HIGH COURT OF SIKKIM

[CIVIL JUDGE CUM JUDICIAL MAGISTRATE (GRADE III) EXAMINATION 2018]

INSTRUCTIONS FOR THE CANDIDATES

1. Candidates are required to answer ten questions in all with at least one question from each part.
2. No candidate shall be allowed to enter the examination hall beyond 30minutes from the time of commencement of the examination.
3. No candidate shall be allowed to leave the examination hall before the expiry of one hour of commencement of the examination. Any candidate joining the examination late will not be allowed any extra time.
4. Candidate is not required to state his name or indicate any sign anywhere in the answer sheet which may be conceived as a mark of his identification. Candidate using additional answer sheet will not indicate their roll number, name or any other mark on such additional sheets.
5. No candidate is permitted to carry with him/her mobile phone, any electronic equipment capable of being used as means of communication, any book, slip or writing in any form capable of being used in examination.
6. Violation of these instructions will entail the cancellation of examination / expulsion of the candidate.

Total Marks : 200 **Time : 3 Hours**

PAPER – I PROCEDURAL LAW

PART –I

1. Answer the following. *MARKS*

(i) An order passed under section 151 of Civil Procedure Code 1908 is (1)
- (a) Appealable
- (b) Revisable
- (c) Not liable to be inferred with
- (d) Not reviewable

(ii) Where the appellant has withdrawn the appeal preferred against decree passed ex parte, the application under Order 9 rule 13 of C.P.C shall be- (1)
- (a) Rejected
- (b) Returned
- (c) Maintainable
- (d) Referred for opinion to the Appellate Court

(iii) Warrant Case means a case - (1)

(a) In which a police officer cannot arrest without warrant
(b) In which the court in the first instance, shall issue a warrant of arrest against the accused
(c) Relating to an offence punishable with imprisonment for a term not exceeding two years
(d) Relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years

(iv) Under sub section (1) of S. 146 of Cr.P.C, the Magistrate may attach the subject of dispute, if - (1)

(a) It is movable
(b) He decides that one of the parties was in possession of the said subject
(c) He is unable to satisfy himself as to which of them was in possession of the subject matter
(d) In relation to that a receiver is appointed by a Civil Court

(v) Inherent powers, under Section 482 Cr.P.C, can be exercised by – (1)

(a) Any Criminal Court
(b) The Supreme Court only
(c) The Court of Session and High Court
(d) The High Court

(vi) On an application made by a person apprehending arrest on an accusation of having committed a non- bailable offence, the High court or the Court of Session may, under S.438 Cr.P.C give the direction that - (1)

(a) He shall not be arrested till further orders
(b) He shall be released on bail without taking him into custody
(c) In the event of such arrest he shall be released on bail
(d) In the event of such arrest he shall be released on bail three days after the arrest

(vii) Three years period of limitation prescribed for taking cognizance of the offence punishable with imprisonment for a term not exceeding- (1)

(a) One year
(b) Three years
(c) Five years
(d) Seven years

(viii) Appeal against an order of acquittal by J.M.F.C in respect of an offence u/s 138 Negotiable Instrument Act can be filed in : (1)

(a) Special Court
(b) Court of Session
(c) High Court with leave of the Court
(d) C.J.M Court

(ix) The following is *not* the exception to the rule of hearsay (1)

(a) Dying Declaration
(b) Res gestae
(c) Experts Opinion
(d) Confession

(x) Test Identification parade is – (1)

(a) Substantive evidence
(b) Corroborative evidence
(c) No evidence
(d) Hearsay evidence

(xi) When the person who would otherwise be competent to compound an offence under section 320 of Code of Criminal Procedure is dead, then- (1)

(a) Offence cannot be compounded
(b) Offence can be compounded by any of the eye-witnesses
(c) Legal representative of such person can compound the offence without the consent of the court
(d) Legal representative of such person can compound the offence with the consent of the court

(xii) In relation to F.I.R, lodged under section 154 of Cr.P.C, which of the following statement is not correct? (1)

(a) It is not a substantive evidence
(b) It merely marks the beginning of the investigation
(c) It cannot be used as previous statement of any person
(d) The informant need not be an eye witness

(xiii) In which of the following sections of the Indian Evidence Act, 1872 provision as to refresh memory has been given (1)

(a) Section 141
(b) Section 149
(c) Section 159
(d) Section 158

(xiv) Which of the following facts need not be proved ? (1)

(a) The facts which are covered under the Doctrine of Resgestae
(b) The facts which are written in police statement

(c) The facts which are admitted
(d) None of the above

(xv) A fresh period of limitation shall be computed from the time when the acknowledgment was ..... (1)

(a) Signed before expiration of prescribed period
(b) Signed after expiration of prescribed period
(c) Oral agreement before expiration of prescribed period
(d) Oral agreement after expiration of prescribed period

(xvi) Which of the following cannot be decided by an Alternative Dispute Resolution (ADR) (1)

(a) The suit of civil nature, subject matter of which is an immovable property
(b) The suit of civil nature for recovery of money
(c) The suit of civil nature filed under Hindu Marriage Act
(d) A Criminal case which is of non- compoundable nature

(xvii) Under the principle of sub judice which of the following is not an essential condition for stay of suit..... (1)

(a) That the matter in the issue in the suit is directly and substantially is in issue in the first suit
(b) That the parties in the second suit are the same
(c) That the court in which the suit is instituted is competent to grant the relief claimed in the subsequent suit
(d) That the previous suit is pending in a Foreign Court

(xviii) Under the Criminal Procedure Code, 1973 who can file an application for plea bargaining? (1)

(a) The Public Prosecutor
(b) The investigating officer
(c) The Victim of the Offence
(d) The Accused of the Offence

(xix) Which one of the following sections of the criminal procedure code, 1973 provides that "no judge or magistrate shall try any case in which he is personally interested" ? (1)

(a) Section 478
(b) Section 477
(c) Section 479
(d) Section 481

(xx) "X" sues "Y" for money due on a bond. The Execution of the bond is admitted but "Y" says that it was obtained by fraud which "X" denies. The burden of proof is (1)

(a) On "Y"
(b) On "X"
(c) On the State
(d) On "X" and "Y" both

2. (i) Define the following (10)

(a) Judgment Debtor
(b) Legal Representatives
(c) Mesne Profits
(d) Res-judicata
(e) Decree

(ii) Write short answer to the following (10)

(a) Explain the term "*locus standi*"
(b) Explain the doctrine of "*just desert*"
(c) Whether the magistrate can proceed with the trial in absence of the accused? If "yes" what procedure the Magistrate Should adopt?
(d) Whether the parents are entitled to claim maintenance against their son us 125 of Cr.P.C ?
(e) Whether a victim has right to file an appeal against the judgment of acquittal? Explain with provisions of Cr.P.C ?

PART –II

3. (a) What are the provisions relating to rejection of plaint? (10)
Explain the conditions when a plaint can be rejected?

(b) Whether the rejection of plaint amounts to decree. Explain? (5)

(c) What are remedies available to the plaintiff against the order of rejection of the plaint? (5)

4. (a) What are the provisions relating to Revision u/s 115 of C.P.C 1908 ? (5)

(b) Explain when a revision is maintainable u/s 115 of C.P.C ? (5)

(c) What are 3 pillars on which foundation of every order of injunction rests ? (5)

(d) What is an Ex-parte decree ? Whether it can be set-aside at the instance of defendant by the same court? What remedy is available against an order rejecting an application for setting aside the ex parte decree? (5)

5. (a) Explain the provisions regarding Institution of a suit by an indigent person? (5)

(b) What procedure should be adopted by the court when the suit is instituted by a person claiming himself to be Indigent person? (10)

(c) What remedy is available under C.P.C to a person whose application for permission to sue as an indigent person is rejected ? (5)

PART III

6. Define the following as per Cr.P.C - (20)

(a) Victim
(b) Non Cognizable Offence
(c) Officer In-charge of Police Station
(d) Inquiry, Investigation & Trial
(e) Circumstantial Evidence

7. (a) Whether the court can alter any charge at any time during the trial? (20)
(b) What procedure is to be adopted by the trial court while alteration or addition of Charges?
(c) Who may be charged jointly?
(d) When an accused shall be discharged in a warrant case?
(e) Explain examination-in-chief, Cross-Examination & Re-examination? Whether witnesses can be recalled for recording of evidence?

8. (a) Who can compound the following offences :- (10)

(i) Offence u/s 323 of I.P.C
(ii) Offence u/s 343 of I.P.C
(iii) Offence u/s 344 of I.P.C
(iv) Offence u/s 407 of I.P.C
(v) Offence u/s 500 of I.P.C

(b) What is the procedure when an accused of unsound mind is tried before the court under chapter XXV of Cr.P.C? (10)

PART IV

9. (a) Define proved, disproved and not proved ? (4)

(b) What is meant by maxim "*Falsus in uno falsus in omnibus*" Whether it's a rule of evidence in criminal trial ? (4)

(c) Whether the facts forming part of same transaction are relevant facts? Define with an example? (4)

(d) Explain the term confession? (4)

(e) Whether confession to the Police Officer or confession by accused while in custody can be proved against him? (4)

10. (a) How much information received from accused may be proved u /s 27 of the Indian Evidence Act? (4)

(b) Whether the statement of a person who is dead is admissible evidence, If, yes, then under what circumstances? (4)

(c) What are public documents as provided u/s 74 of Evidence Act? (4)

(d) What is meant by burden of proof ? On whom burden of proof ordinarily lies? (4)

(e) Under what circumstances the presumption as to dowry death can be drawn against the accused u/s 113 B of the Evidence Act? (4)

PART V

11. (a) Define the following (6)

(i) Period of limitation
(ii) Bond
(iii)Promissory Note

(b) Whether the prescribed period for filling any appeal or application may be extended by the concerned court? If yes, what are the circumstances under which such extension is possible? (7)

(c) What are legal disabilities? How the period of limitation shall be computed in the cases filed by the parties suffering legal disabilities? (7)

12. What are the 4 major circumstances prescribed in Part III of the Limitation Act in which exclusion of the time in computation of period of limitation are allowed? (20)

PART VI

13. Who is Prescribed Authority within the meaning of The Sikkim Cultivator's Protection Act 1985? Describe the grounds on which the Prescribed Authority can terminate the cultivation by a cultivator under the said Act? (20)

14. (A) What is meant by "Commercial Establishment" within the meaning of section 2 (5) of Sikkim Shops and Commercial Establishments Act 1983? (10)

(B) To whom or to which establishments the provisions of the Sikkim Shops and Commercial Establishments Act 1983 does not apply? (10)

PART VII

15. Question Paper on language test is provided separately (20)

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