

UTTARAKHAND HIGHER JUDICIAL SERVICE EXAMINATION-2012

Paper no. 3

Maximum marks -100

Time : 2 hours

- Note- (i) The question paper is divided into four parts. Each question of Part 'A', 'B' and 'C' carries 30 marks. Part 'D' carries 10 marks. All questions are compulsory in Part 'A', 'B' and 'C'. Only two questions are required to be attempted in Part 'D'.
- (ii) The candidate has a choice to answer the question either in Hindi or in English.

Part-A

Indian Evidence Act, 1872

1. Is the child witness, a reliable witness? What precautions are to be observed by the Presiding Officer of a Court -
- (i) When a child witness enters the witness-box? **15 marks**
- (ii) While evaluating the evidence of a child witness? **15 marks**
2. See 165 of the Indian Evidence Act, 1872 provides for the Judge's power to put questions he pleases. If given the chance to act as an Additional District Judge, how will you exercise such power and in what situations? Please illustrate. **15 marks**

Part-B

Code of Civil Procedure, 1908

3. Plaintiff files a suit against the defendant for a decree of permanent injunction restraining him from interfering in the shop in question which is situated at Hari Parvat, Agra (U.P.), India. Defendant files a written statement denying, first of all, that Hari Parvat is not in Agra; secondly, that Agra is not the part of Uttar Pradesh and thirdly, that Uttar Pradesh is not the part of Indian Union. Defendant also denied other averments of the plaint. On the date of first hearing, defendant insists that the issues be framed on proposition of facts affirmed by the plaintiff and denied by the defendant.

As a Presiding Officer of the Court, how will you frame the issues? Name the materials from which issues may be framed by the Court. **15 marks**

4. Discuss the circumstances under which the parties to an appeal are entitled to produce additional evidence. What is the mode of taking such additional evidence? **15 marks**

Part-C

Code of Criminal Procedure, 1973

5. John Milton in the last line of his poem, "On His Blindness" said, 'They also serve who only stand and wait!'.

You, as an Additional Sessions Judge, are trying three accused persons in connection with murder of 'V'. Accused 'X' inflicted blow of knife which pierced the heart of the victim, accused 'Y' inflicted a hard blow of stick on his skull and accused 'Z', who was father of accused 'X' and 'Y' was present on the scene of occurrence in order to see that no harm is done to his sons.

Please discuss the criminal liability, if any, of each one of the above accused. How will you hold them or any one or two of them guilty of murder of victim? **15 marks**

6. Is it true that one of the duties of an Additional Public Prosecutor attached to the court of Additional Sessions Judge is to frame the draft charge(s) and statement under Section 313 Cr.P.C. for the assistance of the Court? If yes, is the Presiding Officer bound to accept those drafts? If not, what for the public prosecutor is then appointed by the State Government?

What are the duties of Presiding Officer of such Court while framing charge(s) and examining accused under Section 313 Cr.P.C.?

15 marks

Part-DLegal drafting

7. Kindly frame charge(s) against the accused persons, as if the charge sheet has been submitted against them with the allegations, as have been mentioned in question no.5 in Part-C above. **5 marks**
8. Kindly frame issues in a suit filed by the plaintiff against the defendant for partition of their ancestral house. You are at liberty to imagine the facts by yourself. **5 marks**
9. Write the operative portion of the judgment granting preliminary decree in favour of the plaintiff in the back ground of the facts mentioned by you in question no.8 in Part-D above. **5 marks**