Kerala Judicial Service (Mains) 2020

Paper IV · compulsory paper

Marks: 100 · Duration: 3 Hours

Part - I

Answer all the questions. Each question carries one mark. (Answers to the questions in this Part should be marked only in the OMR Answer sheet. Answers marked/written elsewhere will not be valued).

(15 x 1 mark = 15 marks)

1. A availed loans from X residing at Thiruvananthapuram, Y residing at Kollam and Z residing at Alappuzha. A has secured all the three debts with mortgage of his immovable property situated at Ernakulam. A resides at Kottayam. Suit for recovery of money by sale of the mortgaged property is to be filed at which court ?

(A) Kottayam

(B) Ernakulam

(C) Kollam

(D) Alappuzha.

2. Which among the following enables the Court to attach property situated beyond the territorial limits of that court?

(A) Precept

(B) Third party proceeding

(C) Interpleader suit

(D) None of the above

3. Can the Court take help of any person in preparing the questions to be put to the accused under S.313 Cr.P.C.

(A) No

(B) Yes. Prosecutor

(C) Yes. Defence counsel

(D) (B)and (C) above

4. S.34 CPC deals with interest for the period ----

(A) prior to filing of suit

(B) Pending suit and till decree

(C) After decree and till recovery

(D) (B)and (C)

5. Can the offence of adultery be compounded ?

(A) Yes, by the husband of the woman

(B) No

(C) Yes, by the adulterer

(D) Yes,both by husband and adulterer

6. A suit is filed against Government seeking urgent and immediate relief. Can the Court grant exparte interim relief in such a suit?

(A) Yes

(B) No

(C) Depends on the emergency

(D) Only when leave is granted under S.80(2).

7. In a suit filed for recovery of money with interest, the court finds that the plaintiff is entitled for the plaint claim with interest. However, in the decretal portion of the judgment, interest is not mentioned. What is the remedy of the plaintiff ?

(A) Appeal

(B) Review

(C) Seek for amendment under Section 152 CPC

(D) Any of the above.

8. Can Court take cognizance of an offence under S.498A IPC on a police report.

(A) No. Only on a complaint by wife

(B) No. Only on a complaint by mother

(C) No. Only on a complaint by blood relative

(D) Yes. By virtue of S.198A Cr.P.C.

9. Issues can be amended?

(A) only before trial commences

(B) any time before decree is passed

(C) only before steps are completed

(D) none of the above

10. While considering the default bail, will intervening holidays be accountable under S.167(2) Cr.P.C.?

(A) Holidays shall be excluded from the period

(B) Local holidays shall be excluded

(C) Holidays shall be accountable

(D) None of above

11. Which among the following is within the power of a District Magistrate or a SDM conducting enquiry under S.137 or S.138 CrP.C?

(A) To conduct local inspection by any person

(B) Summon and examine an expert

(C) To appoint a person to record evidence

(D) (A) and (B)

12. Pecuniary jurisdiction of the Munsiff's Court is?

(A) Upto 10 lakhs

(B) Upto 20 lakhs

(C) Unlimited

(D) Upto 5 lakhs

13. In which among the following situations a Magistrate can direct that the accused will not be furnished copies of document under S.208 Cr.P.C, but will be permitted to inspect

(A) If documents are confidential

(B) If documents are voluminous

(C) If documents produced are original registers

(D) If document is an electronic document

14. Pending a suit for realisation of money, plaintiff files an application for amendment of the plaint, seeking to enhance the plaint claim beyond the jurisdiction of the Court. What should the Court do?

(A) Return the plaint along with the application for presentation to Court having jurisdiction.

(B) Allow the amendment and proceed with the suit.

(C) Allow the amendment and return the plaint for presentation to Court having jurisdiction.

(D) None of the above.

15. Under S.219 Cr.P.C, a person accused of three offences of same kind can be charged together, which means;

(A) When they are punishable with same amount of punishment under same section of Indian Penal Code or

(B) When they are punishable with same amount of punishment under same section of any special laws or

(C) When they are punishable with same amount of punishment under same section of any local laws

(D) All the above

Part - II

Answer any eleven questions. Answers shall not exceed 160 words (1 ½ pages). If more than eleven questions are answered, the first eleven answers alone will be evaluated. Answers to the questions in this part should be written in the Common Answer Book.

(11 x 5 marks = 55 marks)

16. A suit is instituted on payment of one-tenth Court fee. When is the balance court fee payable? Does the Court have power to extend the time for payment of balance court fee beyond the 30 days period fixed under S.4A of Court Fees Act?

17. One person is arrayed as an accused in a criminal proceedings along with few others. He filed an application to discharge, which was allowed. In the course of trial of remaining accused, new evidence

touching the complicity of the discharged person is revealed. Can the Court invoke S.319 CrP.C.? Explain with reasons?

18. A decree for recovery of possession obtained by X against Y is under execution. One Z obstructs the execution, claiming independent right and possession over the property. The execution court, on the available materials, found that Z is in possession of the property. Thereafter, Z was relegated to file a suit to establish his title. Discuss about the correctness or otherwise of the order with relevant statutory provisions.

19. What are the limits of exercise of powers under S.311 Cr.P.C. Explain with examples?

20. What are the particulars contained in A Diary and B Diary maintained under the Civil Rules of Practice?

21. 'X' files a suit for money against 'Y' based on promissory note. In his written statement 'Y' contends that his signature in the promissory note is forged. Simultaneously 'Y' files a criminal complaint against 'X' for cheating. What are the options available to the Magistrate before whom the complaint is filed? Elaborate with reasoning.

22. What is the time fixed under Order VIII Rule 1 CPC to file written statement? Do Courts, under any circumstances, have power to extend the time beyond the time fixed therein?

23. In a suit for prohibitory injunction against trespass, the defendant filed a counter claim for the same relief asserting his possession over the property. During the course of the plaintiff's evidence, the defendant filed an application for amendment of the Counter claim to incorporate a prayer for recovery of possession alleging that, after commencement of trial the plaintiff trespassed into the property. Is the amendment liable to be allowed? Discuss the scope of amendment after commencement of trial.

24. What are the contents of 'A' diary and proceedings papers to be maintained in a Court under the Criminal Rules of Practice?

25. Does the filing of a Caveat denude the power of the Court to pass exparte interim orders under all circumstances? Discuss with reference to scope of caveat.

26. Is a fresh suit maintainable when,

(A) A suit is dismissed for default for failure on the part of the plaintiff to take steps for service of summons.

(B) Plaintiff does not appear but defendant appears.

27. A witness, during trial, did not support the prosecution case. The prosecutor seeks permission to declare him hostile. What are the judicial proceedings to be done by the Magistrate thereafter in the course of examination of that witness?

28. When a right not pre-existing in common law is created by a statute and the statute provides a remedy, is the jurisdiction of the Civil Court ousted?

29. 'When can the police arrest a person without warrant? What are the rights of an arrested person?

30. A decree is executed under Order 21 CPC. Is there any provision for execution of an order? Explain.

Part - III

Answer both the questions. Answers to the questions in this part should be written in the Common Answer Book. (2 x 15 marks = 30 marks)

Writing of judgment (Name of Court alone to be indicated. Other details in the cause title not required)

31. A agreed to purchase 10 cents of property owned and possessed by B, for a total consideration of Rs.6 lakhs. A written agreement was entered into on 01.02.2018 and an advance of Rs.1 lakh was paid. It was inter alia agreed that the entire amount of sale consideration would be paid by A to B within a period of six months from the date of agreement, on which day, sale deed would be executed. It was further agreed that, the seller would get the property measured, handover in advance copies of title deeds, all previous deeds, receipts evidencing payment of water and electricity connection, possession certificate and encumbrance certificate for 13 years. Time was recorded as the essence of the contract. After five months, buyer issued a lawyer notice to the seller asserting that, he has not given copies of the title deeds and that the property has not been measured. He called upon the seller to measure the property, satisfy the title deeds, to accept the balance sale consideration and to execute the document of assignment. A reply was sent by the seller alleging that the buyer has no intention to purchase the property, has no financial ability, time was treated as the essence of the contract, and that, delay was caused by the buyer. A suit was instituted by the buyer in September 2018 for specific performance of the written agreement. It was claimed that, parties were governed by the Specific Relief Act as amended by Act 1 of 2018, which had come into effect on 01.10.2018.

The defendant filed a detailed written statement traversing the various allegations., It was contended that, though the agreement was entered into, time was considered as the essence of the contract. It was also contended that the plaintiff did not have sufficient means or funds to pay the balance sale consideration. Though copies of title deeds and previous title deeds were offered, the plaintiff refused to accept it. It was also contended that plaintiff was never ready and willing to perform his part of the contract, and that, damage, if any, can be compensated in terms of money.

On the basis of the above pleadings, issues were framed and the parties proceeded for trial. On the side of the plaintiff, he got himself examined as PW1. He tendered evidence strictly in accordance with the plaint claim. In the cross examination, he admitted that, he did not have sufficient funds in his bank account during the relevant period though at the time of institution of the suit, he had sufficient funds with him. The agreement could not be performed due to the conduct of the defendant. He asserted that, he was ready and willing to perform his part of the contract.

PW2 was examined to support the case of the plaintiff. He also deposed that, he had seen the execution of the document and had signed the agreement as an attesting witness.

PW3 deposed that, he knew about the execution of the agreement and receipt of consideration. However, the defendant did not deliver his title deeds nor the property was got measured.

Defendant got himself examined as DW1. He asserted in terms of his pleadings. He asserted that, though he was ready and willing to perform his part of the contract, the plaintiff failed to satisfy his part of contract. Time was the essence of the contract. Hence, the plaintiff was not entitled for damages or compensation. Though, he was confronted with the question whether he has given previous documents and title deeds, the reply was in the negative. It was also stated that, plaintiff

did not have sufficient means to pay. He asserted that, he was ready and willing to execute the document, hand over possession of the title deed.

Frame issues on the basis of the above pleadings and draft Judgment.

32. 'A' was the driver of a motor car. On 06.03.2021 at 6 a.m, while he was driving the car along the National Highway from Alleppey to Kollam, a scooter came from the opposite side. It overtook an autorickshaw and on seeing the car from opposite side, the rider applied break suddenly. Scooter skid and hit on the body of the car. He was thrown off and sustained serious injuries, He succumbed to the injuries, while in hospital. Crime was registered and after investigation, final report was laid against 'A' for offences punishable under sections 279, 338 and 304A IPC.

On appearance, the accused pleaded not guilty and demanded trial.

On the side of prosecution, one eye witness to the incident was examined as PW1. He stated that, he was an autorickshaw driver. On the relevant day, while he was proceeding along the National Highway a car came from opposite side with great speed. At same time, a scooter overtook his autorickshaw, proceeded towards the middle of the road and thereafter, the incident occurred. He attributed the incident to the rash and negligent driving of the driver of the car. He identified the accused as the person who was driving the car. In cross examination, he admitted that the road was sufficiently wide and the incident happened in the middle of the National Highway. The rider of the scooter was also riding the Scooter with great speed. He overtook his autorickshaw and hit head on, against the car. In the cross examination, he further admitted that the scooter had crossed the mid line and moved towards the side of the car. However, he could not mention the approximate speed.

PW2 was a petty shop owner, conducting the shop near the place of incident. He deposed that, on hearing the crash sound, he rushed to the spot and found the injured lying in a pool of blood. He identified the accused as the driver of the car. It was stated that the car was being driven in a rash and negligent manner with great speed. In the cross examination, he admitted that, he could not answer the approximate speed of the car. To a specific question as to whether the permitted speed in that locality of the National Highway was 60 kms per hour and whether the accused has crossed that limit, the answer was that, he did not know.

PW4 was the investigation officer, who deposed that, though PW1 and PW2 had stated that the car was driven at a great speed, but they could not ascertain the specific speed of the car. The remaining witnesses were the officials and mahazar witnesses.

Prosecution relied on the mahazar prepared by the Head Constable attached to the local police station. It showed that the road had a width of 110 feet. The road was lying north south. Car was proceeding from north to south and scooter from south to north. The place of incident was 60 cms towards the eastern side from the central line. There were tyre marks of the two wheeler having applied the break, and that, the vehicle had moved towards east.

In the questioning under S.313 CrP.C., the accused specifically stated that, he had an experience of 35 years as a driver, he was not involved in any other crime earlier. He stated that, he was driving the vehicle, following the rules and on his side, the scooter came with great speed, overtook another vehicle, suddenly on seeing the car, he applied his break. The vehicle skid, crossed the mid line, came and hit the car. However, he did not adduce any oral or documentary evidence.

Write a judgment on the basis of the above facts.