Uttarakhand Civil Judge (Mains) 2015

Law II (Evidence and Procedure) · compulsory paper

Time allowed: Three Hours · Maximum Marks: 200

Note: Candidates should attempt question No. 1 as compulsory and four more. 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]

Marriage between Rajkumar and Rita Rathore solemnized on 10-5-2013 and both of them resided together as husband and wife for about nine months. Case of the husband is that both parties were employed in District Court at different places. Rajkumar was transferred to District Court Dehradun, and he started living at Dehradun. By their joint efforts, they were able to get the Rita Rathore transferred from Pithoragarh to Dehradun. The wife Rita Rathore became pregnant and she went to her parents house at Nainital, case of the husband is that in February 2014, wife left Dehradun for delivery at the parent house Nainital and thereafter, she never came back and never stayed with husband. Parties are said to have separated since February 2014 and a male child was born out of wedlock at Nainital on 2-6-2014. Husband alleged that despite his request, Rita Rathore continued to stay with her child at her parents house at Nainital, and inspite of her transfer to Dehradun, she refused to join husband at Dehradun and instead she got adjust at Nainital District Court. Draft a plaint for divorce against Rita Rathore on the various grounds of Hindu Marriage Act, 1955.

1(b) [10 marks]

In reply to the above plaint, draft a written statement on behalf of defendant Rita Rathore.

OR

1 (OR) [40 marks]

On 24-7-2015, a health camp was organized at Primary Health Centre, Jawalapur (Haridwar) for conducting Tubectomy (Nasbandi) operation. In such camp, deceased Meenakshi Devi was admitted to undergo the operation for Tubectomy. It was pleaded by plaintiff that original defendant No. 1 R.S. Upadhyay and original defendant No. 2 Dr. Sunil Nigam, were working at Primary Health Center, Jawalapur and original defendant No. 3 S.K. Kushwaha was working as Doctor in District Hospital, Haridwar. Defendant No. 4 Smt. Shivani was a nurse in Primary Health Centre, Jawalapur. It was stated that at the direction of state, Tubectomy camp was organized at Jawalapur wherein before Tubectomy operation, at the instance of defendant No. 1 to 3, some injections were administered to Meenakshi Devi. After giving injection, her condition started deteriorating and she lost her sense and thereafter, she was referred to District Hospital and eventually she died. It was pleaded that the death was caused due to negligence and administration of wrong injections to the deceased Meenakshi Devi. It was further pleaded that deceased was a teacher, aged about 28 years and used to earn ₹25,000 per month. On the basis of above facts prepare a case, frame the issues and decide the case by supporting legal provisions and case law.

Group A

2(a) [20 marks]

(i) “Every suit shall as far as practicable be framed so as to afford ground for final decision upon the

subject in dispute and prevent further litigation." In the context of this statement interpret the framing of suit. (ii) A lets immovable property to B at a yearly rent. The rent for the whole of the year 1905, 1906 and 1907 is due and unpaid, and the tenancy is determined before A sues B in 1908, only for the rent due for 1906. In this case, what kind of remedy can be availed by A? Decide.

2(b) [10 marks]

What is the procedure of examination of parties by the court? What kind of legal directions shall be given by the court in civil suit and what are the consequences of refusal or inability of pleader to answer? Critically examine.

2(c) [10 marks]

What shall be considered by the court at the time of pronounce of judgment and decree? Analyse the merit and demerit of 1976 amendments in this regard.

3(a) [20 marks]

Enumerate the list of property which is liable to attachment and sale in execution of a decree, and shall not be liable to such attachment or sale. Explain state amendments also in the said legal provisions.

3(b) [10 marks]

Critically examine this statement that "Inherent powers of the court cannot be exercised so as to nullify the provisions of the Civil Procedure Code". Support your answer by leading judgment.

3(c) [10 marks]

When court can amend judgment, decree or order? Whether court has power to amend decree or order where appeal is summarily dismissed? Examine.

4(a) [20 marks]

Who can be arrested and who can not be arrested under civil process? Who are exempted from personal appearance before civil court? Explain.

4(b) [10 marks]

What are the provisions under Civil Procedure Code for oath on affidavit by whom to be administered? What are the amendments of Uttar Pradesh as applicable in Uttarakhand in this regard? Discuss.

4(c) [10 marks]

Critically analyse the provisions as prescribed by Civil Procedure Code for settlement of disputes outside the court. What should be done for strengthening these provisions? Comment.

5(a) [20 marks]

What is the power of High Court to determine issues of facts in second appeal? When appeals lie to the Supreme Court? What is the procedure in appeals from appellate decrees and orders? Explain.

5(b) [20 marks]

Who may be joined as plaintiffs and defendants? What and when court can pass an order for separate trials? What is the effect of mis-joinder and non-joinder of parties? When parties can make objections as to non-joinder or mis-joinder? Explain.

Group B

6(a) [20 marks]

Distinguish between the following: (i) Investigation Diary and Report of Police Officer on completion of investigation. (ii) Contents of charge and contents of warrant of arrest. (iii) Procedure when accused

is not discharged and when accused shall be discharged by Magistrate in cases instituted otherwise than on police report. (iv) Power of court to require attendance of Prisoners and Persons released on Bail.

6(b) [10 marks]

What are the provisions under criminal procedure code for sentence of imprisonment in default of fine and in cases of several offences at one trial? Explain with case law.

6(c) [10 marks]

Explain in short provisions with various definitions of reciprocal arrangements for assistance in certain matters and procedure for attachment and forfeiture of property.

7(a) [20 marks]

(i) Discuss the procedure of maintenance and alteration in allowance and enforcement of order of maintenance with support of relevant legal provisions. (ii) Whether father-in-law and mother-in-law are entitle to get maintenance from widowed daughter-in-law, when she has obtained job in place of deceased husband? Support your answer by case law.

7(b) [10 marks]

Critically examine the legal requirements in recording of confessions and statements in sexual offences and mentally and physically disabled persons under criminal procedure.

7(c) [10 marks]

Examine those provisions when evidence found by police is deficient and when evidence is sufficient against accused under criminal procedure code.

8(a) [20 marks]

(i) Examine the provisions of prosecution of judges and public servants and critically analyze amendment of 2013 in this regard as prescribed under criminal procedure code. (ii) Whether officers of Government companies or public undertaking even when such public undertakings are state, entitle to get protection under the provision of prosecution of judges and public servant law? Support your answer by case law.

8(b) [10 marks]

"A" is charged with the murder of Khuda Baksh on the 21st January, 1882, in fact the murdered person's name was Haidar Baksh, and the date of murder was the 20th January, 1882. "A" was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. What can be inferred by court from these facts? Decide.

8(c) [10 marks]

Examine the victim compensation scheme provided under Criminal Procedure Code with amendment of 2013. How far this scheme is different from order to pay compensation and compensation to those persons who were groundlessly arrested? Discuss.

9(a) [20 marks]

(i) Examine the provisions that in civil cases character to prove conduct imputed irrelevant, whereas, character as affecting damages is relevant. Analyse. (ii) In criminal cases, previous good character is relevant, however, evidence of character or previous sexual experience not relevant in certain cases. Thus, the law is that previous bad character is not relevant, except in reply. Critically analyse.

9(b) [10 marks]

"A" prosecutes "B" for adultery with "C", A's wife. "B" denies that "C" is A's wife but the court convicts "B" of adultery. Afterwards, "C" is prosecuted for bigamy in marrying "B" during A's lifetime. "C" says that she never was A's wife. Decide the relevancy of judgment against "B", for offence of bigamy against "C".

9(c) [10 marks]

"A" is on his trial for murder of "C". There is evidence to show that "C" was murdered by "A" and "B", and that "B" said — "A" and I murdered "C". Whether the statement of "B" may be taken into consideration as relevant evidence by the court, against "A"?

10(a) [20 marks]

Discuss in short the cases in which statement of relevant fact by person who is dead is relevant. Support your answer by illustrations.

10(b) [10 marks]

Express your views based on decided case of Supreme Court that whether newspaper report is a oral evidence or documentary evidence or hearsay evidence? Whether it is reliable? Decide.

10(c) [10 marks]

"A", a client, says to "B" an attorney — "I wish to obtain possession of property by the use of forged deed on which I request you to sue". Whether this communication is protected under professional communications? Answer should be based on legal provisions.