# Assam Judicial Service Grade III (Mains) 2006

**Law Paper I** · compulsory paper

100 marks · 2 hours · 2006

**Objective questions (15 × 1)**

**1(i). The court can enlarge the period under Section 148 CPC for doing of any act prescribed or allowed under the Code of Civil Procedure not exceeding, in total, — (a) 90 days (b) 60 days (c) 45 days (d) 30 days.**

**1(ii). According to Section 27 CPC, summons to the defendant shall be issued to, and served on, such day not beyond — (a) 30 days from the date of institution of the suit (b) 30 days from the date on which the process-fee is paid (c) 90 days from the date of institution of the suit (d) 90 days from the date on which process-fee is paid.**

**1(iii). List of witnesses must be filed — (a) within 15 days of the settlement of the issues (b) 15 days before the settlement of the issues (c) on the date of the settlement of the issues (d) on the date on which the suit is instituted.**

**1(iv). Under O.7 R.14 CPC, where a plaintiff sues upon a document, which is in his possession or power, the document or a copy thereof (a) must be filed on or before framing of the issues (b) must be filed along with the plaint (c) can be filed at any time, but before the evidence is adduced by the plaintiff (d) can be filed at any time before the delivery of the judgment.**

**1(v). Adjournment can be granted (a) under O.17 R.2 CPC (b) under O.18 R.3 CPC (c) under O.17 R.1 CPC (d) under O.18 R.1 CPC.**

**1(vi). Notice of the application for execution of a decree has to be issued to the judgment-debtor — (a) Where the execution is applied for after 2 years of the date of decree (b) Where the application for execution of the decree is made against the legal representatives of the judgment-debtor even if the application is made within 2 years of the decree (c) In all execution proceedings, notice must be given to the judgment debtor (d) Where the application for execution is made beyond 3 years of the date of the decree. Out of the above propositions, which of the following propositions are correct: (i) (a) and (b) (ii) (b) and (c) (iii) (c) and (d) (iv) (b) and (d).**

**1(vii). When a decree is passed against the Union of India or a State, execution of such a decree shall not be issued except — (a) When the decree remains unsatisfied for a period of three months computed from the date of the decree (b) When the decree remains unsatisfied for a period of 60 days from the date of the decree (c) When the decree remains unsatisfied for a period of 6 months from the date of the decree (d) When the decree remains unsatisfied for a period of 1 year from the date of the decree.**

**1(viii). Plaintiff's right to withdraw his suit is — (a) absolute (b) If the leave to withdraw the suit is granted by the Court (c) Only if the defendant agrees to the withdrawal of the suit by the plaintiff.**

**1(ix). Foreign Rulers, Ambassadors and Envoys under Section 86 of the CPC — (a) cannot be sued in Indian Courts (b) can be sued in Indian Courts only with the written consent of the Central Government (c) can be sued in Indian Courts only with the written consent of the person, who is to be sued (d) can be sued in Indian Courts only with the written consent of the State Government, where the said suit is sought to be instituted.**

**1(x). Precept is (a) a transfer of the decree (b) an order passed by one Court to another Court of competent jurisdiction to attach any property of the judgment-debtor (c) an execution of the decree (d) all the above.**

**1(xi). Which of the following deals with reservation in public employment — (a) Article 15 of the Constitution of India (b) Article 16 of the Constitution of India (c) Article 25 of the Constitution of India (d) Article 35 of the Constitution of India.**

**1(xii). Whether an Ordinance is a law within the meaning of Article 21 of the Constitution of India — (a) Yes (b) No.**

**1(xiii). Which of the following deals with Doctrine of Frustration as embodied in the Contract Act — (a) Section 36 (b) Section 46 (c) Section 56 (d) Section 66.**

**1(xiv). Whether a contract induced by misrepresentation is — (a) Void (b) Voidable (c) Void as well as voidable (d) Neither void nor voidable.**

**1(xv). Which Section of Transfer of Property Act deals with mortgage — (a) Section 56 (b) Section 54 (c) Section 52 (d) Section 50.**

**Descriptive questions**

**2. An airhostess, working in Air India, challenges, by filing a writ petition, the service regulations, which stipulate that an airhostess, who gets married, may be retired within 4 years of her marriage or on her first pregnancy, whichever is earlier. Will she succeed? Give reasons.**

**3. The term 'life', as used in Article 21, means something more than mere animal existence. Elucidate.**

**4. Arbitrariness is the anti-thesis of Article 14. Do you agree with the said statement? If so, give reasons.**

**5. Is the scope of Article 32 wider than that of Article 226 of the Constitution of India? Assign reasons for your answer.**

**6. Whether the Parliament has the power to amend Article 368 of the Constitution of India? If so, how? Answer with reasons.**

**7(a). Short note — Doctrine of stare decisis.**

**7(b). Judicial Review.**

**8. What are the different modes of transfer of immovable property as embodied in the Transfer of Property Act, 1882?**

**9(a). Whether the following amounts to 'transfer' within the meaning of Section 5 of the Transfer of Property Act. Give reasons (any two) — Relinquishment.**

**9(b). Dedication of property to an idol in a temple.**

**9(c). Charge.**

**10. Can the doctrine of part-performance be availed for the purpose of filing a suit for possession of immovable property? Answer with reasons.**

**10(OR). A entered into a written contract with B to take two shops belonging to B on a monthly rental of Rs.1,000/- each. A gave Rs.12,000/- to B as one year's advance rent and took possession of one shop. As regards the other shop, located in the same building, A gave another Rs.12,000/- as advance and B promised to hand over possession of the second shop after his son's wedding, which was to take place after one week. After the wedding, B, however, did not give possession of the other shop to A. Thereupon, A filed a suit for possession under Section 53-A of the Transfer of Property Act. Can A succeed. Assign reasons for your answer.**

**11(a). Short notes (any two) — Fraudulent transfer.**

**11(b). Doctrine of Lis Pendens.**

**11(c). Doctrine of election.**

**12. What is the difference between 'offer' and 'invitation to offer'?**

**13. H, a minor, but tall and well built, obtains a loan of Rs.35,000/- from J on a Promissory Note by telling him that he (i.e. H) has attained the age of majority and he needed the money for his college education. He, then, (a) purchased a costly wrist watch worth Rs.5,000/- and presented it to his friend, (b) spent Rs.14,000/- for furnishing his house, (c) entertained his friends in a hotel at the cost of Rs.3,000/- and (d) bought books worth Rs.13,000/- for preparing himself for the Medical Entrance Examination. On the failure of H to repay the loan, J sues him. Will J succeed and if so, what will be the extent of his success. Give reasons.**

**14. The plaintiff, a tailor, delivered a sewing machine to the Railways for being sent to a place, R. The railways, as part of their agreement, promised to dispatch the machine and deliver the same at the specified place by a specified date. The tailor had sent the tailoring/sewing machine to the place R, for, he expected to carry on his business with special profit at that place, because of a forthcoming festival to be celebrated at the place, R. The delivery of the sewing machine was delayed due to negligence of the Railways and the same was delivered at the place, R, after the conclusion of the festival. The plaintiff files a suit claiming damages for travelling upto the place of festival and the loss of profits, which he would have, otherwise, earned. Will the plaintiff succeed? Give reasons for your answer.**

**15. A, a contractor, on the request made, in writing, by a Head Master of a Government School, constructed two new class-rooms in the already existing school. The Inspector of Schools accepted the work and classes started in the newly built class-rooms. However, no payment for constructing the class-rooms was made to A on the ground**

**that the Head-Master was not authorized to bind the Government by giving a contract for building the class-rooms, the proper authority, in this regard, being the Inspector of Schools. The contractor wants to approach the Court for remedy. Advise him.**

**16. A, an old lady, gifted her immovable properties to her daughter, D, with the direction that D should pay an annuity of Rs.50,000/- to D's brother P. On the same day, D, the defendant, made a promise, in writing, to P, the plaintiff, that she would pay the annuity as directed by A. The defendant failed to pay the stipulated sum and when the plaintiff filed a suit, she took the plea that since the plaintiff had himself not furnished any consideration, the agreement as between P and D is not enforceable. Decide.**

**16(OR). What agreements are contracts? What are the essentials of a valid contract?**

**17. What are the remedies available to a plaintiff in the cases, where an order of temporary injunction passed under Order 39 Rules 1 and 2 CPC is violated?**

**18. The plaintiff, P, institutes a suit against the defendant, D, seeking declaration of his title to the suit property and recovery of possession thereof by evicting D therefrom. The defendant, D, entered appearance, but subsequently failed to appear in the suit and filed an application showing cause for his previous non-appearance. This application was dismissed on the ground that the application did not show any sufficient cause. Should D be now permitted to contest the suit from the stage at which he entered appearance. Can he insist on re-trial of the part of the suit during which he was absent?**

**19. On 11.1.2005, A filed a suit against B for declaration of title and other consequential reliefs. Along with the suit, an application for temporary injunction under Section 94 read with O.39 Rules 1 and 2 of the CPC was filed. On 7.4.2005, the Court granted temporary injunction in favour of the plaintiff. On the next date, i.e., on 2.5.2005, the plaintiff did not appear and the suit was dismissed for default. The plaintiff, thereafter, filed an application under Order 9 R.9 CPC and, on showing of sufficient cause, the dismissal was set aside and the suit was revived. Whether on the revival of the suit, the temporary injunction granted vide order, dated 7.4.2005, in favour of the plaintiff would also automatically revive? Give reasons for your answer.**

**20. Does the term 'government' in Section 80 CPC mean and include public sector enterprises, such as, Food Corporation of India and Assam State Electricity Board?**

**21. Whether the scope of the amendment of pleadings, as governed by O.6 R.17 CPC, has been narrowed down by "The Code of Civil Procedure (Amendment) Act, 2002". If so, give reasons.**

**22(a). Write short notes (any two) — Decree.**

**22(b). Mesne Profit.**

**22(c). Restitution.**