

THE GAUHATI HIGH COURT AT GUWAHATI
(High Court of Assam, Nagaland, Mizoram & Arunachal Pradesh)

LIMITED DEPARTMENTAL COMPETITIVE EXAMINATION, 2019
FOR PROMOTION FROM GRADE-II TO GRADE-I OF ASSAM JUDICIAL SERVICE

Paper-II
Time: 1 PM to 4 PM

Total Marks: 100
Duration: 3 Hours

1. Police officer when without recording the F.I.R despite receipt of information about a non-cognizable offence goes to the spot and registers the complaint as F.I.R after deliberations, consultations and discussion. whether the F.I.R is admissible? If not, give a short explanation. (1)
2. Whether Magistrate has the discretion in taking cognizance of any offence under Section 190 (1)(b) of Cr.P C ? (1)
3. What are the contents of charge under Section 211 of the Cr.P.C.? (2½)
4. State the fundamental principle of criminal law involved in Section 218 of the Cr.P.C. and the exception under Section 221 of the Cr.P.C. for joint trials and joinder of charges? (1½)
5. Do you consider that issue estoppel and principles of double jeopardy are same? Give justification to your answer in short. (2)
6. Whether an accused person requires to state the ingredients of right of private defence while giving reply to questions under Section 313 Cr.P C? (1)
7. What is the scope of power of the Magistrate while committing a case to Court of Session under Section 209 of the Cr P.C.? (1)
8. Cognizance of offence under the Wild Life Protection Act, 1972 was taken on the complaint of the officer mentioned in the said Act, 1972. The jurisdictional police purported to register a case for an alleged offence against the Act, 1972. Whether in such a situation Section 210 (1) of Cr.P.C. would be attracted? Give reasons for your answer. (1+2)
9. If a person is discharged totally i.e. of all the charges whether he can be resummoned under Section 319 of the Cr P.C ? (1)

10. Whether it would be justified to be lenient in the matter of imposing sentence due to inability of the prosecution to collect evidence of motive of crime? (1)
11. What are the conditions precedent for allowing a complainant to withdraw the complaint? (2)
12. What are the conditions for application of Plea Bargaining as stipulated in Chapter XXI A of the Code of Criminal Procedure, 1973? (2)
13. Fill up the gaps. -
- (a) Form of Warrant of Arrest and duration is prescribed in Section _____ of the Cr.P.C. (1)
- (b) Section _____ of the Cr.P.C prescribes that person arrested by police officer is to be informed of grounds of arrest and of right to bail. (1)
- (c) Section _____ of the Cr.P.C. stipulates when police may arrest without warrant. (1)
14. A Civil Nazir went to execute a warrant. The accused persons resisted him with common object and an innocent man interfered, the accused persons together murdered the innocent intervenor. What are the offences under which the accused persons are liable to be convicted? (1)
15. At what stage it is proper to decide the availability of benefit under Section 84 IPC by an accused person and whether nature of crime by itself is a ground for such benefit? ($\frac{1}{2} + \frac{1}{2}$)
16. The *maxim de minimis non curat lex* (the law takes no account of trifles) is the foundation of which Section in the Indian Penal Code? (1)
17. There was no prior enmity between two groups but all of a sudden they started fighting in which accused persons received number of injuries including some on vital parts. Prosecution failed to give plausible explanation. The accused took the plea that they inflicted injuries on the deceased in self-defence. They gave only one blow on head of the deceased person which proved fatal. Whether the plea of the accused persons can be accepted giving benefit of doubt to them? Justify your answer (1)

18. There took place a free fight between two groups forming unlawful assembly and death was caused. What are the relevant factors to infer common object of members of unlawful assembly? (2)
19. Accused stabbed the victim by a small knife. the victim succumbed to death nine days after the injury. The doctor who conducted the autopsy stated in cross examination, that the abdomen injury was only likely to cause death. The prosecution did not question the doctor specifically as to whether all or any of the injuries found on the deceased was sufficient to cause death in the ordinary course of nature. What is your conclusion in respect of the offence so committed by the accused? (1)
20. (a) State the law relating to an attempt to commit murder. (1)
(b) To justify conviction under Section 307 IPC is it essential that bodily injury capable of causing death should have been inflicted? (1)
21. A head constable had taken away, by force i.e. by giving a slap. the watch and gold ornaments from a boatman who had recovered these articles from a dead body of a drowned person. But instead of entering them in the official records, dishonestly kept them with himself and produced them only when confronted with the boatman. What are the offences committed by the policeman? (1+1)
22. What are the ingredients of the offence of cheating under Section 415 IPC? (1½+1½)
23. Define "*mesne profits*" of property indicating the profits excluded from its sweep (1)
24. Distinguish "*Res Judicata*" and "*Res Subjudice*" citing relevant provisions in the Code of Civil Procedure. (1+1)
25. State the principle of constructive *res judicata*. Whether it is applicable in execution proceeding? Whether an issue heard and finally decided by a Court of limited jurisdiction but competent to decide such issue shall operate as *res judicata* in a subsequent suit when such Court of limited jurisdiction was not competent to try such subsequent suit? (1+1+1)
26. What is the effect given to the rules in the First Schedule of the Code of Civil Procedure? (1)

27. Whether the Court has the power to mould the relief sought for by the plaintiff in a suit? Give reasons to your answer. (1+1)
28. Whether a preliminary issue can be framed on the plea that the suit is barred by principles of *res judicata*? Give reasons to your answer. (1+1)
29. Whether an order passed under Rule 58 of Order XXI of the CPC adjudicating objections to attachment of property is appealable under Section 104 read with Order XLIII of the CPC? Give reasons to your answer indicating the provision for appeal. (1+2)
30. What are the mandatory requirements in an appeal against a decree for payment of money under Order XLI Rule 1 of the CPC? (1+1+1)
31. Mention the classification of Special Proceedings in the Code of Civil Procedure, 1908. ($\frac{1}{2} + \frac{1}{2} + \frac{1}{2} + \frac{1}{2}$)
32. To what extent salary of a judgment debtor can be attached in execution of any decree other than a decree for maintenance? (1)
33. Mention the options before the Court where any party to a suit to whom time was granted failed to produce his evidence or to cause attendance of his witnesses? (1+1)
34. Whether the Court has the power under Order XIX of CPC to order attendance of deponent for cross examination without there being an order from the Court to prove any point by affidavit? Give reasons to your answer. (1+1)
35. If the identifying witness is not produced and Test Identification Parade result is sought to be proved by the officer holding the T.I. Parade whether the said evidence can be utilized by the prosecution? Give justification to your answer. (2)
36. Mention the extent of relevancy of a judgment passed by a criminal court in a civil suit between the parties to the suit. (2)
37. What are the requirements for drawing presumption as to genuineness of certified copies of public documents? (2)
38. A plot of land was sold by way of a sale deed which contains a map of the property sold. Whether the fact that land not included in the map had always been regarded as part of the estate and was meant to transfer by the same sale deed? Give reasons for your answer. (1+1)

39. "The rules of evidence are in general the same in civil and criminal proceedings".
Mention any three exceptions to the above statement. (½ + ½ + ½)
40. Give three exceptions to the rule excluding hearsay evidence. (½ + ½ + ½)
41. In a civil case are there restrictions on the question which may be asked in cross-examination? Has the Judge power to exclude any question? If so, in what cases?
(1+2)
42. What are the powers of a Judge to put questions to a witness or production of any document? What is the object of the legislature in so empowering the Judge?
(1½ + 1½)
43. Examine the validity of the following transfers, state reasons for your answer.
- (i) 'A' and 'B' enter into a contract. 'B' commits a breach of it. 'A' transfers to 'C' his right to recover damages for the breach of contract. (1)
- (ii) 'A', a Mohammedan, agrees to transfer his right of inheritance to the property of his father at a consideration of Rs. 5,000/-. (1)
44. 'A' transfers a property by Sale Deed to 'B' subject to a condition that on 'B' becoming insolvent, the property shall revert to 'A'. Examine the validity of the condition put in the Sale Deed (1)
45. Point out the legal consequences of—
- (a) Vested interest; and
- (b) Contingent interest (1+1)
46. A co-owner of a joint immovable property sold a portion of the said property exceeding his share. Whether the rest co-owners are entitled for the relief of cancellation of the sale deed on the ground that the sale is invalid? Give reasons to your answer. (1)
47. There is a litigation as to title going on between A and B in respect of property 'X'. C, a creditor of A attaches 'X' in execution proceedings and brings it to sale. D, a stranger, purchases 'X' without notice of the suit between A and B. Ultimately title declared in favour of B in the suit and B seeks to recover 'X' from D. Can B succeed? Give reasons. (1+1)
48. (i) A condition is stipulated in a mortgage deed as follows:

“If we do not pay your amount by the due date we agree to this document being treated as a sale deed ”

(ii) ‘A’ mortgaged his house to ‘B’ with possession for 10 years. Six years after the mortgage, ‘A’ agreed to sell his house to ‘B’.

Whether the conditions as aforesaid are “clog on redemption”? Justify your answer. (1+1)

49. Explain the term ‘foreclosure’. What is a suit for foreclosure? (1+1)

50. “A party to an exchange in respect of the property given by him in exchange is subject to the same liabilities and entitled to the same rights as if he were a seller, and in respect of the property received by him, has the same rights and liabilities as a purchaser.”

Is there any exception to the above rule? Give reasons for your answer (2)

51. What do you understand by an onerous gift? What is the legal effect of such a transaction under the Transfer of Property Act where the donee is a minor? (1+1)

52. Whether the period prescribed for execution of any decree (other than a decree granting a mandatory injunction) by the Limitation Act, 1963 can be extended under Section 5 of the said Act, 1963? Give reason for your answer (1)

53. How the period of limitation is computed where a right to institute a suit accrues only on the death of a person? (1)

54. Specify the requirements in order to give effect to an acknowledgement of a liability in respect of such property in order to give the benefit of a fresh period of limitation to a plaintiff in a suit. (3)

55. Where any special law prescribes for any suit a period for limitation different from the period prescribed by the Schedule of Limitation Act, 1963 whether the provisions of Section 3 of Limitation Act, 1963 will apply and to what extent, if applicable? (2)