

## MEGHALAYA HIGHER JUDICIAL SERVICE, GRADE-I 2023



PAPER-II

Full Marks-100

Date : 31.03.2023

Time-2 Hours

2:00 P.M. to 4:00 P.M.

Transfer of Property Act, Civil Procedure Code, Code of Criminal Procedure, Indian Penal Code, Indian Evidence Act, Limitation Act.

### TRANSFER OF PROPERTY ACT

- 1) A filed a suit for a decree for eviction of the defendant, D and recovery of possession and damages for illegal occupation. During the pendency of this litigation, D sold the suit property to X and Y by executing a registered sale deed. X and Y applied being impleaded as parties to the suit.

Discuss whether the transferee pendente lite must be impleaded as a party to suit. Justify your answer with the help of decided case laws. (10)

- 2) A bank proposed to E-auction an immovable property under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The respondent paid the consideration according to the Bank guidelines, and the Bank issued a sale certificate in his favour. As per the notification of the Bank, the sale was free from all encumbrances. After the completion of sale, the respondent was charged for property and maintenance taxes for a period before the auction.

Can the purchaser be made liable to pay the taxes after completing the sale and delivery of possession? Analyse the situation in light of the provisions of the Transfer of Property Act 1882. (10)

### Civil Procedure Code

- 3) A. Explain with example preliminary decree, final decree and decree, partly preliminary and partly final? (5)
- B. Explain with reasons whether the following can be termed as decree or order :- (5)
- Dismissal of suit or appeal for want of evidence or proof.
  - Order holding that the right sue does not survive.
  - Order of granting or refusing injunction.
  - Order of remand.
  - Rejection of plaint for non-payment of court fees.
- 4) A. Discuss the principle of constructive res-judicata with decided cases. Draw a distinction between the matter "directly and substantially in issue" and "the matter collaterally or incidentally in issue". (5)

### LIMITATION ACT

- 5) 'A' filed a suit for partition. In the said suit, the defendant 'B' could not appear, because the summons was served on a wrong address. The Preliminary decree for partition was passed accordingly. Thereafter the defendant 'B' filed an application under order 9 rule 13 Civil Procedure Code (CPC) which was dismissed by the Trial Court after hearing both the parties on merit. Being aggrieved by the such dismissal, 'B' preferred an appeal against the

dismissal of the said application for setting a side *ex-parte* decree, before the District Court. After the lapse of 3 years, 'B' had withdrawn the said appeal and filed an another appeal against the original *ex-parte* decree passed by The Trial Court. Since the said appeal was out of time, the 'B' filed an application for condonation of delay along with such appeal. In the Said delay application, it is pleaded by 'B' that he was pursued in a wrong forum by moving an application under order 9, rule 13CPC & as such he should get the protection of under section 14 of the Limitation Act. The District Judge allowed the application of the condonation of delay in filing the appeal against the said *ex-parte* decree by invoking the provision of Section 14 of the Limitation Act. Against the said order 'A' preferred an application under article 227 of the Constitution of India Before the High Court where The Hon'ble High Court held that the time spent in pursuing the remedy by filling the applicant under order 9 rule 13 CPC can not be excluded for calculating the limitation. As such the said appeal was dismissed as time bar. Now against such order of the Hon'ble High Court, 'B' decided to file a Special Leave petition before the Apex Court on the following points.

- i) Whether the time spent in the proceedings taken to set aside the *ex-parte* decree constitute "sufficient cause" within the meaning of Section 5 read with Section 14 of the Limitation Act, 1908 so as to condone the delay in preferring an appeal against the *ex-parte* decree on merits?
- ii) When an application filed under Order IX Rule 13 CPC has been dismissed on merits, whether regular appeal under Section 96 (2) CPC is barred? (5+5=10)

#### LAW OF EVIDENCE

- 6) It has been observed that legislations, now a days, incorporate presumption clauses therein. Discuss and identify provisions of presumptions clauses, its classification and the advantages of incorporation in the penal statute. (10)
- 7) Ms. Khubsurat, 11 years old girl, was kidnapped by Mr. Zalim Ghosh, a 30 years old man. He sexually exploited her for few days and then sold the girl to a brothel at Kolkata. Police rescued the girl and on the basis of her statement a case was registered against Zalim Ghosh. Ms. Khubsurat narrated about all atrocities to Magistrate who recorded her statement U/S 164 Cr.P.C. During the cross examination of the victim, the defense counsel asked so many unnecessary questions to the victims directly. One NGO called Mahila Insaff Foundation came to know about the process of trail and contacted you for advice and preparation of a petition to be submitted in the court.
  - a) Explain the manner in which such trail should be conducted, what kinds of power the court exercises while conducting the trail, what are the restriction (s) / protection (s) sanctioned under the Indian Evidence Act and the higher Judiciary in respect of trial of a child of sexual abuse cases. (4)
  - b) In the same trial following evidences were produced before the court by the prosecutors. The defense vehemently opposed the relevancy and admissibility of such evidences. Justify the relevancy and admissibility. (2+2+2)
    - i) Evidence about the fact that Mr. Zalim Ghosh was convicted earlier in two cases for molestation and rape.
    - ii) Mr. Rahim, a very close friend of Mr. Zalim Ghosh was admitted in the hospital in a very critical situation disclosed to the doctor attending him that he and Zalim Ghosh

sold the girl to the brothel owner. He subsequently died and Doctor was produced before the court as a witness to depose about the statement made by Mr. Rahim.

- iii) One chance witness deposed during the trial that he saw Mr. Zalim Ghosh in the vicinity where girl was sold by him (Zalim Ghosh). He gave a very holistic detail about the time, place and the manner in which girl was taken in that area by Mr. Zalim Ghosh. Discuss in detail about the relevancy and admissibility of the aforesaid evidence.

#### THE CODE OF CRIMINAL PROCEDURE, 1973

- 8) It is the duty to represent the executive for trying the offender. While broadly his responsibility is to see that the trial results in conviction, but he need not be overenthusiastically concerned about the outcome of the case. He acts as the officer of the court and is duty bound to assist them and ensure that the accused is not unfairly treated. He may withdraw from a case for reasons like public interest, paucity of evidence and can never surrender this power to withdraw to anyone else. Identify the person whose role has been described and explain the appointing process. Also discuss with case laws the various roles and powers of the person has during the criminal trial. (10)
- 9) 'A' an unmarried girl is raped by B. The father of the girl lodged the FIR against B after 7 days, explaining the delay. The father stated that members of the family took some time in lodging the FIR because they were discussing whether to initiate the prosecution or not, as the honour of the girl was in question. Can the FIR be relied upon by the court or the court should acquit the accused giving benefit of doubt? Give reason for your answer with reference to case laws. (10)

OR

Discuss the procedure relating to Sessions trial. What amendments do you suggest to simplify the procedure?

#### INDIAN PENAL CODE

- 10) A, an enemy of B, pointed a bottle looking like real acid bottle, at B to scare her. B treating the acid bottle as real one finds her life in danger and draws out a loaded pistol from her drawer and fires at A. Consequently, A dies on the spot. B is prosecuted for murder of A. B takes the defense of that she killed 'A' in exercise of right to private defense as she did not know that the bottle in the hands of A was an empty bottle of acid. Will B succeed in her defense? convicted? If he threw acid but the girl escapes injuries what offence has been committed by A? (5)
- 11) Identify the offences, if any, committed in the following situations: [2x5=10]
- i) "A" removes the gold bangle of a dead passenger after a train accident. Has "A" committed any offence, if yes, what offence?
- ii) 'A' is the paramour of 'Z's' and to be such property, which 'A' knows to belong to her husband 'Z', and to be such property as she has no authority from 'Z' to give. If 'A' takes the property dishonestly will he be liable, if yes what offence?
- iii) A Judge censuring in good faith the conduct of a witness, or of an officer of the Court, is the act of censuring amounts to an offence, if yes, what offence discuss.

- iv) 'A', shopkeeper, says to 'B', who manages his business "Sell nothing to 'Z' unless he pays you ready money, for I have no opinion of his honesty". What offence 'A' has committed, if he has made this imputation on 'Z' in good faith for the protection of his own interests.
- v) 'A', a women after quarrel with her husband and in-laws, ran towards a well stating that she would jump into it, and she was caught by her neighbors before she could reach it. Will the husband and the in-laws be liable for cruelty?