

**Main Examination (2011) for Recruitment of Grade-I of  
Assam Judicial Service**

**LAW PAPER-II**

**Time-3 hours**

**Total Marks-100**

**(Attempt all questions)**

1. Answer the following questions by giving reasons in about 3/4 sentences with reference to the relevant provisions of law. 20×3 = 60
- (i) **Rajib**, the owner of a plot of land, transfers the same to **Mukut** in trust for himself and his intended wife **Madhu** successively for their lives, and, after the death of the survivor, the eldest son of the intended marriage for life, and, after his death for **Rajib's** 2<sup>nd</sup> son.
- Whether the interest so created for the benefit of the eldest son does take effect?
- (ii) **Ram**, who has separated from his father and partitioned the property, sales a plot of land to **Jadu** representing that he is authorized to transfer the same, though that property did not fall in his share on partition. After such sale **Ram's** father died leaving **Ram** as the sole heir.
- Whether **Jadu**, who has not rescinded the contract of sale, will acquire any right over such property and can ask **Ram** to deliver the property to him?
- (iii) **X** took a sum of Rs.10,000/- in cash from **Y** and handed over the possession of a landed property to **Y** by executing a document to the effect that **Y** and his heirs would be entitled to use and enjoy the property and in case **X** fails to repay the said amount within a period of 5(five) years, neither he nor his heirs will have any right to take back the said property.
- Whether by executing such document a mortgage by conditional sale has been created?
- (iv) **X** orally leased out his immovable property in favour of **Y** for agricultural purpose. **X** subsequently wanted to terminate the lease and take possession of the property.
- Whether such lease is terminable, if so how?
- (v) The Sessions Judge granted a person the privilege of anticipatory bail in an offence alleged to have been committed by him which is punishable under Section 376A of the Indian Penal Code, which is bailable offence.
- Whether such order is valid, if not, the reason therefor?
- (vi) An order was passed by the criminal court forfeiting the bonds of Rs.1,00,000/- each executed by two sureties for production of the property under Section 446 of the Code of Criminal Procedure and issued notice to the sureties why the penalty of Rs.1,00,000/- on each of the sureties be imposed. The sureties entered appearance and claimed to share the said amount of Rs.1,00,000/- by both of them in equal proportion.
- Whether such prayer can be allowed?
- (vii) A person is convicted of an offence attended by criminal force or by criminal intimidation. The Court finds that any other person has been dispossess of any immovable property by such force or intimidation.
- What order the Court can pass in that event?
- (viii) **A** is accused of an offence under Section 277 IPC the maximum punishment for which is for imprisonment for 3 months or fine of Rs.500/- or both. Such offence was committed on 01.01.2010. The Court took cognizance of the offence on 01.03.2011.
- Whether such order taking cognizance is valid in law, if not, why?

- (ix) The decree holder executed the decree for recovery of khas possession. In an appeal preferred thereafter by the judgment debtor the decree was set aside.

How the judgment debtor can recover the possession of the property?

- (x) X obtained a decree in respect of an immovable property against Y and put the same in execution. Z purchased the property at a sale in the execution of the decree. A dispute was thereafter, arose relating to the execution of the decree.

Whether such dispute is to be resolved by filing a separate suit?

- (xi) X obtained an ex-parte decree against Y on 1<sup>st</sup> January, 2010, which was put into execution immediately thereafter. The bailiff went to execute the writ of delivery of possession on 1<sup>st</sup> June, 2011. The judgment debtor on 29<sup>th</sup> June, 2011 filed an application under Order IX Rule 13 CPC for setting aside the decree. The decree holder objected the application contending that it is not maintainable.

Whether such an application can be entertained?

- (xii) Mukul instituted a suit against Arun in the Court of the Civil Judge for declaration of right, title and interest in respect of an immovable property, where summons were issued and served on Arun on 1<sup>st</sup> June, 2009. Arun could not file the written statement within 90 (ninety) days from the date of service of summons. He, however, filed the written statement on 1<sup>st</sup> December, 2009 together with an application to accept the same.

Whether the Court can accept the same after expiry of 90 (ninety) days from the date of service of summons?

- (xiii) An application seeking review of a judgment has been filed on the ground that the judgment of the Supreme Court, on the basis of which the Trial Court passed the judgment, has subsequently been reversed in another case.

Whether the judgment can be reviewed on that ground?

- (xiv) Plaintiff sues the defendants for recovery of Rs.1,00,000/-. In order to prove the case, the plaintiff proved the entries in his books of account showing the defendant to be indebted to him to the said amount.

Whether such entries in the books of account are relevant and sufficient to prove debt?

- (xv) A instituted a proceeding for grant of probate of a Will. A apart from examining himself also adduce the evidence of the scribe of the Will to prove its due execution. No attesting witness however was examined, as none of them can be found, though Section 68 of the Evidence Act requires examination of at least one attesting witness to prove due execution of a Will.

Whether non-examination of one of the attesting witnesses is fatal? If not, what the propounder of the Will is required to prove.

- (xvi) A woman had committed suicide within 7 years from the date of her marriage. There is evidence that her husband had subjected to her to cruelty.

Whether the Court can convict the husband on presumption that such suicide had been abated by him, when in criminal jurisprudence the guilt of the accused is required to be proved by the prosecution and beyond all reasonable doubts?

- (xvii) A, on 31.12.1989, filed a suit for recovery of a sum of Rs.20,000/- from B, which was taken by B as loan on 01.01.1986 contending that B on 01.04.1989 acknowledges such debt in writing.

Whether the suit filed by A is within the period of Limitation and as such maintainable?



- (xviii) **Ramen** applies for a loan in State Bank of India at a time when there is stringency in the money market. The banker agrees to give the loan only at an unusually high rate of interest. **Ramen** having no alternative accepts the loan on those terms.

Whether the contract is valid?

- (xix) A trader delivers certain goods at **A's** house by mistake though no such order was placed. **A** treats the goods as his own and appropriates the same.

Whether the trader can realize the price of the goods from **A**?

- (xx) **Rahim**, a Muslim by faith, gifted his immovable property to **Abdul** orally, which was accepted by **Abdul's** wife on his behalf. The possession of the property, however, was not delivered to the donee by the donor.

Whether it is a valid gift under Mahomedan Law?

**2. Choose the correct option.**

10×1 = 10

- (i) For raising the plea of part performance there must be-
- (a) oral contract,
  - (b) written contract without possession,
  - (c) oral contract for consideration,
  - (d) written contract with possession.
- (ii) Lease of immovable property for manufacturing purpose, in the absence of written contract or local uses, can be terminated by giving-
- (a) 12 months notice,
  - (b) 15 days notice,
  - (c) 1 month notice,
  - (d) 6 months notice.
- (iii) The objection relating to the place of suing can be raised-
- (a) In the appellate Court,
  - (b) In the revisional Court,
  - (c) In the Court where such suit is filed at any stage of the suit,
  - (d) Before settlement of issues in the Court where suit is filed.
- (iv) A decree for partition of an undivided estate assessed to the payment of revenue to the Government shall be made by-
- (a) the Deputy Commissioner,
  - (b) the Civil Court,
  - (c) the Court which passed the decree,
  - (d) the Collector.
- (v) Which of the following property cannot be attached and sold in execution of a decree-
- (a) necessary wearing apparel of the judgment debtor,
  - (b) tools of artisans,
  - (c) books of accounts,
  - (d) all the above.
- (vi) Suit against a Government can be instituted on expiration of-
- (a) two months next after the date of issuance of notice,
  - (b) two months next after the notice is delivered,
  - (c) two months next after the cause of action arose,
  - (d) none of the above.

- (vii) A suit can be decided on a preliminary issue, when such issue relates to-
- (a) jurisdiction of the Court,
  - (b) bar to the suit created by Limitation Act,
  - (c) question of fact apparent on the face of the record,
  - (d) all the above.
- (viii) The decree in terms of the judgment is to be drawn within-
- (a) within 15 (fifteen) days from the date of the judgment,
  - (b) within 1 (one) month from the date of the judgment,
  - (c) within 3 (three) months from the date of the judgment,
  - (d) within 1 (one) week from the date of the judgment.
- (ix) Suit for possession of immovable property based on title is to be filed within 12 years from the date-
- (a) of dispossession,
  - (b) of purchase,
  - (c) when the possession of the defendant becomes adverse to the plaintiff,
  - (d) none of the above.
- (x) A person, not being an Indian citizen, can be tried in India for the offence committed-
- (a) On high seas or elsewhere,
  - (b) On any ship registered in India,
  - (c) On any aircraft coming to India but not registered in India,
  - (d) None of the above.

**3. Indicate whether the following statements are correct or incorrect:**

**30×1=30**

- (i) A person cannot be the natural guardian of a Hindu minor, if he has ceased to be a Hindu.
- (ii) Natural guardian of a Hindu minor can mortgage the immovable property of the minor for minor's welfare even without the permission of the Court.
- (iii) The property of a male Hindu dying intestate shall first devolve on the sons and daughters and in their absence on the widow.
- (iv) The property possessed by a female Hindu shall not be held by her as full owner thereof.
- (v) The property of a female Hindu dying intestate shall devolve firstly upon the sons and daughters and in their absence on the husband.
- (vi) The heirs related to an intestate by full blood shall be preferred to heirs related by half blood in the matter of succession under Hindu Succession Act, if the nature of relationship is the same in every other respect.
- (vii) A child in the womb at the time death of an intestate and who subsequently born alive cannot inherit the property of the intestate.
- (viii) No presumption under the Hindu Marriage Act, 1955 can be drawn that they live as husband and wife even if they are living under the same roof and cohabiting for a number of years, unless a valid marriage is solemnized under the said Act.
- (ix) A decree for restitution of conjugal rights passed under the Hindu Marriage Act cannot be executed.
- (x) The Court can pass a decree for judicial separation on a petition for dissolution of marriage filed under the Hindu Marriage Act in certain circumstances.
- (xi) A petition for dissolution of marriage by a decree of divorce under the Hindu Marriage Act can be filed and entertain by a Court at any time.
- (xii) No Court can pass any order under the Arbitration and Conciliation Act, 1996 before commencement of an arbitral proceeding before the Arbitrator.
- (xiii) The power of appointment of arbitrator under the Arbitration and Conciliation Act, 1996 vest on the Chief Justice, in the event of failure of the parties to agree on a procedure for appointing the Arbitrator.



- (xiv) In a contract between two persons, who are Indian nationals, no person who is not an Indian can be appointed as arbitrator under any circumstances.
- (xv) The Arbitral Tribunal cannot pass any interim order during pendency of the arbitral proceeding.
- (xvi) An application under Section 34 of the Arbitration and Conciliation Act, 1996 has to be filed within 3 months from the date of receipt of the arbitral award by the party making the application, which period however can be extended by the Court for a further period of 60 days only.
- (xvii) An instrument of gift of immovable property of the value of less than Rs.100/- is compulsorily registerable under the Registration Act, 1908.
- (xviii) A document registered under the Registration Act, 1908 shall operate from the time, which it would have commenced to operate if no registration in respect of such document had been required or made, and not from the time of its registration.
- (xix) A contract which is in its nature determinable cannot be specifically enforced in law.
- (xx) Specific performance of a contract can be enforced in favour of a person even if he is not entitled to recover compensation for its breach.
- (xxi) In a suit the Court can grant temporary injunction even if there is no prayer for permanent injunction.
- (xxii) In a suit for declaration and consequential relief, the amount of Court fee payable shall be computed according to the amount at which the relief sought is valued in the plaint.
- (xxiii) In a suit for declaration of right, title and interest and recovery of khas possession of land, which forms an entire estate paying annual revenue to Govt. and such revenue is permanently settled, 10 times of the revenue so payable is required to be paid as Court fee.
- (xxiv) In determining the amount of compensation to be awarded for the land acquired under the Land Acquisition Act, 1894, the Court is to take into consideration, apart from others the market value of the land at the date of passing of the award by the Collector under Section 11 of the said Act.
- (xxv) The Court can award compensation for acquisition of the land under the Land Acquisition Act, 1894 less than the amount awarded by the Collector under Section 11.
- (xxvi) The Collector's decision relating to the dispute as to apportionment of compensation under the Land Acquisition Act is final.
- (xxvii) The Labour Court in a reference made under the Industrial Dispute Act, 1947 cannot substitute the order of dismissal of a workman from service by a lesser punishment.
- (xxviii) An application for compensation under Section 166 of the Motor Vehicles Act, 1988 can be filed by an agent authorized by the person injured.
- (xxix) The application for compensation under Section 166 of the Motor Vehicles Act, 1988 has to be filed within 1(one) year from the date of the accident.
- (xxx) The claims tribunal can award interest under Section 171 of the Motor Vehicles Act, 1988, on the amount of compensation awarded, from the date of the accident.

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