

13th Limited Competitive Examination for promotion to the cadre of District Judge (Entry Level) against 10% quota for the year 2021-22 & 2022-23 combinedly under one and same selection process.

Date of Examination: 8th October, 2023 (Sunday)

Total Marks : 100

Paper:- Theory

Pass Marks : 40

Time : 3 Hours

Answer all the ten questions. Each question carries 10 marks.

1. What are tainted properties ? If a person not connected in any way with drug trafficking, buys a property, which is an illegally acquired property of a drug offender, will this property be also treated as illegally acquired property ?
2. Write notes in reference to Prevention of Corruption Act, 1988:
(I) Previous Sanction for Prosecution
(II) Criminal Misconduct by Public Servant
3. Explain the ambit and scope of section 50 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short 'NDPS Act). Does it apply to the search of luggage found with the accused ? Whether an application for re-analysis of a sample of alleged narcotic substance is maintainable under the NDPS Act ?
4. A confession made by an accused on the faith of a promise made by the police officer making the investigation that he would get off, if he made a disclosure of the offence committed by him or would get pardon. Whether such a confession made by the accused is admissible in evidence ? Answer citing the relevant provision of Law.
5. What is the scope of compromise in a civil suit ? Describe; (I) whether a compromise can contain property which is not the subject matter of the suit ? (II) How far the principle of estoppel applies ? And (III) Under what circumstances, the prior permission of the court is required for entering into a compromise ?

6. Discuss the powers of a Karta of Mitakshara joint Hindu family to make a gift out of joint family property. A Mitakshara joint Hindu family consisted of 'A', and his two brothers 'B' and 'C'. 'C' posted a registered notice to 'A', the Karta of the family communicating his intention to separate from the joint family. Two days afterwards 'C' withdrew his intention to separate which reached to 'A' indirectly. Subsequently 'C' dies. Decide whether 'C' died separated from the joint family.
7. What is the rule against accumulation ? What are the exceptions of the rule against accumulation ? Discuss.
8. What is the scope of liability of Directors and other officials of any company with respect to offences under Negotiable Instrument Act, 1881 ?
9. What is meant by Place of Suing and how do you determine the place of suing ? Mr. 'B' and Mr. 'C' pass a joint promissory note to Mr. 'A' at Banaras and made payable at Banaras. Mr. 'B' resides at Agra and Mr. 'C' at Shimla. Mr. 'B' and Mr. 'C' defaults the payment to Mr. 'A'. Hence, explain in which place Mr. 'A' can sue Mr. 'B' and Mr. 'C' under the provisions of the Civil Procedure Code, 1908.
10. 'Hearsay evidence is no evidence'. Explain this rule of law. Is hearsay evidence ever admissible ?

13th Limited Competitive Examination for promotion to the cadre of District Judge (Entry Level) against 10% quota for the year 2021-22 & 2022-23 combinedly under one and same selection process.

Date of Examination: 8th October, 2023 (Sunday)

Total Marks : 60

Paper:- Judgment Writing

Pass Marks : 24

Time : 2 Hours

At least one judgment must be written in English. Each question carries 30 marks.

1. Judgment relating to Civil Matter.

The plaintiffs' suit for specific performance has been decreed by the learned trial court, however, the same has been assailed before the first Appellate court. You have to decide the First Appeal.

The case of the plaintiffs:-

According to the plaintiffs, the second defendant was the owner of the suit property. The second defendant executed a sale deed dated 22.02.1988 (registered on 07.03.1988) in respect of the suit property in favour of the plaintiffs for a consideration amount of Rs. 22,000/-. The plaintiffs claimed that they paid a sum of Rs. 17,000/- to the second defendant at the time of execution and registration of the sale deed and the balance of Rs. 5000/ was to be paid subsequently as and when the vendor would request for the said payment. The second defendant retained the registration receipt in regard to the sale deed and agreed to deliver the same to the plaintiffs against payment of balance sale consideration. The plaintiffs claimed that with the execution and registration of the sale deed by the second defendant, his right, title and interest in the suit property passed on to the plaintiffs and possession of the land sold was also delivered to the plaintiffs. According to the plaintiffs, the second defendant was not receiving the balance of Rs. 5000/- and did not deliver the registration receipt, therefore, the plaintiffs issued a legal notice calling upon the second

defendant to deliver the registration receipt so that the plaintiffs would collect the original registration sale deed but the second defendant denied receipt of Rs. 17000/- and claimed that the entire consideration was due. In such circumstance, it became necessary for the plaintiffs to file the suit. The plaintiffs sought a decree for the second defendant to deliver the registration receipt relating to the sale deed dated 22.02.1988 by receiving the balance consideration of Rs. 5000/- and that in case the second defendant had already obtained the original sale deed from the office of the sub-registrar, then for a direction to deliver the same to the plaintiffs.

The second defendant in his written statement took a plea that he agreed to sell the property as he was in urgent need of money for purpose of marriage of his daughter. He admitted the execution and registration of the sale deed dated 22.02.1988 but claimed that the plaintiffs did not pay any part of the consideration and the statement of the plaintiffs in this regard was false. The second defendant alleged that the plaintiffs played a fraud upon him by stating in the deed that Rs. 17000/- was already paid towards the sale price and making him to sign the sale deed without reading the deed. Defendant no. 2 asserted that when he demanded the sale price, the plaintiff avoided the same saying that the sale consideration would be paid later, he retained the registration receipt and did not deliver possession. Defendant no. 2 pleaded that it was the intention of the parties that the title of the properties should pass to the plaintiffs and possession should be delivered only on payment of the consideration of Rs. 22,000/- by the plaintiffs and as the plaintiffs failed to pay the said consideration, he cancelled the said sale deed dated 22.02.1988 on 18.03.1988 and sold the property to the first defendant on 29.08.1988 for a consideration of Rs. 19,000/- and also delivered possession of the property to the first defendant and ever since then the defendant no. 1 is in possession of the suit property. The defendant no. 2, therefore, contended that as the title and possession remained with him even after execution and registration of the sale deed in favour of the plaintiffs and as the sale price was not paid, he was justified in cancelling/rescinding the sale and the plaintiffs were not entitled to any relief.

In the trial court the plaintiffs pleaded that the part payment of Rs. 17,000/- was made at the time of scribing and execution of the sale deed, however, the Scribe (PW 5) deposed that in his presence no consideration money was paid by the plaintiffs to the executant. On behalf of the plaintiffs, to prove the place of part payment, PW 3, who happens to be the attesting witness of the sale deed dated 22.02.1988 and brother of one of the plaintiffs, deposed that the payment of Rs. 17,000/- was made at the residence of his sister. PW 6, who was one of the plaintiffs, deposed that the part payment of Rs. 17,000/- was made at her residence. The second defendant, however, disputed as to passing of any consideration amount.

In the kind of evidence brought before the court, the trial court held that the sale deed dated 22.02.1988 recited that Rs. 17,000/- was received by the vendor prior to execution of the sale deed and the balance of Rs. 5,000/- was to be paid at the time of transfer of the registration receipt. Thus, the trial court decreed the suit. The second defendant while challenging the judgment of the trial court submits that the evidence as to place of part payment led on behalf of the plaintiffs were totally inconsistent and were beyond the pleadings. It is contended that as per the pleadings of the plaintiffs the part payments of Rs. 17,000/- were made at the time of scribing and execution of the sale deed but the evidences in this regard were beyond the pleadings. It is further contended that there was no endorsement on the sale deed by the Sub-Registrar about payment of Rs. 17,000/- in his presence nor any receipt existed to show the payment of Rs. 17,000/- prior to preparation and execution of the sale deed. The second defendant contends that the vendor even after execution of the sale deed has got right to dispute and challenge the non-payment of part consideration amount.

In the aforementioned background of the case you have to decide the following questions:-

- (i) Whether the plaintiffs had paid Rs. 17,000/- towards the sale price to the second defendant ?

- (ii) Whether the title of property passed on to the plaintiffs on execution of the sale deed ?
- (iii) Whether the second defendant-vendor was justified in cancelling/repudiating the sale on the ground that the sale consideration was not paid ?
- (iv) Whether the plaintiffs would be entitled to the reliefs claimed in the suit ?

Decide with reference to the case laws.

2. Judgment relating to Criminal Matter

On 02.02.2023 while the informant's minor daughter ('x') aged about nine years was playing along with other children at the informant's house, at around 4:00 PM the accused took her away on the pretext of buying toffee for her. The minor victim ('x') did not come back. The minor was taken away when the informant was not at home. When he returned, he along with his brother searched for the minor victim throughout the night. In the morning to the dismay of the informant the body of 'x' was found. The FIR was lodged at 1:00 PM on 03.02.2023 by the informant the father of 'x' with the allegation of rape and murder against the accused.

During investigation the accused was arrested on 03.02.2023 at 5:15 AM, the stone used for inflicting injuries on the deceased was recovered and marked as Exhibit E/1. The accused person's trouser was sealed on the spot and marked as Exhibit E/2. The stone was recovered in front of two witnesses. The vaginal semen was marked as Exhibit E/3. The accused was examined medically on 04.02.2023 at 12:30 PM at the Primary Health Centre which opined that 'nothing is suggested that person examined is unable to perform sexual act'. Birth certificate of the victim was marked as Exhibit E/4 wherein the date of birth of the victim is recorded as 02.01.2014. Statement of prosecution witnesses were examined and chargesheet filed under Sections 376(2)(i), 376A, 302 of the Indian Penal Code (in short 'IPC') and Sections 3 and 4 of Protection

of Children from Sexual Offences Act 2012 (in short 'POCSO') against the accused.

After due opportunity to the accused of hearing, the charges were framed under Sections 376(2)(i), 376A, 302 IPC and Sections 3 and 4 of POCSO Act 2012. The accused denied the allegations and stated that on the date of incident he was at his in-laws house with his wife where stayed from where he was arrested.

At the trial, eleven prosecution witnesses were examined. PWs 1, 2 3 and 4 have supported the fact that mother of the deceased was treating the accused as her brother on the eve of Rakhi and on such occasions she was also tying Rakhi on the hand of the accused. There is evidence to show that the victim was having full confidence in the accused, being well known to the accused since before. The accused had been frequently visiting the victim's house.

PWs 2 and have also stated about the cordial relationship the accused had with the victim's family. They have stated that they genuinely believe the victim was being taken away for buying toffees for her.

The evidence PWs 1, 2 and 4 is consistent for sustaining the fact that the victim believed and trusted in the accused as if he was her 'mama'.

The toffee was purchased by the accused from the shop of PW 5. He has supported this fact in his deposition. PWs 7 & 9 have also supported this fact at the trial.

Medical Board comprised of PWs 10 and 11. They examined the cadaver of the victim. They preserved the smear from the victim's vagina, prepared slides and sent the same for forensic examination. Medical examination of the dead body revealed five injuries. The injuries on the body were as follows:-

- (i) 3x 1 cm on left thigh on interior the knee

- (ii) 6 x 1 cm on right leg
- (iii) 2 x 1 cm abrasion on right thigh
- (iv) 1 x 1.5 cm on nose
- (v) 1 x 1 cm on right wrist

In their cross-examination PWs 10 and 11, the two doctors, admitted that the injuries were simple in nature and likely to be caused by falling. Fracture was also found on left rib. The two doctors have mentioned in the post mortem report that this injury can be caused by falling on stone. No sign of sperm ejaculation was found on the external skin near the genital organ of the deceased. The genital organ was found to be healthy and no marks of any injury were present on the private part of the deceased. There was also no injury on the head of the deceased.

At the deposition doctor has stated that if forceful intercourse was committed upon the victim of such tender age, there was a possibility of the vagina being ruptured and bleeding from her genital. There, however, no such finding in the post mortem report. The FSL report regarding vaginal swap also does not help the prosecution to prove the offence under Sections 3 and 4 of Protection of Children from OCSO Act.

Apart from certain casual observations made, which are not supported by evidence led by the prosecution, there is no evidence to support penetration into the vagina, mouth, urethra or anus of the victim or on any part of the body.

It is submitted on behalf of the accused that none of the PWs are eye witnesses to the occurrence. Most of the witnesses are hearsay witnesses. At best they have stated about the victim being last seen with the accused and the chain of circumstance is incomplete to hold the accused liable for the offences alleged.

PWs 10 and 11 (doctors) have only found simple injuries on the person of the deceased. The opinion regarding death being caused by haemorrhage also does not prove homicidal death as it has been stated that such death could have occurred due to fall. The doctors have

specifically stated that there was no injury found on the private part of the deceased. The vaginal swap also did not support sexual penetrating assault, no motive has been brought during trial to sustain the theory of killing and sexual penetrating assault. In absence of any medical evidence, lack of motive and lack of ocular evidence, the prosecution case must fail and the accused is entitled to clean acquittal.

Learned APP on the other hand, has argued that PWs 1 to 9 have supported the fact of the victim being taken away by the accused on the allurements of buying toffee. The purchasing of toffee has also been supported by the PWs as also the fact that the victim was having full trust and faith in the accused so as to voluntarily accompany him. The recovery of the dead body of the victim next morning after being taken away by the accused is sufficient to establish the prosecution case based on these glaring circumstances which complete the chain. In the statement recorded under Section 313 also the accused has not come forward with any explanation as to when he parted ways with the victim. The irresistible conclusion therefor is the guilt of the accused. The victim had suffered homicidal death is apparent from the medical evidence which is repeat with injuries on the victim's body. The irresistible conclusion is of the accused having committed the offence of killing and penetrating sexual assault upon the victim.

Decide as a trial court
