Kerala Judicial Service Mains 2009 (Regular) · Question papers

Paper IV · compulsory paper

Marks: 100 · Duration: 3 hours

Part I

Answer all questions in one or two sentences. Each question carries 1 mark.

(1) A plaint presented in a Munsiff's Court was found to be defective. What is the course open to the court? [1 mark]

(2) How can facts in an interlocutory proceeding be proved? [1 mark]

(3) A warrant of arrest issued from a Munsiff's Court was signed by the chief ministerial officer of the court. Is the warrant valid? [1 mark]

(4) A government medical officer is a witness in a criminal case. His address given in the charge sheet has been changed and his present address is not known. What is the procedure for issuing summons to him? [1 mark]

(5) An Advocate, who accepted the vakkalath executed by an accused, has himself attested it. Is the vakkalath legal? Explain with the relevant rule. [1 mark]

(6) Even a stranger to a proceedings is entitled to get certified copy of the judgment as of right. Elucidate. [1 mark]

(7) During trial of a criminal case involving a non-bailable offence, 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. [1 mark]

(8) The accused in a case is proclaimed absconding. Witnesses are available for tendering evidence. Is the Magistrate empowered to record their evidence? [1 mark]

(9) During the trial of an offence, it was revealed that the case before a Magistrate is a counter case to a pending sessions case. What is to be done? [1 mark]

(10) A Magistrate, after taking cognizance and after recording statement of the complainant, finds that he has no jurisdiction to try the case. What shall he do? [1 mark]

(11) In a private complaint, the accused is shown residing out of jurisdiction of the court. 4 witnesses were cited in the complaint. What is the procedure to be followed? [1 mark]

(12) The matter in issue in a suit is also directly and substantially in issue in a suit pending before a foreign court between the same parties. Whether S.10 CPC can be applied to stay the subsequent suit? State reasons. [1 mark]

(13) Defendant in a suit raised objection regarding territorial jurisdiction of the court for the first time at the time of evidence. Can it be entertained? State reasons. [1 mark]

(14) A obtained a money decree against B, a government employee for Rs.50,000/-. In the execution petition he requested the court to attach the amount lying in the name of J.D. in the Provident Fund account? How will you decide? [1 mark]

(15) A suit u/s.92 CPC relating to a public charity was filed before a Munsiff Court. What step will you take? [1 mark]

Part II

Answer any 15 questions in no more than 120 words each. Each question carries 3 marks.

(1) Is it permissible to send a summons to a witness through the party to the suit? If yes, state the procedure? [3 marks]

(2) Ina final decree for partition, plaintiff and two defendants were directed to deposit the amount required for the non-judicial stamp paper for engrossing the decree. The defendants failed to deposit the amount. How can the plaintiff get the final decree engrossed on the non-judicial stamp paper? [3 marks]

(3) 'A' & 'B' entered into a contract, by which 'B' had to pay a certain sum to 'A'. No specific rate of interest was mentioned in the contract. 'A' filed a suit against 'B' claiming return of money with interest. How will you decide the rate of interest? [3 marks]

(4) 'A' filed a suit against 'B' for realization of money. 'A' obtained attachment before judgment of B's immovable property. Thereafter 'B' sold the property to 'C'. What is the legal effect of that sale? If 'B' and 'C' had executed a contract to sell the property, and if it had been registered before the attachment, does it make any difference? [3 marks]

(5) What are the considerations for invoking power u/s.89 CPC? What are the modes of settlement of disputes prescribed u/s.89 CPC? [3 marks]

(6) When can an application for restitution be filed? What are the considerations for allowing it? [3 marks]

(7) What are the conditions in which a suit under Order 1 Rule 8 CPC can be filed? If the parties wanted to compromise the matter, how can it be done? [3 marks]

(8) What is the effect of non-inclusion of one of the claims available to the plaintiff against the defendant in a suit? Plaintiff wanted to file a money suit before a Munsiff court. Going by the valuation of the claim, it may exceed the pecuniary jurisdiction of that court. Can it be instituted before a Munsiff Court? If so, how? [3 marks]

(9) What are the considerations for return of plaint? If the return of plaint is to be made after the appearance of the defendant, what shall be the procedure? [3 marks]

(10) Compare the terms "set off' and "counter claim". [3 marks]

(11) What do you mean by the term 'issues' arising in a suit? What are the kinds of issues? Can a court dispose of a case on a preliminary issue? If so, under what circumstances? [3 marks]

(12) What are the modes of execution of a decree for permanent prohibitory injunction? 'A' obtained a decree against 'B' for permanent prohibitory injunction from demolishing a compound wall. After the decree, 'B' demolished the wall. Can 'A' get the wall restored in execution of the prohibitory injunction decree? [3 marks]

(13) State the procedure to be complied with by a Magistrate before remanding an accused to police custody. [3 marks]

(14) An accused in a case was found to be absconding. What are the procedures to be observed before transferring the case to the register of long pending cases? [3 marks]

(15) Investigating Officer wanted production of a document in the custody of a public servant. What is the step to be taken? Is there any difference if the document is in the custody of a postal authority? [3 marks]

(16) An accused was tried for an offence punishable u/s.379 of the IPC. The Magistrate on finding that an offence u/s.417 of the IPC was proved and the offence u/s.379 was not proved, convicted the accused of the offence u/s.417 IPC. Comment. [3 marks]

(17) When can a summons case be converted into a warrant case? What is the procedure to be followed? [3 marks]

(18) What are the restrictions in imposing imprisonment in default of fine by a Magistrate? [3 marks]

(19) Who are all the authorities competent to issue a search warrant u/s.97 Cr.P.C.? What are the circumstances in which a search warrant can be issued? [3 marks]

(20) A Magistrate tried a warrant trial case and posted it for judgment. What are the steps to be taken in the following circumstances?
(i) When the accused is in custody?
(ii) When the sole accused in the case abstains from court on the day of judgment?
(iii) When one of the three accused in the case absconds? [3 marks]

Part III

Answer any 5 questions in no more than 250 words each. Each question carries 8 marks.

(1) (i) What are the essentials of res judicata?
(ii) What do you mean by the expression 'former suit'?
(iii) What is the difference between res judicata and estoppel?
(iv) Is section 11 CPC exhaustive in the matter of res judicata? [8 marks]

(2) (i) What is the general rule regarding filing of suits for recovery of immovable property and partition of immovable property?
(ii) Is there any difference if there are more than one property and they are situated in the jurisdiction of different courts?
(iii) A person has a cause of action against the debtor and the surety for recovery of money. Debtor resides at Thrissur and the surety works for gain at Kottayam. Where the suit can be filed?
(iv) If the borrowal was at Kottayam, what is the effect if the parties agree to file the suit at Thiruvananthapuram? [8 marks]

(3) (i) What are the modes in which a decree can be executed? Explain.
(ii) Who are all exempted from arrest and detention in execution of a money decree? [8 marks]

(4) (i) What are the considerations for granting a temporary injunction in a suit?
(ii) Explain the principles with statutory provision and case law.
(iii) In a suit, an ex-parte order of injunction was granted against the defendant. After serving the order of injunction and appearance of the defendant, the suit was dismissed on a technical reason. Before dismissal of the suit, the plaintiff filed an application alleging violation of the order by the defendant. Decide with reference to legal provision and case law. [8 marks]

(5) (i) Who are the persons entitled to claim maintenance u/s.125 Cr.P.C?
(ii) Can a Criminal court grant interim maintenance?

(iii) What is the method of enforcement of an order passed to pay maintenance u/s.125 Cr.P.C.?
(iv) What are the reasons in which an order for maintenance can be altered? [8 marks]

(6) (i) What do you mean by the term cognizance of an offence?
(ii) What are the circumstances upon which a Magistrate can take cognizance of an offence?
(iii) A Magistrate peruses the private complaint filed and examines the complainant on oath. Thereafter, he forwarded the complaint to the officer in charge of a police station for investigation. Is the order correct? [8 marks]

(7) (i) What is the purpose of examining an accused u/s.313 Cr.P.C.?
(ii) Is it necessary that the court should previously warn the accused when he is questioned under the above section?
(iii) Is it mandatory in any case to examine the accused u/s.313 Cr.P.C.?
(iv) Is it necessary to administer oath before examining the accused u/s.313 Cr.P.C.?
(v) Can the answers given by the accused be taken into consideration to convict him? [8 marks]

(8) (i) What are the periods of limitation prescribed under the Code of Criminal Procedure 1973 for different kinds of offence?
(ii) When does the period of limitation commence?
(iii) Is there any difference if the offence is a continuing offence? [8 marks]