Uttarakhand Civil Judge (Mains) 2016

Law – II (Evidence and Procedure) · compulsory paper

CIS-04 · 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.

Mahachand's wife Dayawati was the owner of Gatimaan circus. Suryaveer used to lookafter the display and management of the circus at different places as its manager. On 15-01-2014 Gatimaan circus was brought to Haridwar for public display. Abhaykant was running a grocery shop at Haridwar. Simultaneously as a registered moneylender he also gave money on loan to the people. During the period of running of the circus Suryaveer used to purchase day-to-day necessaries from the shop of Abhaykant. During the same period on a promissory note Suryaveer took a loan amount of ₹ ten thousand from Abhaykant and put some equipments of circus as a pledge in possession of Abhaykant. On 19-03-2014 the circus management planned to shift the circus to Rishikesh. Suryaveer contacted Abhaykant and requested him to release the circus equipments from pledge and give them back to him. Suryaveer also promised to Abhaykant that from Rishikesh he will send the payment of loan amount with interest. Abhaykant did not agree to it. He said that he will not return the circus equipments until he receives the payment of loan amount. Looking to the circumstances Mahachand, who was a sales business man at Dehradun wrote a letter to Abhaykant that he gives his surety to make the payment of entire amount. But still Abhaykant did not return the circus equipments. After making payment in instalments from Rishikesh finally on 25-05-2014 payment of entire money was made to Abhaykant. Thereafter, on 27-05-2014 Mahachand contacted Abhaykant and told him that since he has paid the entire due amount so he should settle the accounts and return the circus equipments to him. But Abhaykant did not return the circus equipments and started claiming more money. Due to this both the parties developed strained relations. With a view to harass Mahachand, Abhaykant on 17-06-2014 filed a complaint before Magistrate Court at Haridwar against Mahachand for cheating under Section 420 of Indian Penal Code. Due to that complaint Mahachand was arrested on 28-06-2014 and was released on bail on 16-07-2014. The hearing of the criminal case was held for a period of more than two years. Ultimately on 08-02-2017 the court acquitted Mahachand from the charges.

Looking to the matter as above mentioned prepare a draft of plaint for claiming compensation for malicious prosecution. In reply to the above plaint also prepare a draft of the written statement for the defendant. 40

OR

On 20-01-2015 on the basis of an agreement plaintiff Ramanand was appointed on the post of manager in M/s. Avon Computers Pvt. Ltd. at Nainital. Conditions of service and payment of salary were subject to the terms and conditions in the agreement. Aforesaid appointment of Ramanand was on salary of ₹ twenty-five thousand per month for a term of five years from the date of appointment. Plaintiff has alleged that the defendant company dismissed him from the post of manager on 15-03-2017 without any sufficient reasons. Plaintiff states that he sincerely performed his duties by following

the conditions of service in the agreement. Defendant company was also satisfied with his work performance because according to plaintiff the company never gave any adverse comments against his duties. All of a sudden on 15-03-2017 company dismissed Ramanand from the service. Plaintiff submitted his representation on 24-03-2017 before the defendant against his wrongful dismissal from service. Plaintiff also states that while dismissing him from service the defendant company has not paid him salary for the month of January and February 2017. Due to wrongful dismissal the plaintiff has to suffer mental and financial damage. According to the defendant the company has not denied giving appointment to plaintiff Ramanand as per the conditions of the agreement. Defendant states that during the service plaintiff Ramanand was careless towards his duties. He was in the habit of disobeying the instructions of company due to which company's work was adversely affected. Defendant states that from 26-12-2016 to 31-12-2016 plaintiff Ramanand without any leave or notice remained absent from duty. On being asked the reasons for absence by the defendant, plaintiff did not give any satisfactory reply. On 17-02-2017 company found that from the funds allocated for company's work plaintiff misappropriated an amount of ₹ Thirty Five Thousand and for that money he made forged entries into the records. This act of plaintiff amounts to be a gross misconduct. Since plaintiff was working against the interests of company, therefore, he was dismissed from the service of company on 15-03-2017. Plaintiff Ramanand states that his dismissal order dated 15-03-2017 has been issued by the defendant in complete violation of the principles of natural justice, so it is liable to be cancelled by the court. In the form of specific and ordinary damages plaintiff has claimed a compensation of ₹ two lakhs from the defendant.

On the basis of above facts prepare a case, frame the issues and decide the case by supporting legal provisions and case laws. 40

Group - A

2. (a) Subject to the pecuniary or other limitations prescribed by any law, the suits which are for the partition of immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate. Elaborate. 10

2. (b) When a suit can be instituted before any one of the two or more courts, and afterwards the suit is instituted in any court, then describe the procedure for transferring the suit to the other court. 10

2. (c) After institution of the suit, discuss the prescribed procedure for summoning the defendant and witnesses. What is the law for discovery of documents and other physical objects ? Describe the penalty for default as above. 20

3. (a) Explain the supplemental proceedings as has been mentioned under Code of Civil Procedure, 1908. Mention it's merits and demerits too. 20

3. (b) Particulars of set-off should be given while preparing written statement. Explain the effect of set-off. 10

3. (c) 'A' sues 'B' on a bill of exchange. 'B' alleges that 'A' has wrongfully neglected to insure 'B's goods and is liable to pay compensation to him, which he claims to set-off. Decide. 10

4. (a) Discuss in detail the procedure relating to framing of issues as provided under Civil Procedure Code. 20

4. (b) Explain the law relating to appointment of receivers. Mention the rights and duties of the receiver. 20

5. (a) Explain the procedure, extent and limitations of the power of revision of the court which has been provided under Code of Civil Procedure, 1908. Differentiate between the review and revision too.

5. (b) Discuss the powers of Appellate Court as given under Civil Procedure Code. 10 20

5. (c) Discuss the power of Supreme Court to transfer suits etc. 10

Group - B

6. (a) Who is an accomplice ? Discuss the relevancy and admissibility of the evidence given by an accomplice as provided under law of evidence. 10

6. (b) 'A' is accused before the Court of Session of having given false evidence before 'B', a Magistrate. Can 'B' be asked as to what 'A' said to him ? Consider. 10

6. (c) Can a police officer be compelled to say whence he got the information as to commission of an offence ? Consider and decide. 10

6. (d) At least how many witnesses would be required to proof a fact in any case before the court ? Discuss the law. 10

7. (a) What do you understand by estoppel ? Discuss in detail the law relating to evidence of estoppel and mention it's exceptions. 20

7. (b) What is the conclusive proof of legitimacy of a child ? Discuss related law. 10

7. (c) Discuss the presumption of evidence law with reference to dowry death. 10

8. (a) What is cross-examination ? What questions are lawful during the cross examination of a witness ? Explain. 20

8. (b) 'A' is accused of a crime. During the investigation it comes to the notice of the police that 'A' has gone somewhere from his house. Examine. 10

8. (c) 'A' is on his trial for the 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". Examine the relevancy of this evidence. 10

9. (a) What is summary trial ? Which offences would be tried summarily? Which court is competent to conduct summary trial ? Discuss the summary trial procedure. 20

9. (b) Mention the law relating to limitations for cognizance of certain offences as has been provided under Code of Criminal Procedure, 1973. 10

9. (c) Explain the law in relation to confirmation of order of death sentence as passed by the Court of Session. 10

10. (a) Judgement shall be written in the language of the court. In case death sentence is awarded special reasons should be given in the judgement. Explain with the help of relevant law. 20

10. (b) What is plea-bargaining ? Discuss with the help of relevant statutory provisions. 10

10. (c) Distinguish between acquittal and discharge. Support your answer with the help of statutory provisions. 10