

UTTARAKHAND HIGHER JUDICIAL SERVICE EXAMINATION-2015

Paper No. 2

Maximum Marks:100

Time: 2 hours

Note:

- (i) All questions are compulsory.
 - (ii) Credit will be given to the answers supported with case law and relevant provisions of law.
 - (iii) Candidates can answer the questions either in English or in Hindi.
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CIVIL LAW

1. Who is a tenant by holding over? Is there a distinction between a tenant at sufferance and a tenant by holding over? Is there any distinction between a trespasser and a tenant by holding over? Can a tenant at sufferance, who is dispossessed by the landlord by use of force, maintain a suit for possession under Section 6 of the Specific Relief Act?
(10 marks)
2. What is the principle of restitution under Section 144 of the Code of Civil Procedure? A defendant's appeal against a decree against him is successful and the decree for money is set aside. In the meantime, his property was sold in court auction pursuant to the decree, as there was no stay of execution. The property is purchased by a stranger auction purchaser. The defendant applies for restitution under Section 144 of the Code of Civil Procedure. What is the position in law? Can restitution be ordered without invoking Section 144? Discuss.
(10 marks)
3. Does an easement create an interest in property? Discuss the distinction between easement and a licence. What is an easement of necessity? What is a customary easement and is it different from a customary right? Discuss.
(10 marks)
4. What is a contract of indemnity? Is a contract of guarantee a species of a contract of indemnity or is it of a different nature? A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. Will the surety be discharged in such circumstances and, if so, why?
(10 marks)

CRIMINAL LAW

1. 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?

(10 marks)

2. What do you mean by 'incriminating evidence'? How the same is put to the accused? Please illustrate by way of giving examples.

(10 marks)

3. What do you mean by 'public servant'? Please illustrate with the aid of decided cases.

(10 marks)

4. Discuss the law relating to right of private defence of person and property. Please cite case-laws also.

(10 marks)

CONSTITUTIONAL LAW

1. What is the doctrine of prospective overruling? Can the High Courts resort to prospective overruling? Can it be used in all branches of law? Discuss with the case-law.

(10 marks)

2. What is the doctrine of eclipse? Can it be applied to a post-Constitutional law? Discuss with the aid of case-law.

(10 marks)
