

**Main Written Examination (2012)**  
**For Direct Recruitment to Grade – I of Assam Judicial Service.**  
**Paper –II**

Total Marks: 100  
Time: 3(Three hours)

**I. GROUP 'A'** (each question carries 1 mark)

Answer following questions in one word (Yes or No):

- (1) A mistake of law, committed in good faith, is a valid defence in a criminal trial?
- (2) A 14 year old boy was found guilty of offence under Section 379 IPC. He pleads for leniency in sentence as a minor boy of Immature understanding. Is the plea sustainable?
- (3) Actus Reus is a mental state in commission of a crime and must be proved to convict an offender?
- (4) A person cannot be held to be guilty for committing an offence of criminal conspiracy under Section 120 (A) IPC to kidnap a person for ransom, unless overt act as proof to have been committed?
- (5) Decision in a proceeding under Section 372 of the Indian Succession Act, which was rendered after full-fledged trial will operate as *res judicata* in a subsequent suit between the same parties?
- (6) A decision rendered by the Civil Judge Senior Division upon delegation of power in a proceeding under Section 372 of the Indian Succession Act for Rs. 50,000/- is appealable before the District Judge?
- (7) A preliminary decree is not envisaged in a redemption suit?
- (8) Without attestation a privilege will is not valid in law?
- (9) The right to private defence is not available to an accused who is found to be an aggressor?
- (10) No appeal lies against an award of the Arbitrator under the Arbitration and Conciliation Act, 1996?

**II. GROUP 'B'** (each question carries 3 mark)

- (1) Rahim sues Ramjan for declaration of right, title and interest over an area of land and obtains decree. Thereafter Rahim sues Abdul for a decree of possession by evicting him. Abdul contends that he is in possession as Ramjan's tenant, raising the plea of *res judicata*. Is the defence of Ramjan sustainable in law? Explain.
- (2) In a civil suit certain documents are found to be fraudulently manufactured by the plaintiff attracting an offence under Section 463/471 IPC. The defendant filed a criminal complaint before the local Magistrate against the plaintiff-
  - (a) What would be the defence of the plaintiff in the criminal case?

- (b) Does the Magistrate has jurisdiction to take cognizance of the case?
- (3) Section 216 of the Cr. P.C. empowers the Court to amend/alter a charge at any time before judgment. In the event the court proposes to alter the charge at the time of hearing of the argument-
- (a) What is the duty cast upon the court?
  - (b) What would be the duty of the Court, if the alteration/addition of charge causes prejudice to the accused?
- (4) 'A' borrows a sum of Rs.10000/- from HDFC Bank and keeps some of his ornaments as security for due re-payment of the debt
- (a) What is the legal term of this contract?
  - (b) In case of default to repay the loan, can the Bank recover the amount by selling the ornaments of their own?
- (5) 'A' appoints 'B' to purchase certain goods in an auction sale on his behalf
- (a) What is the legal relationship created between 'A' & 'B' by the above contract?
  - (b) Can 'B' delegate the authority given to him by 'A' to 'C' and if so, under what provision of law and to what extent?
- (6) A contract in writing is executed between 'X' and 'Y' that 'X' shall sell 50 quintals of paddy and the price is to be paid on delivery. At the same time they made an oral agreement that 2(two) months' credit shall be given to 'X' and after receipt of the price certain dues of 'X' to 'C' will be cleared.
- Can the oral agreement be introduced in evidence in a suit between 'X' and 'C'? If so, under what principle?
- (7) 'W' files a petition against her husband 'H' for maintenance. During the pendency of the proceedings 'W' executed an agreement with 'H' not to proceed with the proceedings on the promise of 'H' to pay maintenance allowance. 'H' defaulted to pay and 'W' sued her husband on the basis the agreement.
- (a) Will 'W' be entitled to get relief in the suit?
  - (b) Comment on the nature and legal consequence of the agreement made between 'W' & 'H'.

- (8) 'A' is the owner of an area of land. 'A' leased out the land to 'B' with a stipulation that in the event 'B' makes any construction over the land, 'A' would re-enter the land. Thereafter, 'A' transfers his right to re-enter to 'C', in case of breach of covenant by 'B' not to re-enter. Is the transfer valid, if not, why?
- (9) Ram owes Rs.50000/- to Modhu. Modhu transfers the debt to John. Subsequently, on Modhu's demand, Ram paid the money to him.
- Is the payment of the money to Modhu is valid inspite of the transfer of the debt to John?
  - If not, why?
- (10) 'K' is tried on the charge of conspiracy to raise war against India. It is in evidence that 'R' procured arms at Rawalpindi for the purpose of conspiracy. 'L' collected money in China for the object and 'M' persuaded persons to join conspiracy in Mumbai.
- Is the fact to collect money in China is a relevant fact for the charge of conspiracy?
  - Can the said evidence of 'L', though he is a stranger to 'K' be used as evidence against 'K'? If so, under what principles of law?
- (11) Rahim is accused of killing Ramesh by beating in a road side. During the course of beating, Jadu, a bystander uttered "Oh! Do not beat in such manner, he would die."
- In the trial of Rahim the words uttered by Madhu are not facts in issue. Will the words of Jadu be relevant? If so, under what principles?

### III. GROUP 'C'

(each question carries 2 marks)

Distinguish between the following with reference to relevant provisions of law-

- International award and foreign award.
- Investigation, enquiry and trial.
- FIR and complaint
- Arrest by a private person and arrest by a Magistrate.
- Public trust and private trust.
- Decree and order.
- Preliminary decree and final decree.
- Appeal and revision.
- Fine and compensation.



- (10) Vested interest and contingent interest.
- (11) Condition precedent and condition subsequent.
- (12) Simple mortgage and English mortgage.
- (13) Mortgage and charge.
- (14) Burden of proof and onus of proof.
- (15) Public document and private document.
- (16) Testamentary and non-testamentary instrument.
- (17) Facts in issue and relevant facts.

**IV GROUP 'D'**

**(each question carries 1 mark)**

Answer, whether the following questions are – correct/ incorrect?

- (1) In case of an offence relating to public tranquility mens rea is not necessary.
- (2) Inculpatory part of an admission can be taken into consideration to secure conviction of an offence.
- (3) Identification of an accused by photo is not admissible in evidence.
- (4) In the absence of a plea in the written statement, a court trying a suit is not entitled to go into the question of limitation at the appellate stage.
- (5) In the event the failure of the claimant to communicate his statement before the arbitrator, the arbitral tribunal is empowered to terminate the proceeding without any determination of the point of reference.
- (6) In a criminal trial against the husband, the wife is not an acceptable witness.
- (7) After delivery of the award, the arbitrator noticed some inadvertent substantial omission in the proceeding touching the merit, which was also not pointed out by the parties. The arbitrator can rectify the defect for ends of justice.
- (8) In a criminal case, conviction cannot be based on the statement of an accomplice witness.
- (9) In granting mandatory Injunction, the court may compel the defendant performance of a particular act, but cannot direct to prevent the breach complained of.
- (10) A declaratory decree passed under S. 34 of S.P.R. Act is a judgment in rem.
- (11) In a suit for mandatory injunction the plaintiff is not entitled to claim damage in addition to injunction.
- (12) In order to ensure fair trial, the prosecution must supply all the statements of witnesses recorded under Section 161 Cr. P.C. and is not entitled to withhold any part thereof.
- (13) Right to enjoy easement cannot be transferred.
- (14) Where a transfer of property confers vested interest with an immediate right to possession, such vested interest is ended with the death of the transferee.

- (15) In a mortgage created by conditional sale, there is no debt.
- (16) Result of the test identification parade conducted during investigation of an offence of robbery, is a substantial piece of evidence.
- (17) To file a suit for breach of trust created for public purpose of a charitable mortgage, only a person having an interest in the trust can institute the suit.

**V. GROUP 'E'**

**(each question carries 1 mark)**

Choose the right answer:-

- (1) 'A', hindu male died leaving certain immovable properties. Before his death 'A' made a Will disposing his properties appointing 'B' as executor, but the Will contains no other provision. In the situation-
  - (a) 'A' is to be held died instate.
  - (b) 'A' is to held died leaving a Will.
  - (c) None of the above.
- (2) The duties of an executor of a Will is extended to –
  - (a) Distribute the properties left by the testator.
  - (b) To pay testamentary and funeral expenses.
  - (c) To apply for a succession certificate.
  - (d) None of the above.
- (3) The Insurance Company is entitled to contest a claim case filed in the MACT by an accident victim-
  - (a) Only upon obtaining written permission from the tribunal to contest.
  - (b) By filing an application for permission to contest.
  - (c) If the vehicle is fould to be insured.
  - (d) None of the above.
- (4) The principles of 'No fault liability' in a vehiclular accident is provided in –
  - (a) Sec 161 of the M.V.Act
  - (b) Sec 140 of the M.V.Act.
  - (c) Schedule I of the M.V.Act.
  - (d) None of the above.
- (5) Under the Industrial Disputes Act, a 'court' means-
  - (a) The labour court.
  - (b) The Industrial Tribunal
  - (c) Principal civil Court of ordinary civil jurisdiction.
  - (d) None of the above.

- (6) Retrenchment of a workman-
- (a) Includes termination of a workman as a result of non-renewal of the contract.
  - (b) Does not include the termination of a workman.
  - (c) Includes workman whose name is struck off from the roll.
  - (d) None of the above.
- (7) The Court fee payable in a suit to be filed at Guwahati, has been fixed by-
- (a) The Gauhati High Court.
  - (b) The Central Government
  - (c) The State Government
  - (d) None of the above.
- (8) The Court fee in a suit relating to a share of a revenue paying estate is determined-
- (a) Upon the market value of the land
  - (b) Upon the value fixed by the Court.
  - (c) Upon the annual revenue of land.
  - (d) None of the above.
- (9) The particulars of apportionment of compensation amount specified in the award in a land acquisition case-
- (a) Is the conclusive evidence of the correctness of the apportionment?
  - (b) Can further be questioned in the civil court.
  - (c) Cannot be challenged before the judicial authority,
  - (d) None of the above.
- (10) After publication of the preliminary notification under Sec 4 of the Land Acquisition Act the declaration under Sec 6 is to be made after expiry of –
- (a) 30 days
  - (b) 90 days
  - (c) 1 year
  - (d) 3 years

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