

# Direct Recruitment to Grade-I Assam Judicial Service, 2013

## PAPER II

Answer all questions

(Support your answers with reasons and reference to legal provisions)

**Total Marks- 100**

**Time – 3 hours**

### GROUP A

**Each question carries 1 ½ marks**

1. Joyanal approaches a police investigating a case and offers to give information leading to discovery of the hidden knife used in committing the crime, on the charge made against him for committing murder. Does the action of Jyonal amounts to surrender himself to police?
2. For the purpose of arresting a person without warrant, can the police officer travel beyond his territorial jurisdiction without an express order from the Magistrate?
3. A Corporation registered at Chennai is arrayed as accused in criminal case pending at Dibrugarh. The summon of the case is effected by serving upon the local manager of the Corporation at Dibrugarh. Is the service valid in law?
4. In a TIP held to identify accused, one particular accused could not be identified. Whether the benefit of doubt for such failure goes only to the person not identified or to all the accused?
5. A complaint case was dismissed by the Magistrate for default but after framing of the charges, whether the Magistrate can restore the case to file by setting aside the order of dismissal upon sufficient cause shown by the complainant?
6. Can the CJM try an offence under section 323/354 IPC against a person below sixteen years of age?
7. Jadu is a proclaimed offender in a cognizable case. Madhu a private person, knowing that fact arrested Jadu on his own from a secret hideout and handed over to police. Is Jadu authorized to do so without any order from the authority?

8. Can a Sub-divisional Magistrate issue a search warrant to find out a person who is suspected to be illegally and wrongfully confined?
9. There having arisen some matrimonial differences between a married couple, they mutually agreed to live separately. The wife, who has no source of livelihood, later claims maintenance allowance under section 125 Cr.P.c. Will she be entitled?
10. A police Officer making an investigation sends oral information to the son of the accused who is a student of fourteen years old to appear before him, as he appears to be acquainted with the facts and circumstances of the case. Is the action of the police Officer permissible under the Cr.P.C.?
11. Can the plea of limitation in a civil suit be raised for the first time in appeal without raising in the pleading?
12. 'A' files a suit for declaration of right, title and interest and for recovery of possession from 'B', after he lost in a prior proceeding under section 145 Cr.P.C. where possession was declared in favour of 'B'. Can 'A' succeed in spite of declaration of possession in the 145 proceeding against him by the Magistrate after a full scale investigation?
13. 'A' obtained a decree for money against 'B'. 'A' files an execution petition to execute the decree, but the petition being barred by time, he files an application u/s 5 of the Limitation Act to condone the delay on the ground that on the last date of limitation, his father expired. Can the delay be condoned by the court u/s 5 of the Limitation Act?
14. 'A' files a suit for realization of a sum of Rs.10000/- against 'B'. 'B' files written statement denying his liability without any counter claim. Later on, after some progress of the suit 'B' files a counterclaim against 'A' in the suit. Is the counter claim maintainable after filing of the written statement?
15. In a title suit both the parties have adduced evidence, oral and documentary by examining witnesses on their behalf. Later on,



- the defendant files an application to the court stating that one important witness, whose evidence is essential for deciding the suit, was not examined and prayed for calling him as a court witness. What the court should do in such a situation?
16. In which court an application for removal of a trustee of a trust properly created for public purpose will lie?
17. What is the remedy of a plaintiff when his suit is dismissed for non-appearance u/o 9 R.3 CPC and under what provision?
18. Can a party judicially challenge the order appointing an arbitrator by the Chief Justice of the High Court u/s 11(5) of the Arbitration and Conciliation Act, 1996? If so, how?
19. A title suit filed by 'A' against 'B' dismissed for default by the Civil Judge Sr. Division and a decree was also drawn up. The time for setting aside the dismissal order having been expired, 'A' files a regular appeal u/s 96 of the CPC in the High Court. How you will defend 'B' in the first appeal?
20. An application for setting aside an arbitral award is filed after expiry of thirty seven days of the period of limitation of three months, as the applicant was suffering from ailments. In support of his plea to condone the delay he filed a medical certificate. How the court is to decide the prayer for condonation of delay?

**GROUP B**

**(Each question carries 2 ½ marks)**

1. In a complaint case filed by you as a lawyer, charges were framed under section 323/447/34 IPC against the accused after considering the evidence produced before charge. Subsequently, due to the absence of the complainant, the case was dismissed and the accused was discharged without trial. Is the order valid in law? ~~How~~ How would you advise your client to set into motion the case again?

2. Jadu, who is an accused in a criminal case u/s 325/447/34 IPC facing a NBWA issued by the CJM approach you. Going through the record you find that on several occasions warrant issued to Jadu could not be executed and hence the I/O described him as an absconder and filed charge sheet, on the basis of which NBWA was issued. How you will defend Jadu to get bail on his appearance. Is the order issuing NBWA is valid in law?
3. 'M' was arrested in a case against him u/s 21(c) of the NDPS Act, but the investigation could not be completed within 90 days. You are approached for bailing 'M' out u/s 167(2) Cr.P.C. What should be the consideration of the court in considering your bail plea for 'M'?
4. 'Z' files a suit for declaration of right, title and interest over a plot of land against 'Y' on 1.9.2012. Summon of the suit was served upon 'Y' on 5.10.2012 and immediately he contracts you to defend him and file written statement. On your prayer, time granted to you on three occasions upto 4.1.2013. On 4.1.2013 while coming to court for signing and filing the written statement, 'Y' met with an accident, resultantly 'Y' could not file the written statement within 90 days as mandated under O 8 R 1 CPC.

What will be your argument to convince the court to accept the written statement beyond 90 days?

5. During the pendency of an appeal in which you are appearing for the Respondent, the sole respondent dies and you informed the court. Though the court granted time to substitute the legal heirs of the deceased respondent, but the appellant could not do so for not knowing the names of the legal heirs of the deceased respondent. In such a situation have you any role to play as an advocate for the deceased respondent? If so, what?



6. A suit was dismissed by the Civil Judge (Sr Division) by passing judgment on 28.10.2012, but the decree was prepared and subsequently signed on 11.11.2012. The plaintiff approaches you to file an appeal. The period of limitation for filing the appeal being 90 days, what would be the last date for filing the appeal in this case?
7. A specific area of land with standing trees thereon are notified to be acquired by the government for public purpose and value of the land and trees are assessed by the Collector and notified the person interested to accept the compensation. The owner considers the compensation assessed is much below the market value and approach you for advice. How will you act as an advocate of the claimant/owner to get higher compensation under the Land Acquisition Act?
8. Madhu filed a suit against Jadu. Jadu, though appeared, did not file written statement. In the subsequent proceeding, as Jadu's advocate how you will try to protect his interest and to what extent?
9. 'M' is a workman in an industry. His service was terminated by the management. In a reference, the Labour court passed an award setting aside the termination order and directed the Management to re-instate 'M' in service. Management challenges the order in a writ petition and prays for stay of the award including re-instatement. Being served with notice of the writ proceeding the workman approaches you to resist the interim stay in the writ proceeding. How will you defend the interest of the workman at the time of hearing of interim matter?
10. Madhu filed an appeal against a decree passed in a suit filed under section 6 of the Specific Relief Act in the Civil Judge (Sr. Divn). The appeal was held to be without jurisdiction after three years of filing by the court as no appeal lies

against such decree'. Madhu then approaches you changing his former lawyer, requesting you to file a revision petition in the High Court for which the period of limitation is only 90 days stating that the appeal was wrongly filed against the decree.

What point will you raise to condone the delay of more than two years in filing the revision petition?

### **GROUP C**

**(Each question carries 3 marks)**

1. You are conducting a suit on behalf of the plaintiff. The defendant has not filed written statement and obtained time. The plaintiff, at that stage is required to go to Washington on a foreign assignment and would not be able to come back for at least ½ years and his evidence is essential to establish his case. What steps you will take in this situation to protect the interest of the plaintiff and the procedure the court is to follow?
2. 'A' files a suit for declaration and injunction against 'B'. After filing written statement and necessary steps for peremptory hearing is over on the first day of hearing you as an advocate for the plaintiff filed an application for appointment of an Amin Commission to make location investigation of the suit land as the identity of the same is in question. How the court is to deal with your prayer?
3. 'A' instituted a title suit with prayer for injunction and ad interim injunction was granted. The suit was dismissed for default of the plaintiff under Or 9 R 8 CPC. On an application showing sufficient cause by the plaintiff, the suit was restored to file under Or 9 R 9 CPC. Comment on it, if the restoration of the suit also restores the ad interim order of injunction automatically, without any express order?

4. Rohim approaches you for recovery of a plot of KP Patta land measuring 1 Bigha fetching annual revenue of Rs.500/- per year which is encroached by Jalil and his party. The market value of the land is approximately 50 lakhs. You advised him to file a suit for declaration of his title and for recovery of possession.

How you will value the suit and pay the court fee?

5. While the husband of 'W', a resident of Guwahati was travelling to Tinsukia expired in a fatal road accident near Nagaon Town. 'W' approaches you for filing an accident claim case for compensation under the M.V.Act. She also urgently need some amount as an interim measure. The place of accident being near Nagaon, the cause of action arose within the jurisdiction of the Nagaon Claims Tribunal, and 'W' is not in a position to peruse the case at Nagaon.

How you will protect her interest on both counts?

6. Ram took a loan of Rs.2 lakhs from Shyam on 30.04.2004 payable on demand with interest @15% per annum by executing a pronote. On demand Shyam paid only Rs.10,000/- on 01.04.2007 acknowledging in writing the debt and promising to repay. Again on 30.04.2010 he sent another letter with a cheque of Rs.12,000/- in favour Shyam acknowledging his debt and requesting more time to repay. Ram defaulted again. If Shyam approaches you on 25.04.2013 for recovery of the loan only with interest on the basis of the pronote and acknowledgement.

How will you advise him in the matter?

7. In a title suit conducted by you for the plaintiff, the plaintiff produced only a certified copy of the sale deed by which he purchased the land and not the original.



What are the conditions you are to satisfy the court to bring the certified copy exhibited in the suit?

8. Ramjan is charged under section 376 IPC and is defended by you. On the date of commission of offence Ramjan was 17 years 10 months of age and when the trial commenced he attained the age of 22 years. Can you raise the plea of protection under Section 8 of the Juvenile Justice Act, 1886 in favour of your client and if so, under what principle?
9. A document which was attested by two witnesses, not being a will, is required to be proved by you on behalf of your client in a suit. The document is a registered one. The attesting witnesses are not coming to depose they being then not in good terms with your client. How you will protect the interest of your client in the absence of attesting witnesses?
10. 'A' is the owner of a house at Tezpur town of which 'B' is a monthly tenant. 'A' brings a suit against 'B' for his eviction and for recovery of the tenanted premises as 'B' has defaulted to pay the monthly rent for seven months. Defending the suit 'B' questions the locus of 'A' to file the suit alleging that 'A' is not the owner of the suit house.

As an Advocate, how will you meet the situation and rebut 'B's plea?

#### **GROUP D**

**(Each question carries 3 marks)**

1. Ganesh being suffered bodily injury due to assault by a local politically influenced person went to lodge an FIR to the Police Station. Police not having entertained the FIR, he approaches you. How will you advice him to get the FIR registered and investigate the case?
2. 'A' is charged under section 302 IPC and the trial is going on. 'A' is defended by you. During the course of evidence it has



been established that due to one fatal blow inflicted by 'A' on the head of the victim by a stick, the victim died after 5 days. However, no previous animosity was proved nor the cause of attack by 'A' is made known. How you will argue to defend 'A' to come out of charge u/s 302 IPC during argument?

3. Don obtained the signature of Bina in an agreement to sell her land and house in favour of Don threatening that in the event of Bina's refusal, her minor daughter would be kidnapped and she would be ravished. After putting her signature in the agreement, Bina approaches you for legal help. How will you advise her? What would be the legal effect of the agreement signed by her?
4. Under Sec 23 of the Indian Contract Act when one person is employed by another to do an act and the agent does it in good faith, the employer is liable to identify the agent against the consequences of that act, though it may cause an injury to the rights of the third person.

In an event, Abdul was employed by Hari to beat Jadu and agrees to indemnify him against all consequences of the act. Abdul thereupon beats Jadu severely and had to pay damages to the extent of Rs.50,000/- to Jadu for the act. Abdul approaches you for legal help. Is Abdul liable? How will you defend him?

5. 'Natarajan Ltd" a private Company conveys 5000 sq m of land to Naresh for valuable consideration by a registered sale deed. But Naresh was not delivered the possession of the property by the Company. On advice of Naresh you filed a civil suit to get possession of the land, where the company raises a defence that the act not being done by a 'living person' to attract definition of 'transfer of property' no right has been created upon Naresh over the land by the sale deed. How you will defend Naresh in the case?
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