Kerala Judicial Service Mains 2009 (NCA, Latin Catholics) · Question papers

Paper IV · compulsory paper

Kerala Judicial Service Examination 2009 (NCA Vacancies for Latin Catholics) · Duration: 3 hours · Marks: 100

Part I

Answer all the questions in one or two sentences. Each carries one mark.

1. A person presents a plaint in a Munsiff's Court at 4.00 pm on a working day. Can the court receive it? State the reason to support your answer.

2. An Interlocutory application along with an affidavit was filed. The affidavit was sworn to before a member of a municipal council. Can the application be received on file? State reasons.

3. A report seeking remand of an accused in a non bailable offence together with a statement that the accused is admitted in a hospital has been filed before a Magistrate. Can the accused be remanded to judicial custody? If yes, what is the procedure?

4. An accused wants to change the pleader who appears for him. But the pleader is not prepared to issue a letter relinquishing the vakkalath. What is the procedure for the accused to appoint a new pleader?

5. Is it permissible for a Magistrate to call for a plan of the scene of offence? Explain with the relevant rule.

6. During trial of a criminal case involving a bailable offence, the accused applied to summon a witness on his side. He contends that the Government has to pay batta to the witness. Write an order mentioning the relevant rule?

7. What is to be done with a private complaint, if it is revealed that the matter is pending investigation by the police?

8. Investigating Officer wants specimen signature of an accused, who was arrested and later released on bail, to be taken for the purpose of comparison. What is to be done?

9. Is it not necessary to get a signed statement when a person is questioned by police u/s.161 Cr.P.C?

10. A person appeared before a Magistrate and requested to record his statement claiming that he witnessed commission of a grave offence. Can the Magistrate record his statement u/s 164 of Cr.P.C? Explain.

11. When can a warrant for arrest of an accused be issued in lieu of summons?

12. During the course of enquiry u/s.202 of the Cr.P.C, the person shown as accused in the complaint appeared before the Magistrate and filed a petition to call for a document. He contends that the said document will prove his innocence. Can the Magistrate allow the petition?

13. A complaint was filed before a Magistrate requesting to forward the same to the crime branch for investigation. The Magistrate forwarded the complaint to the Superintendent of Police, Crime branch for investigation. Comment.

14. An Execution Petition was filed to sell the property lying out side the jurisdiction of the court for realization of money. Cannot the court execute the decree? State reasons.

15. What is the general rule regarding Civil Court's power to entertain a suit?

Part II

Answer any fifteen questions in not exceeding 120 words. Each carries 3 marks.

1. A judgment debtor in a money suit was ordered to be committed to civil prison. What are the payments to be made by the decree holder for sending him to civil prison?

2. What do you mean by the expression "Court which passed the decree"?

3. What are the considerations for granting compensatory costs in a suit. Can you grant compensatory costs if there is no claim made in the pleading?

4. Write a short note on the power of review of a civil court.

5. You fixed a certain time for doing an act by one of the parties to a suit pending before you. Can you extend the time fixed? If the time granted was for payment of court fee, can you extend it further? Explain with provisions.

6. Does the court have power to add or strike out parties to a suit? Explain the statutory provision.

7. What are the considerations for allowing amendment of pleading? Can it be done after the commencement of trial? Explain with the case law on the subject.

8. Illustrate three circumstances in which a plaint can be rejected.

9. A suit was dismissed for the non appearance of the plaintiff. Can the plaintiff bring a fresh suit in respect of the same cause of action? If not, what is his remedy?

10. What are the situations in which notice to show cause against execution of a decree becomes mandatory?

11. Mother filed a suit on behalf of her minor son representing herself as the next friend. Was it necessary for the mother to file a petition, seeking permission of the court to file the suit? Is there any difference, if the minor is a defendant in the suit? Explain the provisions.

12. When can a Criminal Case be transferred to the register of long pending cases?

13. In a penal statute, other than the Indian penal Code, the punishment prescribed for an offence is 10 years imprisonment and fine of Rs.10,000/-. The Act does not state whether the offence is bailable or not and also specify the forum for trial. Whether the offence is bailable? Where it has to be tried? State reasons.

14. A station House Officer received a reliable oral information regarding commission of a cognizable offence. What are his duties?

15. Government of Kerala issued an order for withdrawal from prosecution of a case pending before a Magistrate. Assistant Public Prosecutor filed a memo appended with the government order and requested the Magistrate to acquit the accused. The Magistrate allowed the prayer and acquitted the accused. Comment.

16. A police officer searched a house and seized certain articles which were suspected to be stolen. What is the procedure to be followed by the police officer in regard to the seized article?

17. What is the extent of sentence that can be passed by
(a) Chief Judicial Magistrate
(b) Judicial Magistrate of the Ist Class.

18. A person was found in a bus station in the wee-hours by a policeman on patrol duty. Policeman apprehending that the person was about to commit a cognizable offence, arrested him. Under which provision the police could arrest him? If he is produced before a Magistrate without specifying any particular offence, Could the Magistrate deny bail to him?

19. What is the circumstance in which an accused can be examined as a witness? Can adverse inference be drawn against the accused, if he fails to testify?

20. Victim in a case involving a compoundable offence is a minor. How can it be compounded? If the victim died during the pendency of a compoundable case, how can it be compounded?

Part III

Answer any five questions in not exceeding 250 words. Each carries 8 marks.

1. (i) What are the essential elements of a decree?
(ii) What is the difference between a preliminary decree and a final decree?
(iii) What is the nature of an order passed on an application for restitution u/s. 144 CPC?

2. (i) What do you mean by the term 'Constructive res judicata?'
(ii) In a suit, three reliefs were claimed by the plaintiff against the defendant. Court passed a decree in favour of the plaintiff whereby two reliefs were granted. Nothing was mentioned about the third relief. What is the legal effect?
(iii) A filed a suit against B & C in their personal name and as representatives of other persons having the same interest. A's suit was decreed. Subsequently, A filed another suit against D, who was not a party in the earlier suit. However, D raised contentions identical to that of B & C in the earlier suit. Is the contention of D barred by res judicata? State reasons.

3. (i) What all questions can be decided in a petition filed u/s. 47 CPC?
(ii) Can a separate suit be maintained in respect of such questions?
(iii) A suit was filed by A against B for mandatory injunction. The defendant B remained absent and the suit was decreed ex parte. Subsequently the plaintiff/decree holder filed an execution petition. After the decree, but before the filing of execution petition, the defendant assigned the property to C. Can C contend that the decree does not bind him?
(iv) In the earlier problem, if the suit was one for recovery of money and if C was an auction purchaser, can he be regarded as a party to the suit for the purpose of Sec. 47?

4. (i) What do you mean by inherent power of the court u/s. 151 CPC?
(ii) Is it correct to say that the inherent power is conferred by Sec. 151 CPC?
(iii) Explain three situations with illustrations in which you can and cannot invoke inherent power.

5. Write notes on the following:
(i) Arrest before judgment
(ii) Attachment before judgment

6. (i) An accused was produced before a Magistrate during the investigation in a non bailable offence. What are the considerations for remanding the accused?

(ii) During which time the accused can be given in police custody?
(iii) When does the accused get an indefeasible right to claim bail?

7. (i) Two complaints were filed before a Magistrate on the same day. One contained allegations of theft and the other rape. In both cases the complainants were present. Magistrate examined them and he decided to conduct enquiry u/s. 202 Cr.P.C. Explain the procedure in both the cases.
(ii) If the complaint alleging theft is filed by a government servant, is there any difference in the procedure?

8. (i) Describe the procedure for framing charge and trial of a warrant trial case —
i) on a police report
ii) on a private complaint