

HIGH COURT OF MEGHALAYA
SHILLONG

The Higher Judicial Services Examination

Paper II

Maximum Marks: 100

Time Allowed: Two Hours

Note: Answer all questions. Answer to part (a) and (b) of each question shall not exceed 100 words. Write the correct response to each of the sub-parts of part (c) of each of the questions.

The Transfer of Property Act, 1882

Question no. 1

(a) A, a Hindu, who has separated from his father B, sells to C three properties X, Y and Z, representing that A is authorized to transfer the same. Of these properties, Z does not belong to A, it having been retained by B on the partition; but on B's death. A as heir obtains Z. C, not having rescinded the contract of sale, requires A to deliver Z to him. Will C succeed? Decide and refer to relevant statutory provision.

6 marks

(b) A transfers Rupees 500 to B on the condition that he shall execute a certain lease within three months after A's death, and, if he should neglect to do so, to C. B dies in A's life-time. Will disposition in favour of C take effect. Decide in the light of relevant statutory provision.

6 marks

(c) (i) A transfers a plot of land to B subject to the condition that B shall not be entitled to possession of the plot of land until the death of X. B's interest is

- X) Vested interest
- Y) Contingent interest
- Z) Conditional limitation

2 marks

(ii) Which provision of the T.P. Act enunciates the "*doctrine of Lis pendens*"

- A) Section 50
- B) Section 51
- C) Section 52

2 marks

The Code of Criminal Procedure

Question no. 2

(a) As a magistrate you receive a police report regarding the existence of public nuisance in a locality of the municipality where due to open drains, heaps of dirt, pits, public excretion by humans for want of lavatories breed mosquitoes and the consequent spread of diseases. The municipality in its response to the report expresses inability to help for want of funds.

Discuss how you will proceed as a magistrate under Section 133 Cr.P.C in this matter. Refer to relevant case law.

6 marks

(b) An accused is charged for committing rape on a girl of tender age of 12 years. The evidence shows that though actually rape was not committed, accused attempted to commit rape. However, there is no separate charge under Section 376 read with Section 511 IPC.

How would you decide the matter? Refer to relevant provisions of law.

6 marks

(c) (i) Cognizance of an offence under Section 498-A of IPC cannot be taken by a court on the basis of a complaint made by:

- D) the brother of the father of the victim
- E) the brother of the mother of the victim
- F) any person not related to victim by blood, marriage or adoption

2 marks

(ii) When any person is sentenced to death, the sentence shall direct that he be

- G) hanged by the neck till he is dead
- H) hanged till his death

l) put to death by hanging

2 marks

The Indian Penal Code

Question no. 3

- (a) Three friends A, B and C with the intention of assaulting X, gave him a beating and in the course of which A stabbed X in the abdomen resulting in X's death.

Discuss the liability of each in the light of relevant statutory provisions. **6 marks**

- (b) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending in good faith to save the child. The child however dies due to fall.

Discuss A's liability and refer to relevant provision of law. **6 marks**

- (c) (i) Section 95 of the IPC deals with which of the following defence:

- j) Communication made in good faith
- K) Private defense
- L) Trifles

2 marks

- (ii) While working at a railway station a husband and his wife used quarrelsome and threatening language against each other in presence of numerous other persons. The couple is liable for:

- M) Affray
- N) Riot
- O) No offence

2 marks

- (iii) Common intention and same or similar intention are

- M1) different from each other
- N11) one and the same
- O111) same as well as common

2 marks

The Limitation Act, 1963

Question no. 4

- (a) A and B are co-sharers of a house in equal shares. A sells his portion of house to C by a registered sale deed on 10th December 2018 but without giving option of prior purchase to B guaranteed under an Act. B dies in car accident on 15th December, 2018 leaving behind his minor son C, aged 10 years. The ordinary period of limitation to enforce right of prior purchase is one year from the date of registration of sale deed. Discuss upto what time can C enforce the right of prior purchase and refer to relevant provision of law. **6 marks**

- (b) A took a loan of Rupees 5 lakh from a bank and did not repay the same. On the last day of period of limitation of three years. A handed over a duly signed post-dated cheque by him in favour of the bank for Rupees one lakh which was honoured three days after the last date of period of limitation. Discuss whether the bank can recover the balance amount. Refer to relevant provisions of law. **6 marks**

- (c) (i) Where a special law prescribes a period of limitation for an application and appeal which is different from that prescribed under the Limitation Act, the provisions contained in Sections 4 to 24 of the Limitation Act shall

- P) Apply directly
- Q) Not apply
- (R) Apply only to the extent permitted under the special law

2 marks

- (ii) In which of the following cases can you seek extension of period of limitation under Section 5 of the Limitation Act:

- Y) Suits

- Z) Applications under Order XXI of CPC
A) Appeals

2 marks

The Code of Civil procedure

Question no. 5

- (a) As a mortgagor X sues Y for redemption of certain property alleging that he has mortgaged it with possession to Y. The mortgage is not proved and the suit is dismissed. X files another suit against Y for possession of the same property claiming to be the owner thereof. **6 marks**

Discuss whether the subsequent suit is barred.

- (b) A sues B for Rupees 15000. B has a promissory note for Rupees 20000 duly executed by A in his favour before five years. The court has pecuniary jurisdiction upto Rupees 20000. Discuss whether B can set-off any amount due to him on the promissory note. **6 marks**

- (c) (i) Striking out, adding or substituting parties is dealt under;

- C) Order 1, Rule 8 CPC
D) Order 1, Rule 10 CPC
E) Order 1, Rule 13 CPC

2 marks

- (ii) Who amongst the following cannot bring a suit in relation to a public nuisance:

- F) Advocate General
G) Two or more persons with the leave of the court
H) Any private person who has not sustained special damage

2 marks

- (iii) After the institution of a suit, parties can adjust or settle it by an agreement or compromise under:

- I) Order 23, Rule 3 CPC
J) Order 23, Rule 1-2 CPC
K) Order 22, Rule 1-6 CPC

2 marks

The Indian Evidence Act, 1872

Question no.6

- (a) G who pleaded guilty before the Judge on the day of framing charge, fell ill and died due to heart stroke before the judgment was delivered by the court. G had also made confession against B who was jointly charged with him. Evidence was recorded and appreciated. How would you, as a trial court, proceed to decide?

Give reasons in support of your decision

6 marks

- (b) C invites B for a coffee at home. B accepts invitation and accordingly reached his home on the day decided by both. F, N, B, C and others were enjoying celebration and in the meantime Y came and attacked B with knife and fled away from the place of occurrence. FIR was lodged against Y by C who happened to be witness to occurrence but was declared hostile without seeking permission for cross examination of C by the prosecution. What you will as a defense counsel do?

Give reasons.

6 marks

- (c) (i) In which of the following cases can evidence be given to show facts different from the contents of a written document:

L) A agree in writing to sell a horse for Rupees 10000 or Rupees 15000. Evidence to show which price was given.

M) A sells by deed to B "my land containing 500 square meters at Noida". Evidence of the fact that the land meant to be sold was situated at a different place.

(N) A sells to B by deed "my house at Amritsar". A has no house at Amritsar, but has a house at Ambala of which B is in possession since execution of the deed. Evidence of the fact that the deed related to the house at Ambala.

2 marks

(ii) An accused was taken by the police to the doctor for treatment. While the policemen stood outside at the door of the hospital, the accused confessed to the doctor about his guilt. This confession is:

- O) admissible
- P) not admissible
- Q) admissible only at the discretion of court

2 marks