Civil Services (Main) Examination, 1999

LAW
(Paper II)

Time Allowed : Three Hours **Maximum Marks : 300**

QUESTION PAPER SPECIFIC INSTRUCTIONS

(Please read each of the following instructions carefully before attempting questions)

There are EIGHT questions divided in two Sections.
Candidate has to attempt FIVE questions in all.
Question Nos. 1 and 5 are compulsory and out of the remaining, any THREE are to be attempted choosing at least ONE question from each Section.
The number of marks carried by a question/part is indicated against it.
Wherever any assumptions are made for answering a question, they must be clearly indicated.
Word limit in questions, wherever specified, should be adhered to.

SECTION 'A'

1. Answer any three of the following (answer to each question must not exceed 200 words):

(a) The accused picked up a revolver and believing it to be loaded pulled the trigger with the criminal intention of shooting B dead. Fortunately for B, the revolver was not loaded and he escaped unhurt. What offence, if any, has the accused committed? Is it open to the accused to contend in his defence that when the intended offence was physically impossible of being accomplished on the facts as they turned out to be ultimately, he is entitled to a verdict of acquittal? **20**

(b) A and B are Hindus and are married under the Hindu Marriage Act, 1955. During the subsistence of their marriage A, the husband, embraces Islam and goes through a second marriage ceremony with C, his girl-friend. On the complaint of B, wife of the first marriage, A is prosecuted for the offence of bigamy under Section 494 of the Penal Code. Decide, citing relevant case law. **20**

(c) The accused succeeded in getting a decree of restitution of conjugal rights in his favour, but his wife, who was living separately with her parents, refused to rejoin him. He, thereupon, went to his in-law's place and there he had sex with his wife without her consent. The wife desires to have her husband criminally prosecuted for the offence of rape and seeks your legal advice. What advice will you give her? **20**

(d) Even if the master cannot actually control the way in which the servant does his work, because the servant is a skilled professional who knows his job and will carry it out in his own way, the master nevertheless remains liable for the negligence of the servant. Comment. **20**

2. (a) In the scheme of the Penal Code, "culpable homicide" is the genus and "murder" its species. All murder is "culpable homicide" but not vice-versa – Supreme Court in State of A.P. Vs Punnayya – 1977 Cr.L.J. 1 (S.C.). Discuss and illustrate. **30**

(b) What are the exceptions to the rule of strict liability? Briefly examine each of them. **30**

3. (a) "Statutory right affords no protection if negligence, unreasonable conduct, want of jurisdiction or irregularity is proved." Comment. **30**

(b)(i) Distinguish between the following: Libel and slander **15**

(b)(ii) Public nuisance and private nuisance **15**

4. (a) What do you mean by untouchability in the context of Protection of Civil Rights Act, 1955? Discuss, highlighting the salient features of the Act. **30**

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(b) Explain the nature, scope and extent of the liability of the polluter for environmental torts in the light of the "Polluter pays principle" as developed in recent Supreme Court decisions. **30**

SECTION 'B'

5. Answer any three of the following (each answer should not exceed 200 words):

(a) "The general rule undoubtedly is that no third person can sue or be sued on a contract to which he is not a party, but at bottom that is only a rule of procedure. It goes to the form of remedy, not to the underlying right." Critically comment on the principle of privity of contract in the light of the above statement and state whether you agree with the statement. **20**

(b)(i) No consideration is necessary to create an agency. Explain, giving reasons. **10**

(b)(ii) A owes B Rs. 1,000, but the debt is time barred, C signs a written promise to pay B Rs. 500 on account of the above barred debt. Is B entitled to enforce the promise against C? **10**

(c) What is the rule of caveat emptor? Explain the exceptions to this rule. **20**

(d) Explain, citing relevant case law, whether the penal provisions of Section 138 of the Negotiable Instruments Act cover a case where a cheque is dishonoured by a bank on the ground that the drawer of the cheque has closed the particular account on which he has drawn the cheque. **20**

6. (a) Critically examine the legal basis, scope and extent of the liability of a principal for the misrepresentations made or frauds committed by his agent. Would it be correct to say that the said liability is an extension of the principle of vicarious liability? **30**

(b)(i) Examine the obligation under the Indian Contract Act of a person to whom money has been paid by mistake. In this connection is there a distinction required to be drawn between a mistake of fact and mistake of law? **15**

(b)(ii) The plaintiff bank paid cash over the counter on a crossed cheque on which the defendant had forged the payee's endorsement. Can they claim return of the money by contending that it was paid by mistake? **15**

7. (a) "The doctrine of frustration is really an aspect of or part of law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done." Elucidate with suitable illustrations. **30**

(b) What tests would you apply to determine whether a person "consumer" within the meaning of Section 2(d)(i) of the Consumer Protection Act, 1986? What is the scope and effect of the "Explanation" added to the above sub-clause by the Amendment Act of 1993? Explain with the aid of suitable illustrations. **30**

8. (a)(i) A banker's cheque is a peculiar sort of instrument in many respects resembling a bill of exchange, but in some entirely different. Explain, highlighting the distinctive features of these two instruments. **15**

(a)(ii) A cheque is drawn payable to "B or order" and delivered to B. It is stolen and B's endorsement is forged. The Bank pays the cheque and debits the drawer's account. B sues the Bank and the drawer. Decide. **15**

(b) What are interconnected undertakings as determined in Section 2(g) [?] of the MRTP Act? Explain briefly how and when the Central Government may direct severance of interconnection between undertakings. **30**

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