

Himachal Pradesh Civil Judge (Main) Examination, 2015

PAPER – I: CIVIL LAW-I

Time Allowed: 3 Hours

Maximum Marks: 200

Note:

Part A is compulsory. Answer three questions from Part B. Support your answers with relevant statutory provisions and appropriate judicial pronouncements as may be desirable. Answers to all the parts of a question may be written at one place in continuity.

Part A

1. 'A' alleges that he entered into an agreement with 'B' on January 10, 2014 at Shimla. In the agreement 'B' contracted to sell to 'A' his house for rupees ten lakh. An amount of rupees fifty thousand was paid by 'A' to 'B' as earnest money at the time of agreement. 'A' also alleges that he was ready and willing to perform his part of the contract and on May 15, 2014 he tendered rupees nine lakh fifty thousand, the balance amount of consideration to 'B' and called upon him to execute a sale-deed. But 'B' refused to do so. 'B' denied that he entered into any agreement to sell his house to 'A' on January 10, 2014 or any other date. He also denied about any earnest money paid to him by 'A'. 'B' further alleges that he already entered into an agreement with 'C' for selling his house on December 15, 2013. 'A' wants to file suit.
 - (a) Draft a plaint on behalf of A 10
 - (b) Draft a written statement on behalf of 'B'. 10
 - (c) Write judgment deciding the suit. 20
2. (a) "Presumptions may be looked as the bats of law, flitting in twilight but disappearing in the sunshine of actual facts." Explain while discussing the different kind of presumptions recognised by the Indian Evidence Act. 20
- (b) An estoppel is where "a man's own act or acceptance stopeth or closeth, up his mouth to allege or plead the truth". Explain with reference to the Indian Evidence Act. 20
3. (a) Explain 'res judicata' and 'stare decisis'. Distinguish between them. 10
- (b) Explain the preliminary decree in 'suits for foreclosure'. What the court may direct while passing such decree ? 10
- (c) What questions are to be determined by the court under Section 47 of the Code of Civil Procedure ? 10
- (d) X obtains a decree against 'A' and attaches A's property in execution of the decree. Y, who holds a decree against 'A' and 'B', applies for the execution of his decree by attachment and sale of A's property which is attached in execution of X's decree. Whether 'Y' is entitled to share in the proceeds of the sale of A's property.





- 10
4. (a) "Once a judgment is signed and pronounced by the court it becomes 'functus officio'. Explain with exceptions. 10
- (b) Discuss the procedure for setting aside the sale under the execution of a decree. 10
- (c) 'A' files a suit against 'B' for the property X and the court passes a decree for the property Y. When the time of appeal had elapsed the mistake is detected. Advise 'A', what options are available to him? 10
- (d) Explain the term caveat'. Discuss the right to lodge a caveat. 10
5. (a) Explain the definitions of 'Civil District'. 'District Judge', 'Government' and 'Small Cause' under the Himachal Pradesh Courts Act, 1976. 10
- (b) Explain the provisions regarding instruments, not duly stamped inadmissible in evidence' under the Indian Stamp Act, 1899. 10
- (c) Explain the 'specific performance of part of contract under the 'Specific Relief Act, 1963. 10
- (d) Explain the 'recovering possession of property under the Specific Relief Act, 1963. 10
6. (a) "Evidence has to be weighed and not counted." Explain. 10
- (b) An accused, whilst in police custody, gives information to the investigating officer that he purchased the murder weapon from a particular dealer. Then the accused went with the investigating officer to the place of the dealer and point him out. Whether the information given by the accused and the evidence of the investigating officer regarding this are admissible ? 10
- (c) What do you mean by primary and secondary evidence? Explain the distinction between Sections 64 and 91 of the Indian Evidence Act. 10
- (d) Where a party fails to question his opponent's witness, the presumption is that his evidence is accepted.' Explain. 10
7. (a) Explain the principle contained in Section 32 of the Indian Evidence Act. What observation was made by the Supreme Court in regard to the 'dying declaration' in the case of P.V. Radhakrishna Vs. State of Karnataka, A.I.R. 2003 S.C. 2859 ? 10
- (b) What kinds of facts are to be taken as relevant under Section 7 of the Indian Evidence Act ? 10
- (c) 'X' was the wife of Y. Two months after the death of Y, X' marries 'Z'. Five months after the marriage, a son was born to X. Who is legally the father of the son 10





- (d) Explain the 'impeachment of credit of a witness'. Under the Indian Evidence Act; how can the credit of a witness be impeached ? 10
8. (a) What extensive changes have been made in the Code of Civil Procedure by the amendments of the years 1999 and 2002 for reducing the delay in civil litigation? What are your suggestions for reducing the delay in civil litigation ? 10
- (b) 'A' files a suit against 'B'. for permanent injunction restraining 'B' from demolishing the common gate of adjoining houses of 'A' and 'B'. The court restrained B vide an interim order. While 'B' was in abroad, his wife 'C' demolishes the common gate in violation of interim injunction. 'A' files an application under Order 39, Rule 2-A of the Code of Civil Procedure, against 'C'. Whether 'C' is liable under Order 39, Rule 2-A of the Code of Civil Procedure? What is to be proved by 'A' in that case ? 10
- (c) 'A' is accused of murdering a woman X. It is sought to be proved that two years ago he (A) murdered his wife Y. So A had the mens rea to murder 'X'. Is the evidence relevant and admissible? 10
- (d) When may a witness be called hostile ? What is the evidential value of such a witness? 10

Paper-II : CIVIL LAW

Time : 3 Hours

Maximum Marks: 200

Note : - Question No. 1 and 8 are compulsory. Attempt three questions from the rest. In all five questions are to be attempted. Write legibly quoting provisions of the law and relevant Case law. Each part of the question must be answered in sequence in the same continuation. Give reasons for your answer.

1. (a) With the help of decided cases, distinguish between void and illegal contracts. 10
- (b) Discuss in detail with the help of recent Supreme Court Judgments "Mutual Consent" as a ground of divorce under Hindu Law. 10
- (c) Distinction between Implied Contract and Equitable Estoppel. 10
- (d) How is the period of limitation reckoned under the Indian Limitation Act, 1963. Refer to recent Case Law. 10
2. (a) Discuss in detail Contract through E-mail under the Indian Contract Act. Refer to recent Case Law. 13
- (b) Explain the term 'Anticipatory Breach of Contract'. What are the effects of anticipatory breach of contract ? Refer to Case Law. 14
- (c) A buys freight from 'B' for 5000 bales of cotton on a ship belonging to 'B' to be carried from Bombay to Afghanistan. The freight is paid in advance and the goods are put on board the





ship. While the ship is still lying in the harbour, the export of cotton to Afghanistan is prohibited under orders of the government, and the voyage is abandoned. Is 'A' entitled to a refund of the freight paid in advance ? Discuss with reference to Cases.

13

3. (a) What is partition according to Matakshara law? Is Communication of intention to separate necessary to effect a partition? Can a minor demand partition? If so, under what circumstances ?

14

(b) Discuss doctrine of "relation-back". What changes in the doctrine of 'relation-back' have been brought by the Hindu Adoption and Maintenance Act, 1956 ? Refer to recent Case Law.

13

(c) What remedy, if any, is available to a Hindu wife under the Hindu Marriage Act, in the following cases

(i) The Marriage was contracted her father, when she aged 15 years.

6

(ii) Her husband left her and taken up a job in the near city and refuses to join her.

7

4. (a) "The foundation of Doctrine of Election is that no one can approbate and reprobate at the same time." Discuss and illustrate your answer.

14

(b) "Redeem up and foreclose down." Comment with the help of decided cases.

13

(c) 'A' lease is effected for one year with the right given to the lessee to renew it, if he so likes. Can the lessor terminate it, against the wishes of the lessee on the expiration of one year ? Give reasons and also mention the relevant provisions of Transfer of Property Act.

13

5. (a) What do you understand by acknowledgement of liability? Discuss the effect of acknowledgement on the running of Limitation period.

14

(b) Explain the effect of fraud or Mistake on Limitation and also mention the relevant provisions of the Limitation Act. Refer to Case Law.

13

(c) Can a court entertain an appeal after the expiry of the period of Limitation. If so, under what circumstances? Give your reasons.

13

6. (a) What are the obligations which resemble a Contract? Discuss the rights and liabilities of parties to such an obligations. Illustrate your answer.

13

(b) Critically examine with reference to Section 14 of the Hindu Succession Act, 1956 the circumstances under which a Hindu female can hold property inherited by her husband before the passing of the Act as full owner. State the effect of Section 14 of the Hindu Succession Act, 1956, upon the right of a reversioner.

14

(c) The Law of Limitation bars the remedy in a Court of law when the period of Limitation has expired. However, there are certain exclusions in the computation of the period of limitation." Explain.





- 13
7. (a) What do you understand by a Wring Contract? What are its essentials ? Can a Wagering Contract be enforced in a Court of Law? Is partnership entered into to carry on business of Wagering Contracts valid?
- 14
- (b) 'A' a Coparcener having incurred debts in connection with a business commenced in his individual capacity sold joint family properties for inadequate consideration and his brother Coparcener 'B' only joined him in executing the sale. Does the transaction bind the nephews of A. (Who are sons of 'B'). Is the transaction of sale void, even against the sons of A? Discuss.
- 13
- (c) What do You understand by "Clog on Redemption"? Does taking collateral benefit amount to Clog on Redemption ? Answer with illustration and case law.
- 13
8. (a) Discuss with the help of decided cases the term "Non-residential Building" under the H.P. Urban Rent Control Act, 1987. Whether the profession of an Advocate as practice of law is business or not? Give reasons and also refer the case Law.
- 13
- (b) Answer the following with the help of Case law:
- (i) New Tanant 5
- (ii) Subletting 5
- (iii) Bonafide requirement. 5
- (c) Discuss the law relating to recovery possession in case of tenancies for limited period. What is the importance of the Rent Controller permission in this regard? Refer to relevant provisions of H.P. Rent Control Act, 1987 and decided Cases.
- 12

Paper III : CRIMINAL LAW

Time: 3 Hours

Maximum Marks: 200

Note : - Question No. 1 and 2 are compulsory. Attempt Three questions from the rest, selecting at least one question from each Part A and Part B. In all, Five questions are to be attempted. Write legibly quoting provisions of law and the relevant case-laws. Each part of the question must be answered in sequence in the same continuation. Give reasons in support of your answer. Each question carries 40 marks.

- 5
1. (a) A', a foreigner, stabbed 'B' another foreigner in a foreign vessel on the high sea. Both 'A' and 'B' were brought for treatment to Bombay where 'B' died of wounds. 'A' is also present in Bombay Since 'B' died in Bombay can A be tried for murder in Bombay Court? Give reasons and legal provisions in support of your answer.
- 5
- (ii) Information was received that some persons were gambling in a tent. A party consisting of a Havildar and a Constable of the National Volunteer Corps arrived outside the tent and surrounded it. Soon after, the gun fire was heard and the deceased who was inside the tent was found to have been shot dead. The constable admitted that he has fired the shot-hut



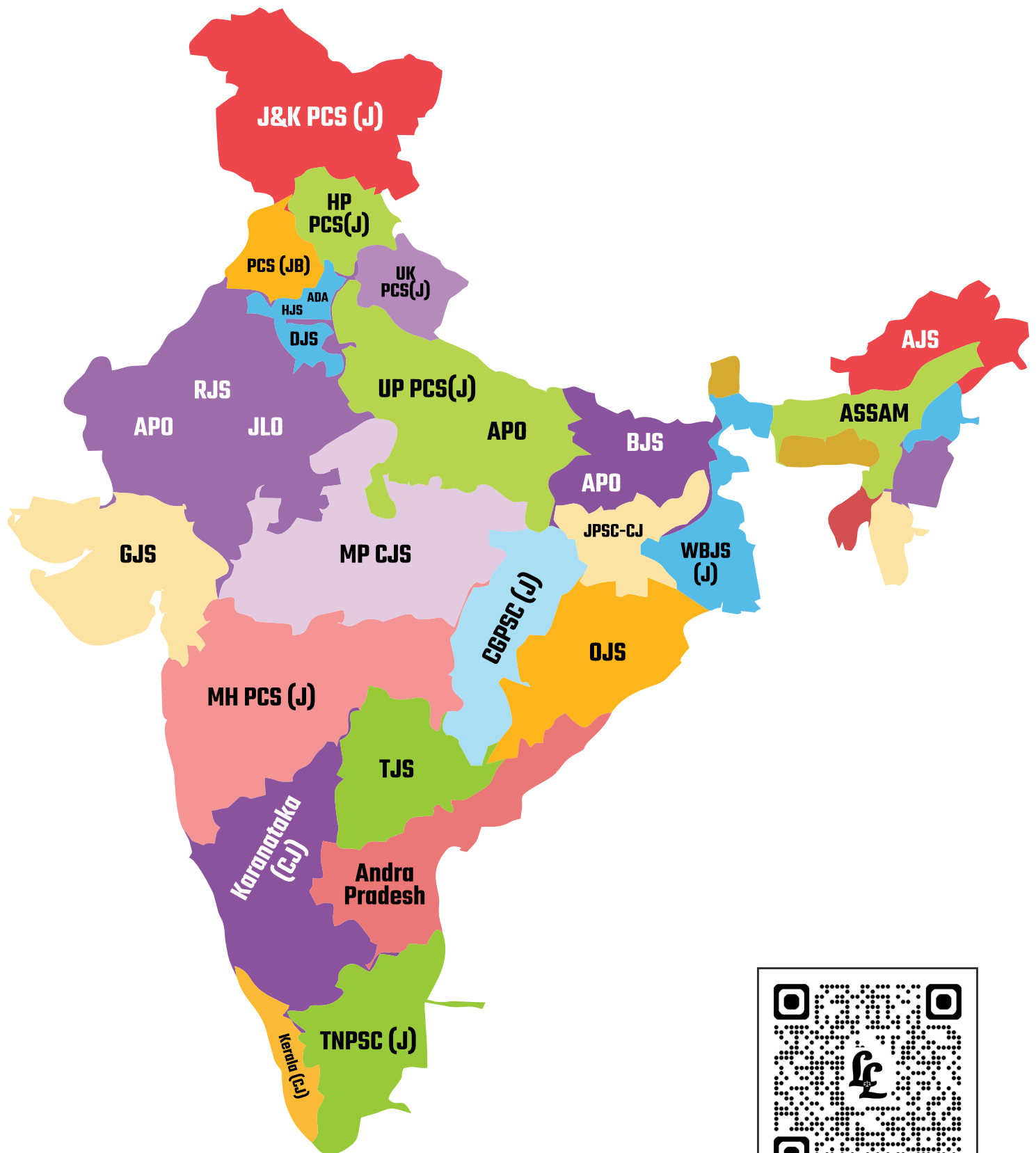


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
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pleaded that he had done so in obedience to the orders of the Havildar. Was the action of the constable justified ? Decide, by referring to relevant law and case law.

5

(b) (i) 'A' was engaged in a fight with another man 'B' when the latter's wife with a baby on her shoulder, intervened. A hit at the woman but the blow accidentally struck the baby who died two days later from the effects of the blow. Was 'A' liable for the murder of baby? Give answer by quoting reasons, law and case law if any.

(ii) A was prosecuted for abducting a girl below the age of 16 years, under the belief that she was above 18 years. The age of the girl was proved below 14 although she looked more than 16 years. The girl had told the accused (A) that she had attained 18 years of age and the accused on a bonafide belief on her statement, took her away. Can 'A' plead mistake of fact? Give law and reasons in support of your answer.

5

(c) (i) Reeta believed herself to be pregnant and asks 'X' to help her to undergo abortion. 'X' administers her some obnoxious substance to cause miscarriage but later on, it was found that Reeta was not pregnant at that time. Reeta and 'X' are charged for attempt to cause miscarriage. Discuss their liability under law giving reasons and law in support of your answer

5

(ii) X enters house of Y to commit theft. He is caught by 'Y' who starts beating him mercilessly. 'X', apprehending death or grievous hurt at the hands of 'Y' pulls out a knife and stabs 'Y' who is injured seriously. Can 'X' put up plea of right to private defence for causing injuries to 'Y' ? Explain with reasons and legal provisions.

5

(d) (i) The accused had repeatedly tried his luck at the matriculation examination, but even failed at his last chance. In frustration, he decided to put an end to his end to his life. He a pact with his 19 years old wife made a who told him that they both should depart from the world at the sam time, and that he should kill her first so that she would predecease him. Thereupon the accused struck her with a crow-har and not being able to witness a self-perpetrated tragedy, he ran out with blood stains on his body. The wife died.

Can the accused be convicted for charge of murder punishable under Section 302 IPC If not, what offence he has committed ?

Support your answer with reasons reasons and law.

5

(ii) 'X' with the intention of murdering "Z", instigates 'Y' a child below 7 years, to do an act which may cause Z's death. 'Y' in the absence of X in consequence, does the act and thereby causes Z's death. Discuss the criminal liability of 'X' and 'Y' under law. Give reasons in support of your answer.

5

2.

(a) (i) Distinguish between 'Cognizable' and 'Non-cognizable' offence.

3

(ii) What do you mean by 'Inquiry' and 'Investigation' under Cr.P.C. ? Distinguish between the two.

3

(iii) State the contents of Charge briefly. Also state power of Court to alter charge.

4





- (b) (i) When is a private person bound to assist a Magistrate or police officer ? 3
- (ii) What are the different classes of Criminal Courts under Cr.P.C.? How are these courts created ? 4
- (iii) Distinguish between a 'Summon Case' and Warrant Case. 4
- (c) (i) Discuss the purpose and procedure for taking security for keeping peace under Section 107 Cr.P.C. and after conviction under Section 106. 5
- (ii) State briefly the procedure to be followed in a Trial before a Court of Sessions. 5
- (d) (i) Write a brief note on Summary Trials under Cr.P.C. 3
- (ii) Under what circumstances and by whom a Anticipatory Bail can be granted under Cr.P.C.? 3
- (iii) Discuss briefly the power of Revision vested in High Court under Cr.P.C. On what grounds is this power exercised ? 4

Part A

2. (a) Under what conditions a person shall be deemed to have committed an offence under Section 138 of the Negotiable Instruments Act, 1881 ? What is the punishment prescribed for the offence under the Act? 10
- (b) (i) Discuss the nature of the offence committed under Section 138 of the Negotiable Instruments Act? Is the mens rea essential for the liability under this Section ? 5
- (ii) 'A' has given a cheque to 'B' of Rupees Five lakhs for the purpose to invest the money in some beneficial scheme. Later on he decided not to invest and conveys his wish to B. The cheque is returned unpaid by the Bank on the ground of insufficiency of funds in the account. Can 'B' invoke Section 138 of the Instruments Act against A ? Give answer with reasons. 5
- (c) (i) Upon whose complaint, a competent court can take cognizance of an offence punishable under Section 138 of the Negotiable Instruments Act ? 5
- (ii) Comment upon the criminal liability of any person nominated as Director of a company by virtue of his holding office under government, under Section 141 read with Section 138 of the Negotiable Instruments Act. 5
- (d) (i) Discuss the provisions made under Section 143 of the Negotiable Instrument Act, for speedy trial of a case under Section 138. 5
- (ii) State the objectives of insertion of Chapter XVII (Section 138 to 143) in the Negotiable Instruments Act, 1881 ? 5

3.





- (a) (i) Explain and illustrate the meaning of the following terms under Himachal Pradesh Excise Act, 2011
- (a) Excise Revenue
- (b) Vehicle.

$$2\frac{1}{2} + 2\frac{1}{2} = 5$$

- (ii) Discuss the powers of investigation, search and seizure vested in Excise Officers under IP. Excise Act, 2011.

5

- (b) (i) Discuss in whom the power to close liquor vends, is vested under the H.P. Excise Act, under Section 14.

5

- (ii) Discuss briefly the procedure and power to withdraw licenses, vested under Section 32 of H.P. Excise Act, 2011, with the Authority granting such licenses.

5

- (c) (i) State the punishments prescribed for the offence of mixing noxious substance with liquor under Section 41 of the H.P. Excise Act, 2011.

5

- (ii) Discuss the penalty prescribed under Section 46 of the H.P. Excise Act, 2011, for consumption of liquor in public places.

5

- (d) (i) On whose complaints, a judicial Magistrate shall take cognizance of any offence punishable under various sections of the H.P. Excise Act, 2011. Is there any limitation period to file complaints Discuss.

5

- (ii) Who has the power of composition of offences under Section 66 of the H.P. Excise Act, 2011. Under what circumstances the composition fees is accepted Discuss.

5

Part B

5. (a) Explain and illustrate the following terms under Wild Life (Protection) Act, 1972 :

- (a) Uncured Trophy
- (b) Vehicle
- (c) Weapon
- (d) Animal.

$$2\frac{1}{2} + 2\frac{1}{2} + 2\frac{1}{2} + 2\frac{1}{2} = 10$$

- (b) Write a brief note on the constitution and functions of the National Board for wildlife under Section 5-A & C of the Wildlife (Protection) Act, 1972.

10

- (c) What are the purposes for declaring any area as sanctuary ? State briefly the powers of collector to settle rights of any person in or over the land comprised within the limits of the sanctuary ?

10

- (d) State briefly about the Constitution and Functions of Central Zoo Authority of India.

10





6. (a) What do you understand by power to compound offences? Discuss briefly the procedure of compounding the offences under Section 54, of the Wildlife (Protection) Act, 1972. 10
- (b) Upon whose complaint a court can take cognizance of any offence against the Act under Section 55 of the Wildlife (Protection) Act, 1972. 10
- (c) State briefly the provisions of Appeal under Section 46 of the Wildlife (Protection) Act, 1972, from an order refusing to grant or renew a licence for dealing in Trophies and animal articles. 10
- (d) Discuss briefly the procedure for forfeiture of property derived from illegal Hunting and Trade under the Wildlife (Protection) Act, 1972. 10
7. (a) Briefly explain and illustrate the following terms under the Indian Forest Act, 1927 :
(i) Cattle
(ii) Timber
(iii) Forest Officer
(iv) Reserved Forest. $2\frac{1}{2} + 2\frac{1}{2} + 2\frac{1}{2} + 2\frac{1}{2} = 10$
- (b) Discuss the powers powers and duties of Forest Settlement Officer under the Indian Forest Act, 1927. 10
- (c) Which of the offences are punishable under Section 33 of the Indian Forest Act, 1927 ? And what are the penalties ? 10
- (d) Discuss with the power and procedure for the seizure and release of seized property under Section 52 and 53 of the Indian Forest Act, 1927 ? What is the punishment for wrongful seizure ? 10
8. (a) What do you understand by 'Right of Private Defence'? When, right of private defence of body and property can extend to causing of death? Refer to case laws. 10
- (b) (i) Distinguish between "Wrongful Restraint" and Wrongful Confinement. Give illustrations 5
- (ii) Distinguish between 'Murder and 'Culpable Homicide not amounting to Murder. Refer to case laws. 5
- (c) (i) Distinguish between Kidnapping and Abduction. Give illustrations. 5
- (ii) Distinguish between 'Criminal Trespass' and House Trespass 5
- (d) (i) Distinguish between "Criminal Misappropriation of Property" and "Criminal Breach of Trust". 5
- (ii) Distinguish between 'Mistake of Law and Mistake of Fact. illustrate your answer. 5

