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Assam JS Grade - I

Previous Year Paper (Mains)
Paper-II 19 Dec, 2015



IN THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam: Nagaland: Mizoram & Arunachal Pradesh)
Main Written Examination for direct recruitment to Grade-I of Assam Judicial Service, 2015.

Total Marks: 100 (One Hundred)

Time: 3 (Three) hours.

PAPER-II

GROUP-A

1.

$\frac{1}{2} \times 4 = 2$

- (i) What is rule against perpetuity? Whether a covenant for presumption offends the rule against perpetuity?
- (ii) 'A' transferred a property to 'B' for life, and after his death, 'C' and 'D' equally to be divided between them, or to the survivor of them. 'C' dies during the life of 'B'. 'D' survives 'B'. In the event of B's death to whom the property will pass?
- (iii) Explain the meaning and distinction of vested interest and contingent interest. When does a contingent interest become a vested interest?
- (iv) 'A', a Hindu, who has separated from his father 'B', sells to 'C' three fields, 'X', 'Y' and 'Z' representing that 'A' is authorized to transfer the same and enters into a contract for sale with 'C'. Of these fields 'Z' does not belong to 'A' having been retained by 'B' on the partition; but on 'B's death 'A' as heir obtains 'Z'. State, if 'C' may require 'A' to deliver 'Z' to him, if so when and under what circumstances? State the principle of law.

2.

$1 \times 3 = 3$

- (i) What is the effect of transfer of immovable property with intent to defeat or delay the creditors of the transfer? Explain indicating the provision of law.
- (ii) How and under what circumstances transfer of immovable property can be effected?
- (iii) Whether a contract for sale of immovable property creates any interest of charge on such property?

3.

$1 \frac{1}{2} \times 2 = 3$

- (i) What is the basic difference between sale and mortgage?
- (ii) When and under what circumstances a mortgagor can exercise his power of redemption?

4.

$1 \frac{1}{2} \times 2 = 3$

- (i) In what manner a transfer is effected in a gift of immovable property?

(ii) Can there be gift of existing and future property and also in favour of unborn person?

5. $1 \frac{1}{2} \times 2 = 3$

(i) Can there be transfer by one of the co-owners of an estate? If so, when and what is the effect of such transfer in respect of other co-owners?

(ii) Can bona fide holder of property under defective title be evicted? If so, by whom and under what circumstances?

GROUP-B

1. $1 \frac{1}{2} \times 2 = 3$

(i) What is res judicata and constructive res judicata? Whether the term 'former suit' denotes a suit instituted earlier or a suit decided earlier?

(ii) Which Court(s) and under what circumstances can stay a proceeding and execution of a decree?

2. $\frac{1}{2} \times 4 = 2$

(i) 'A' is a tradesman in Calcutta, 'B' carries on business in Delhi. 'B', by his agent in Calcutta, buys goods of 'A' and requests 'A' to deliver them to the East Indian Railway Company. 'A' delivers the goods accordingly in Calcutta. 'A' wants to sue 'B' for the price of goods. Indicate the place, where the suit can be filed.

(ii) When and under what circumstances objection as to the place of suing can be allowed by an appellate Court?

(iii) Whether objection regarding pecuniary jurisdiction can be raised before the revisional Court, if so, when?

(iv) Whether recourse to inherent powers in the face of, or in conflict with specific provision of suit is permissible?

3. $\frac{1}{2} \times 6 = 3$

(i) 'A' lets a house to 'B' at a yearly rent of Rs.1200/-. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. 'A' sues 'B' in 1908 only for the rent due for 1906. Can 'A', afterward, sue 'B' for the rent due for 1905 and 1907 or both? Explain with reference to the appropriate provision of law.

(ii) When and under which provision of law a Court, issuing summons by registered post with acknowledgement due, can declare that the summons had been duly served?

(iii) State the mode/manner in which summons can be served on a defendant, who is either avoiding service, or that for any other reason summons can't be served in ordinary way.

- (iv) What course is open to the plaintiff, if his suit is dismissed under rule 2 or rule 3 of Order 9 of the Code?
- (v) What order should a Court pass, if the notice of hearing is found to be refused by the Counsel on the ground that he is no longer in the case?
- (vi) Whether an ex parte divorce decree obtained against wife can be set aside at the instance of the aggrieved wife, even after the death of the husband? If so, under what provision of law and who should be brought on record as respondents?

4. 1x3=3

- (i) What are the questions which can be determined by a Court executing the decree? Explain with reference to the relevant provision of law.
- (ii) Can a judgment debtor plead new plea in execution proceedings?
- (iii) Whether execution of the decree can be refused, if so, when and under what circumstances?

5. 1x2=2

- (i) What relief is available to an appellant, whose appeal is dismissed under Rule 11 Sub Rule (2) or Rule 17 of Order 41 of the Code of Civil Procedure. State with reference to the relevant provision of law.
- (ii) When and under what provision of law an appellate Court can frame issues and refer them for trial to the original Court? State with reference to the provision of law, the duty of the Court from whose decree the appeal has been preferred.

6. 1½ x 2=3

- (i) Mention the documents registration of which is optional?
- (ii) Whether a family agreement is required to be registered?

GROUP-C

- 1. Write short notes on the following indicating the relevant provision of law and the exception, if any. 1x3=3
 - (i) Victim
 - (ii) Complaint
 - (iii) Investigation
- 2. 1x3=3
 - (i) Whether a wife, whose husband is living with another woman, would be entitled to claim maintenance allowance. In such a case, what plea should she take?
 - (ii) Whether a woman, whose marriage is performed in accordance with the Hindu rites with a man having a living spouse, is entitled to get maintenance allowance?
 - (iii) Whether an ex parte maintenance order can be set aside, if so, under which

provision of law?

3. Whether an Executive Magistrate can attach a property and appoint receiver? If so, under which provision of the Code and when? What is the relief available to the aggrieved person. 2

4. 1x3=3

- (i) State with reference to recent case law, the stage of proceeding and the procedure to be adopted by a Magistrate for causing an investigation under Section 156 Cr.P.C, in respect of a complaint?
- (ii) What is the procedure to be adopted by a Magistrate for issuing process in a complaint case, where accused person(s) is a resident of a place outside the jurisdiction of the Magistrate?
- (iii) 'A' was murdered by 'B' in 'C's house on 07.10.2015 at 9.30 P.M. 'C' rushed to the Police Station and orally informed that 'A' was killed by 'B' with a dao (sharp cutting weapon). Police made a G.D. entry. As it was a dark and raining night, Police visited the place of occurrence on the next date and on such arrival, 'B's wife 'D' lodged a written ejahar and Police registered a case under Section 302 IPC. Here, which one should be treated as FIR, the G.D. entry or the written information given by the wife of the deceased.

5. 1x3=3

- (i) Explain the evidentiary value of statements of witnesses, recorded under Section 161 Cr.P.C. and Section 164 Cr.P.C. Indicate the purpose for which such statements can be used in trial.
- (ii) When and under what circumstances a confession can be the basis for conviction?
- (iii) State with reference to the relevant provisions of law, the various factors which determines the jurisdiction of Court for trial.

6. 1x3=3

- (i) At what stage charge may be altered and what is the effect of alteration of charge?
- (ii) When can a Court of Sessions discharge an accused?
- (iii) What should be set out in a charge where 'A' is accused of giving false evidence at a given time and place?

7. 1x3=3

- (i) 'A' commits robbery on 'B' and in doing so voluntarily causes hurt to him. In what manner and for what offences 'A' may be charged and convicted of?
- (ii) 'A' exposes her child with knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. State under which provision of the Code and for what offence(s) of the Penal Code 'A' may be charged and convicted.

(iii) 'A' states on oath before the Magistrate that he saw 'B' hit 'C' with a club. Before the Sessions Court, 'A' states on oath that 'B' never hit 'C'. Here, for what offence, if any, charge may be found against 'A'.

8.

1x3=3

(i) What is the right of a victim in case of acquittal of the accused? State with reference to the appropriate provision of the Code.

(ii) Can an appellate Court take evidence? If so, under which provision of the Code.

(iii) Can a Sessions Court, dealing with a criminal appeal, pass order directing a Magistrate to take evidence?

9.

1 1/2 x2=3

(i) When and under what circumstances and to what extent a Sessions Judge, after delivering and signing the judgment, can alter or review the judgment?

(ii) A Sessions Judge by writing and delivering a judgment acquitted the accused person in a case arising out of a Police report. The informant coming to know about the said acquittal, filed an application before the Sessions Judge seeking retrial of the matter or for examining some additional witnesses on the ground that some of the vital witnesses were not examined. Write with reference to the relevant law, if such prayer can be entertained.

10.

1x3=3

(i) When and under which provision of law a Court can tender pardon to an accused?

(ii) Can a Court holding trial proceed against any other person not being the accused? If so, when and under which provision of law?

(iii) Can a Court holding a criminal trial call any person as witness after hearing the argument in the case? If so, under which provision of law.

GROUP-D

1. Write shorts notes on any three of the following:

1x3=3

(i) Fact.
(ii) Fact in issue.
(iii) Document.
(iv) Proved.
(v) Evidence.

2.

1x3=3

(i) On whom does the burden lie to prove the plea of alibi and under which provision of law the plea of alibi is admissible.

(ii) 'A' is accused of defaming 'B' by publishing an imputation intended to harm the reputation of 'B'. Here, whether the fact of previous publication by 'A' respecting 'B', showing ill-will on the part of 'A' towards 'B' is relevant?

(iii) When does existence of course of business become relevant fact?

3.

1x3=3

(i) State with reference to the relevant provision of law as to whether the confession made by accused while in custody of Police can be proved against him? Also indicate the exception, if any.

(ii) 'A' and 'B' are tried for the murder of 'C'. It is proved that 'A' said – "B and I murdered C". Whether the said confession can be considered against 'B'?

(iii) 'A' is on trial for murder of 'C'. There is evidence to show that 'C' was murdered by 'A' and 'B' and that 'B' said- "A and I murdered C". Here, whether the said statement can be considered against 'A' and 'B'. State with reasons.

4.

1x3=3

(i) Whether admissions are conclusive prove of the matters admitted and if they may operate as estoppels?

(ii) 'A' and 'B' separately sue 'C' for a libel which reflects upon each of them. 'C', in each case, says that the matter alleged to be libellous is true, and the circumstances are such it is probably true in each case or is neither. 'A' obtains a decree against 'C' for damages on the ground that she failed to make out his justification. Whether the fact is relevant between 'B' and 'C'?

(iii) 'A' prosecutes 'B' for committing adultery with 'C', A's wife. 'B' denies that 'C' is 'A's wife. But the Court convicts 'B' of adultery. Afterwards, 'C' is prosecuted for bigamy in marrying 'B' during 'A's lifetime. 'C' says that she never was 'A's wife. Whether the judgment against 'B' is relevant as against 'C'?

5.

1x3=3

(i) Which facts are to be proved by oral evidence?

(ii) When does a copy transcribed from a copy become secondary evidence of the original?

(iii) When does a copy of registered document become admissible as secondary evidence?

6.

1x3=3

(i) Which documents are public documents?

(ii) 'A' agrees in writing to pay 'B' Rs.5,000/- on 1st March, 2017. Whether, the fact that at the same time, an oral agreement was made that the money should not be paid till the 31st March, can be proved?

(iii) 'A' sells 'B' a horse and verbally warrants him sound. 'A' gives 'B' a paper in

these words "Bought of A, a horse for Rs.500." Whether 'B' may be allowed to prove the verbal warranty?

7.

1x3=3

- (i) 'A' wishes to prove a dying declaration of 'B'. Here, what fact 'A' must prove.
- (ii) 'A' accused of murder, alleges that, by reason of unsoundness of mind he did not know the nature of the Act. Here, on whom does the burden of prove lie and what type of insanity is to be proved.
- (iii) 'A' is charged with travelling on railway without ticket. Whether 'A' has any burden to prove, if so, what?

8.

1x3=3

- (i) 'A' intentionally and falsely leads 'B' to believe that certain land belongs to 'A' and thereby induces 'B' to buy and pay for it. The land afterwards becomes the property of 'A', and 'A' seeks to set aside the sell on the ground that, at the relevant time of sale he had no title. Is he entitled to prove his want of title? Explain with reference to the relevant provision of law.
- (ii) When and under what circumstances Court can presume that a person has committed the offence? Is such presumption hit by Articles 14 and 21 of the Constitution of India?
- (iii) Whether principle of *falsus uno falsus omnibus* is applicable in criminal trial? Explain.

GROUP-E

1. Write short notes on the following:

1x3=3

- (i) Gaining wrongfully and losing wrongfully.
- (ii) Dishonestly.
- (iii) Fraudulently.

2.

½ x 6= 3

- (i) 'A' sees 'Z' commit what appears to be a murder. 'A', in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes 'Z', in order to bring 'Z' before the proper authorities. State, with reference to the relevant provision of law, if 'A' has committed any offence.
- (ii) 'A' is at work with a hatchet; the head flies off and kills a man, who is standing by. Under what circumstances and which provision of law the act of 'A' is excusable?
- (iii) 'A' is in a house which is on fire, with 'Z', a child. 'B' and 'C' standing below hold out a blanket. 'A' drops the child from the housetop, knowing it to be likely that the fall may kill the child, but not intending to kill the child and

intending in good faith, the child's benefit. Here, if the child is killed by the fall, whether 'A' can be held guilty. Explain with reference to the relevant provision of law.

- (iv) Is there any restriction in exercising right of private defence of body and property, if so, under which provision of law?
- (v) Can there be right of private defence against a person of unsound mind and to the extent of causing death?
- (vi) 'A', a public servant, is authorized by a warrant from a Court of Justice to apprehend 'Z'. 'B', knowing the fact and also that 'C' is not 'Z', willfully represents to 'A' that 'C' is 'Z' and thereby intentionally causes 'A' to apprehend 'C'. Here, who has committed what offence(s)?

3.

 $\frac{1}{2} \times 4 = 2$

- (i) 'A' instigates 'B' to instigate 'C' to murder 'Z'. 'B' accordingly instigates 'C' to murder 'Z' and 'C' commits that offence in consequence of 'B's instigation. Here who has/have committed what offence(s)?
- (ii) What are the essential ingredients of 'criminal conspiracy'?
- (iii) What is necessary to establish to bring home the charge of conspiracy within the ambit of Section 120B?
- (iv) Can there be conviction with the aid of Section 34 IPC in a case where the accused were charged with the aid of Section 149 IPC?

4.

 $1 \times 2 = 2$

- (i) State, when a conviction under Section 302 IPC can be converted to one under Section 304 IPC and what the provisions of penalty provided by Section 304 IPC?
- (ii) State with reference to the relevant case laws the circumstances and facts, under which death penalty can be awarded?

5.

 $\frac{1}{2} \times 6 = 3$

- (i) 'A' finds a ring lying on the road, not in possession of any person. Whether 'A' by taking the same committed any offence, if so, what offence?
- (ii) 'A' commits theft of property in 'Z's possession and, while committing theft, he has loaded a pistol under his garment, having provided this pistol for the purpose of hurting 'Z' in case 'Z' shall resist. Here, what offence, has 'A' committed?
- (iii) 'A' holds 'Z' down and fraudulently takes 'Z's money and jewels from 'Z's pocket without 'Z's consent. Here, what offence has 'A' committed?
- (iv) 'A', being on friendly terms with 'Z', goes into 'Z's library in 'Z's absence and takes away a book without 'Z's express consent, under the impression that he had 'Z's implied consent to take book for the purpose of reading it. 'A'

sells the book for his own benefit. Here, what offence has 'A' committed?

- (v) 'A' finds a government promissory note belonging to Z, bearing blank endorsement. 'A', knowing that the note belongs to 'Z', pledges it with a banker as a security for a loan, intending at a future time to restore it to 'Z'. Here, has 'A' committed any offence?
- (vi) 'A' finds a rupee on the high road, not knowing to whom it belongs, 'A', picks up the rupee. Has 'A' committed any offence?

GROUP-F

1.

 $\frac{1}{2} \times 4 = 2$

- (i) Can a suit be instituted after the prescribed period of limitation, if so, when and under which provision of law?
- (ii) Indicate the cases in which the prescribed period of limitation can be extended by a Court.
- (iii) When and under which provision of law, a Manager of a Hindu undivided family, governed by the Mitakshara law, is capable of giving discharge in respect of execution of a decree without the concurrence of the other members of the family?
- (iv) Whether the provision prescribed by Section 5 of the Limitation Act includes a 'suit'?

2.

 $1 \times 2 = 2$

- (i) When and under what circumstances the period of limitation will not begin to run in case of a suit or application based on fraud or mistake?
- (ii) When and under what circumstances an acknowledgement in writing will save the period of limitation?

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