What facts need not be proved ?

9(c) [10 marks]

Explain the reason for exclusion of hearsay evidence. To what extent has the principle of exclusion of hearsay evidence been adopted in the Indian Evidence Act. Discuss.

9(d) [10 marks]

Discuss fully the evidentiary value of retracted confession. Illustrate your answer.

10(a) [20 marks]

Relevancy and admissibility are neither synonymous nor is the one included in other. Elucidate this statement.

10(b) [20 marks]

'A' and 'B' are co-accused of the crime of kidnapping and killing of a child. 'A' denies his guilt but 'B' confesses that he along with 'A' has committed the crime. How far the statement made by 'B' is relevant against 'A' ? Discuss.

De Facto IAS