

THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
Main Written Examination for direct recruitment to Grade-I of Assam Judicial Service, 2017

Date: 06-01-2018 (Saturday)

Time: 1.00 pm to 4.00 pm

Total marks: 100

Duration: 3 Hours

PAPER – II

Answer all questions

Directions for Question Numbers 1 to 10: Choose the correct answer from the options given below (1x10=10 marks)

1. Section 148 of the Code of Civil Procedure deals with
[A] Enlargement of time
[B] Right to lodge a caveat
[C] Enforcement of liability of surety
[D] Miscellaneous proceedings

2. When a person aids the commission of an offence he is called an
[A] Accomplice
[B] Absconder
[C] Abettor
[D] Accessory

3. A Hostile witness is one who, in the opinion of the court
[A] is an insane person
[B] Gives testimony adverse to the interest of the party calling the witness
[C] is a witness who supports only the defense case
[D] is a witness who displays hostile behavior towards the court

4. Under section 65 of the IPC, sentence of imprisonment for non-payment of fine has to be limited to
[A] half of the maximum term of imprisonment for the offence
[B] one third of the maximum term of imprisonment for the offence
[C] one-fourth of the maximum term of imprisonment for the offence
[D] one-sixth of the maximum term of imprisonment for the offence

5. Criminal conspiracy is defined in which section of the Indian Penal Code
[A] Section 101
[B] Section 120
[C] Section 120-A
[D] Section 124-A

6. Section 304-B of the IPC deals with punishment for

- [A] Causing death by negligence
- [B] Dowry death
- [C] Murder
- [D] Culpable homicide not amounting to murder

7. Which of the following statements is incorrect in the context of the Limitations Act, 1963

- [A] Delay in filing a Title Suit barred by time cannot be condoned under section 5 of the Limitations Act
- [B] Law of limitation applies to a counter-claim in a suit
- [C] A money suit for recovery of certain specified amount has to be filed within three years from the date of accrual of the cause of action
- [D] Law of Limitations does not apply to arbitration proceedings.

8. Section 44 of the Transfer of Property Act, 1882 deals with

- [A] Transfer of property during pendency of a suit
- [B] Rights and liabilities of buyer and seller
- [C] Transfer by one co-owner
- [D] Transfer of property by un-authorized person

9. Under section 65 of The Indian Evidence Act, 1872, in which of the following cases secondary evidence relating to a document may be given?

- [A] When the original is of such nature not to be easily movable
- [B] When the original is shown to be in the possession or power of the person against whom the document is sought to be proved
- [C] When the original is a public document within the meaning of section 74 of the Act
- [D] All the above

10. Section 14 of the Limitations Act, 1963 provides that

- [A] The court can extend time for filing an appeal beyond the prescribed period of limitation
- [B] Every appeal, suit or application filed after the prescribed period shall be dismissed.
- [C] Time of proceeding *bona fide* in a court without jurisdiction shall be excluded
- [D] Effect of acknowledgement of liability in writing

Direction for question numbers 11 to 20: (10 x 3 = 30 marks) Answer each question in *yes* or *no* and give *reasons* for each answer by referring to the relevant legal principle in not more than 100 words.

(answers without reasoning shall not attract any mark)

11. Anil has filed a Title Suit seeking declaration that the registered deed of sale relied upon by the defendant is a forged document thereby taking a plea that since the deed is produced by the defendant, the burden to prove that it is genuine also lies upon the defendant on the ground that in a case of this nature, the plaintiff cannot be asked to lead evidence to prove facts not with his knowledge. Would the burden of proof under section 101 of the Indian Evidence, 1872 shift upon the defendant in this case ?

12. A suit for recovery of money was instituted beyond the period of three years from the date of accrual of cause of action. The defendant did not take the plea of limitations and the suit was decreed by the trial court on merit. Even in the appellate stage, limitation was not one of the grounds taken by the appellant. Will it be permissible for the appellate court to set aside the decree on the ground of suit being barred by limitation although no such plea had been setup before the trial court ?

13. When the Police arrived at the crime scene, they found that *P* was carrying away the loot after breaking open the bank's safe. As a part of a well thought out plan *Q* was standing at the door and keeping a watch. On being arrested by the police, *Q* took a plea that he had committed no offence as he had done no overt act. Can *Q* be punished for committing theft?

14. Rohit is a businessman and was neck deep in debt. He decided to carry out a bank heist and accordingly worked out a plan for looting the nearby bank. The robbery plan was recorded in his personal diary but before Rohit could execute the plan, his father came across the personal diary and handed it over to the Police based on which Rohit was arrested. Can Rohit be charged with the offence of criminal conspiracy?

15. Prakash had entered into a written contract for sale of a plot of land owned by Amit .On receipt of the earnest money, Prakash was put in possession of the land. An instrument of transfer was also executed but the same turned out to be invalid in the eye of law. Although Prakash was willing to do his part Amit had refused to execute a valid registered deed of sale in respect of the plot of land and on the contrary, he had demanded back the possession of the land on the ground there was a better offer from a third party. Can Amit enforce his right as the land owner over the same plot of land?

16. *A* instituted a suit for declaration of right, title and interest and for recovery of possession of a plot of land against *B*, but the suit was decreed on compromise. The execution of the decree was obstructed by *B* on the ground that by virtue of the compromise, the decree got extinguished and had become inexecutable. A suit for declaration to that effect was filed by *B*. Is the suit maintainable?

17. On conclusion of investigation, the Police had filed Charge sheet against two accused persons relating to offences committed under sections 302/ 34 of the IPC. Looking at the gravity of the offence, in exercise of original jurisdiction, the Sessions Judge calls for the record of the case from court of the Chief Judicial Magistrate, took cognizance of the offences and proceeded with the trial without the case being committed to the Sessions court by the CJM. Is there any error in exercise of jurisdiction by the Sessions Judge in this case ?

18. In a first appeal the appellant took a plea that the document produced as secondary evidence and marked as "an Exhibit", which forms the basis of the decree, was itself inadmissible in evidence but no such objection was taken by the appellant at the time when the document was exhibited by his opponent. Can such a plea be entertained by the appellate court?

19. Husband was prosecuted for murdering his wife who died out of burn injuries that took place inside the dwelling house where the husband and wife were living together. The husband was convicted on the ground that while the prosecution had succeeded in proving that both of them were last seen together, the accused husband had failed to lead evidence to explain how the wife had received burn injury. In view of the established principles of law regarding burden of proof, is the conviction sustainable in law?

20. *X* makes certain imputations against *Y* and publishes the same in a newspaper with the knowledge and intent that such imputation will harm the reputation of *Y*. When confronted, *X* takes a plea that the imputation had been made in good faith with the objective of protecting his son's interest. Can *X* be convicted and punished under section 500 IPC for defaming *Y*?

Direction for question numbers 21 to 30: (10 x 3= 30 marks) Distinguish between the following by giving suitable illustrations using not more than 150 words for each answer. (*answers without illustrations shall not attract any marks*)

- 21.** Prohibitory injunction and Mandatory injunction
- 22.** Simple mortgage and Mortgage by conditional sale
- 23.** Wrongful restraint and Wrongful confinement
- 24.** Summons procedure and Warrant procedure
- 25.** Assault and battery
- 26.** Breach of trust and Breach of duty
- 27.** Facta Probanda and Facta Probandia
- 28.** Kidnapping and Abduction
- 29.** Primary evidence and Secondary evidence
- 30.** Gift and Exchange

Direction to answer question numbers 31 to 40: (10 × 3 = 30 marks) Elucidate the followings in not more than 150 words for each answer.

31. The purpose behind recording the statement of an accused under section 313 of the Cr P C and the consequences of failure to adhere to the legal requirements in respect thereof.

32. The requisites of a plaint filed in an Interpleaded suit as per Order XXXV CPC and the circumstances under which such a suit can be instituted.

33. The factors to be considered by the court before issuing an order of temporary injunction under Order 39 Rules 1 and 2 of the CPC.

34. The principles to be kept in mind when conviction is solely based on circumstantial evidence.

35. The essentials of a valid gift of immovable property in case of a Hindu.

36. The recourse available to the civil court under the law in case of violation of an order of temporary injunction.

37. The grounds on which power of review under Order 47 Rule 1 CPC can be exercised by the court.

38. As per section 52 of the IPC noting is said to be done or believed in *good faith* which is done or believed without due care and attention.

39. The procedure to be followed under the CrPC when information as to commission of a non-cognizable offence is received by an Officer in charge of a Police Station.

40. Evidentiary value of statement of the witnesses recorded under section 161 of the CrPC.

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