

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,1872

Question no.1

(a) A, a Muslim has a wife B and a son C. C in consideration of Rupees ten Lakh paid to him by his father executes a release deed of his share in the inheritance of A. A dies and C claims his share in the inheritance. Decide in light of the relevant provisions of the Transfer of Property Act,1872. **6 marks**

(b) A, a Hindu made a gift of her property to B, her nephew's daughter for life, and then to B's male descendants. If she should have no male descendants, then to B's daughter without power of alienation, but if there were no descendants of B, male or female, then to her nephew. B, who was living on the date of transfer died without issue. Discuss validity of the gift in favour of the nephew, who is living on death of B. **6 marks**

(c) (i) The shebait of a temple agree to appoint the family of E as pujaree from generation to generation to perform the services of the temple and make provisions for the expenses and remuneration of the office. The agreement is :

X) valid and not hit by the rule against perpetuity

Y) void being hit by the rule against perpetuity

Z) valid but hit by the rule against perpetuity

2 marks

(ii) A transfers property to B in trust for C, and directs B to give possession of the property to C when he attains the age of 25. C has _____ in the property

XI) vested interest

YI) contingent interest

ZI) no interest

2 marks

The Code of Criminal Procedure

Question no.2

(a) A postmaster is accused of having, on different occasions within a year, dishonestly misappropriated money paid to him by different persons for money orders. Can the postmaster be charged together and tried at one trial for all the three offences? Give reasons and cite the relevant provisions of Cr.P.C. **6 marks**

(b) An accused was convicted for the offence of murder and was punished with death sentence. The order of sentence was pronounced on the same day on which the order of conviction was passed. The counsel for the accused made no request for a hearing to accused before passing the order of sentence. Discuss the validity of sentence. **6 marks**

(c) (i) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application for award of compensation under

D) Section 357 Cr.P.C

E) Section 357 A Cr.P.C

F) Section 355 Cr.P.C **2 marks**

(ii) To avoid frequent quarrels in between his wife and his parents, A and his parents are living separately by mutual consent. Subsequently the mother of A files an application for maintenance under Section 125 Cr.P.C. The application is :

G) maintainable

H) not maintainable

I) premature **2 marks**

(III) At what stage and why accused in criminal trial is examined under Section 313 CrPC answer precisely. **2 marks**

The Indian Penal Code

Question no.3

(a) 'X', an accused along with two other 'Y' and 'Z' proceeded to A's house in order to take revenge of an insult by the brother of 'A'. They opened fire on members of 'A's a family .It was found that shots of 'X' did not hit anybody but the shots of 'Y' and 'Z' succeeded in killing 'A'.

Discuss the liability of each of the accused under the relevant provisions of Indian Penal Code. **6 marks**

(b) 'A' instigates 'B' to burn 'Z's house. 'B' sets fire to the house and at the same time, 'B' commits theft of property also.

Discuss the liability of 'A' and 'B'. **6 marks**

(c) (i) In order to claim the defense of unsoundness of mind under section 84 IPC, a person must be suffering from unsoundness of mind:

J) at the time, and, immediately before the commission of crime

K) at the time of commission of crime **2 marks**

L) at the time and immediately before as well after the commission of crime

(ii) Where a woman is assaulted with the intention of committing rape, right of private defense of such a woman can;

M) extend to any extent short of causing death of such a person

N) extend to causing death of such person

O) extend to the extent of causing grievous hurt of such person **2 marks**

The Limitation Act, 1963

Question no.4

(a) A right to sue accrues to 'N' during his minority. 'N' dies only one day after attaining majority and is succeeded by his son 'K' who is one month old on the date of death of 'N'. The period of limitation for the action is three years.

When does the period of limitation commence against 'K' and upto what time can he sue. **6 marks**

(b) A obtained a decree for possession against 'B' on First October, 2004. He applied for execution of decree on 26th September, 2018. For two years the execution of decree had been stayed by an order of injunction. The ordinary period of limitation for such execution applications is twelve years. **6 marks**
Discuss whether the application for execution is within time or not? Give reasons

(c) (i) A defendant does not raise the plea of limitation in a suit instituted after the period of limitation. Dismissal of such suit on the ground of limitation by the court is :

P) mandatory

Q) optional

R) discretionary **2 marks**

(ii) Where a debt is sought to be recovered both against the principal debtor as well as the surety, an acknowledgment by the surety in writing and duly signed by him on the last date of period of limitation will give fresh life to the right to sue against:

- S) both surety as well as principal debtor
- T) only surety
- U) neither surety nor principal debtor

2 marks

The code of Civil Procedure

Question no. 5

(a) A police sub inspector was dismissed from the services by the D.I.G. He challenged the decision in the High Court by filing a writ on the ground that he was not afforded a reasonable opportunity but the petition was dismissed on merits. He subsequently filed a suit and raised an additional plea that he was appointed by I.G.P and D.I.G was not competent to pass an order of dismissal against him.

Decide in the light of relevant section.

6 marks

(b) 'A' is liable to pay Rs 1 Lakh. The said amount is claimed by 'B' and 'C' adversely. 'A' does not dispute his liability and is willing to pay the amount to the rightful claimant. Advise 'A' how he can get discharged from his liability, cite the relevant provisions of Law.

6 marks

(c) (i) Where a case is not covered under order 39 Rule 1, interim injunction granted by a court in exercise of inherent power under Section 151 of C.P.C is :

- V) valid
- W) illegal
- X) void ab initio

2 marks

(ii) In which of the following circumstances can you allow amendments of pleadings:

- Y) where amendment takes away a right accrued to other party by lapse of time.
- Z) where amendments introduces events subsequent to suit.
- A) where amendment introduces a new and inconsistent case.

2 marks

The Indian Evidence Act, 1872

Question no. 6

(a) An accused with visible marks of injuries was straightway brought by the police from its prolonged custody to the magistrate. The magistrate immediately recorded his confessional statement while the sub-inspector accompanying him remained outside in the verandah of the Magistrate's office. The magistrate did not ask him how the accused came to be injured. Discuss the validity of the confession under the relevant provisions.

5 marks

(b) Discuss on whom does the burden of proof lie when an accused claims that his case falls within any of the General Exceptions in the Indian Penal Code?

5 marks

(c) (i) In the judgment titled *Birdhichand Sarda -versus- State of Maharashtra* (1984) 4 SCC 116, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. What are those principles?

4 marks

(ii) Under section 115 an estoppel against a statute is

OO) permissible

PP) not permissible

QQ) discretionary

1 mark

(d) What is the essential requirement for admitting electronic record in the form of secondary evidence? Which section of Evidence Act governs the same?

3 marks