Kerala Judicial Service (Mains) 2022

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. Which among the following statements relating to framing of issues in terms of Rule 1(5) of Order XIV of the Code of Civil Procedure, 1908 is incorrect?

(A) Every issue of fact shall be so framed as to indicate on whom the burden of proof lies.

(B) Every issue of law shall be framed only by reference to the pleadings or documents mentioned in the pleadings.

(C) No proposition of fact which is not by itself is a material proposition, but is relevant only as tending to prove a material proposition, shall be made the subject of an issue.

(D) No question regarding admissibility of evidence shall be made the subject of an issue.

2. Which among the following is the course of action to be adopted by a Munsiff when a suit in which he is personally interested comes before him?

(A) He shall transmit forthwith the record of such suit to the Court of the Subordinate Judge having territorial jurisdiction over the subject matter with the report of the circumstances attending the reference.

(B) He shall transmit forthwith the record of such suit to the District Court with the report of the circumstances attending the reference.

(C) He shall transmit forthwith the record of such suit to the High Court with the report of the circumstances attending the reference.

(D) None of the above.

3. Which among the following statements relating to a suit under Section 92 of the Code of Civil Procedure, 1908 dealing with public charities is incorrect?

(A) A suit under Section 92 could be instituted only by the Advocate General or two or more persons having an interest in the Trust

(B) A suit under Section 92 is to be instituted in the Principal Civil Court of original jurisdiction or in any other court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject matter is situate.

(C) A suit under Section 92 would lie only in the case of any alleged breach of any express or constructive Trust created for the purposes of a charitable or religious nature.

(D) A court dealing with a suit under Section 92 is empowered to grant only the reliefs provided for in the Section.

4. Which among the following statements relating to death of parties to a suit is incorrect?

(A) Where a question arises before the appellate court as to whether any person is or is not the legal representative of a deceased party, the appellate court shall decide the question.

(B) Where death occurs between the conclusion of the hearing and the pronouncement of the judgement, the judgement can be pronounced notwithstanding the death, irrespective of the fact as to whether the cause of action survives or not.

(C) Where the legal representatives of a party are already on record, the death does not result in abatement of the suit, whatever may be the capacity in which the legal representatives are arrayed in the suit.

(D) Where a party against whom no relief is sought in the suit dies, the death does not result in abatement of the suit.

5. Which among the following statements relating to compelling of attendance of a person to whom summons has been issued under Section 30 of the Code of Civil Procedure, 1908 is incorrect?

(A) The court may compel attendance by issuing a warrant of arrest.

(B) The court may compel attendance by attaching and selling the properties of the person concerned.

(C) The court may compel attendance by ordering the person concerned to furnish security for his appearance and in default commit him to civil prison.

(D) The court may compel attendance by imposing fine upon the person concerned not exceeding ten thousand rupees.

6. Which among the following statements relating to pleadings in a suit is incorrect?

(A) The court may, at any stage of the proceedings, direct any party to a suit to amend any matter in any pleading which may tend to prejudice the fair trial of the suit.

(B) Wherever it is material to allege a condition of mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

(C) Where a contract is alleged in any pleading a bare denial of the same by the opposite party shall be construed as a denial of legality or sufficiency in law of such contract as well.

(D) Wherever it is material to allege notice to any person of any fact, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.

7. Which among the following statements relating to execution of decree against a partnership firm is incorrect?

(A) Where a decree has been passed, execution may be granted against any property the partnership was holding at the time of the decree.

(B) Where a decree has been passed, execution may be granted against any person who has been individually served as a partner with a summons and has failed to appear.

(C) Where a decree has been passed, execution may be granted against any person who has appeared in his own name under Rule 6 or Rule 7 of Order XXX of the Code of Civil Procedure, 1908 or who has admitted on the pleadings that he is or who has been adjusted to be a partner.

(D) Where a decree has been passed, the same can be executed against persons other than those mentioned in options (B) and (C) above also.

8. Which of the following statements relating to foreign judgments is incorrect?

(A) A foreign judgment shall not be conclusive as to any matter thereby adjudicated upon between the parties where it has been obtained by fraud.

(B) A foreign judgment shall not be conclusive as to any matter thereby adjudicated upon between the parties where it sustains a claim founded on a breach of any law in force in India.

(C) A foreign judgement shall not be conclusive as to any matter thereby adjudicated upon between the parties where the proceedings in which the judgement was obtained are opposed to natural justice.

(D) A court shall not presume, upon mere production of any document purporting to be a certified copy of a foreign judgement, that such judgement was pronounced by a court of competent jurisdiction, unless the contrary is established.

9. A trial in a criminal case can be stated to commence when,

(A) the final report is laid under Section 173 of the Cr.P.C.

(B) when the court takes cognizance of the offence

(C) when the charge is framed and the plea is taken

(D) when examination of witnesses commences.

10. In the course of trial, the Sessions Judge finds that some of the provisions of Section 164 of the Cr.P.C. have not been complied with by the Magistrate who recorded the confession statement. Which provision in the Code of Criminal Procedure, 1973 enables the Sessions Judge to take evidence in regard to such non- compliance and admit the said statement if the court is satisfied that such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded?

(A) Section 374 of the Cr.P.C.

(B) Section 446 of the Cr.P.C

(C) Section 463 of the Cr.P.C

(D) Section 473 of the Cr.P.C

11. An order of acquittal is passed by the learned Magistrate on a complaint lodged by the complainant under Section 138 of the Negotiable Instruments Act, 1881. Under which provision of the Code of Criminal Procedure, 1973 will an appeal lie?

(A) Section 372 of the Cr.P.C.

(B) Section 374(1) of the Cr.P.C.

(C) Section 378(4) of the Cr.P.C.

(D) Section 397 (1) of the Cr.P.C.

12. Besides Section 209 of the Code of Criminal Procedure, 1973, which provision in the Code enables the Magistrate to commit the case to the Court of Session if the conditions mentioned in the section are satisfied?

(A) Section 193 of the Cr.P.C

(B) Section 213 of the Cr.P.C

(C) Section 323 of the Cr.P.C

(D) None of the above

13. An offence punishable with imprisonment for a term of 4 years is committed by a person. What is the period of limitation prescribed under the Cr.P.C. for filing the complaint to prosecute the accused?

(A) 6 months.

(B) 1 year

(C) 3 years

(D) None of the above.

14. In a summons case instituted otherwise than upon a complaint, after the evidence of the principal witnesses was recorded, the learned Magistrate, with the previous sanction of the Chief Judicial Magistrate, decides to stop the proceedings. Which among the following is to be passed by the learned Magistrate?

(A) Order release of the accused

(B) Order discharge

(C) Pronounce a judgement of acquittal.

(D) None of the above.

15. Section 223 of the Cr.P.C. says that persons accused of certain offences may be charged and tried together. Which among the following is an incorrect statement.

(A) persons accused of the same offence committed in the course of the same transaction

(B) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence

(C) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months

(D) persons accused of different offences committed in the course of different transactions

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. (2 x 15 marks = 30 marks) (11 x 5 marks = 55 marks)

16. When a deposition has been read over to the witness, he pointed out a mistake as well as an omission in the deposition. The court was convinced of the omission pointed out, but not of the mistake stated to have been committed. What is the course of action to be adopted by the court to tackle the situation?

17. 'A', 'B' and 'C' obtained money decrees against 'X' and filed execution petitions thereupon for enforcement of the said decrees on 17.1.2012, 23.5.2013 and 25.9.2013 respectively. In the meanwhile, in the execution petition filed by 'A', the court attached and sold the only item of property held by 'X'

and pursuant to the sale, the purchaser deposited the sale proceeds in court on 20.8.2013. 'B' as well as 'C' thereupon claimed rateable distribution of the sale proceeds. The court declined rateable distribution to both 'B' and 'C'. Discuss the correctness or otherwise of the decision with relevant statutory provision concerning rateable distribution, its object and the conditions to be fulfilled for claiming rateable distribution.

18. 'A' entered into a contract with 'B' at Bangalore for distribution of the products of 'A' in Ernakulam. 'B' is a person residing in Ernakulam. The agreement contains a clause to the effect that "in case of any dispute between the parties as to their rights and liabilities, 'A' shall have to either approach the court of competent jurisdiction in Bangalore for relief or refer the dispute to arbitration." Later, when a dispute arose, 'A' did not exercise the options available to him and instead, chose to approach the court of competent jurisdiction in Ernakulam for relief. 'B' raised an objection as to the jurisdiction of the court to entertain the suit in the light of the clause in the agreement. The court repelled the objection. Is that decision right? Discuss the correctness or otherwise of the decision with relevant statutory provisions.

19. 'A' instituted a suit for recovery of Rs.2,00,000/- against 'X' on a promissory note. 'X' admitted the liability under the promissory note. X', however, contended that on a day after the amount under the promissory note became due, 'A' and his henchmen trespassed into his residential property and caused damage to the various movables therein, infuriated by his conduct in not honouring the payment under the promissory note on time; that the loss caused to him in this regard is Rs.2,00,000/- and claimed set-off of the liability under the promissory note on that basis. Discuss the sustainability or otherwise of the said claim of set-off with relevant statutory provision.

20. In the event of a supervening event or death of one of the parties to a suit for partition after the passing of the preliminary decree resulting in change in the quantum of shares to which the parties are entitled to, what shall be the course open to the court for adjustment of the shares of the parties at the time of passing of the final decree? Discuss with reference to the statutory provision in the Code of Civil Procedure, 1908 dealing with the 'decree to be passed in a suit for partition.

21. When a suit for damages instituted by a party to a works contract against the other for the loss caused to him on account of the breach of the terms of the agreement was taken up for preliminary hearing, it appeared to the court that the dispute is one fit to be resolved by recourse to arbitration in terms of Section 89 of the Code of Civil Procedure, 1908, and ascertained from the parties as to whether they are willing to resolve the dispute by recourse to arbitration. The parties pointed out to the court that there is no pre- existing agreement between them to resolve the dispute by recourse to Arbitration and Conciliation Act, 1996. What are the courses open to the court to discharge its function under Section 89 of the Code of Civil Procedure, 1908? Discuss.

22. Why does the leave of the court which appoints the Receiver is insisted upon for initiation of proceedings against the Receiver? When does the appointment of the Receiver and the responsibility of the Receiver to the Court come to an end? Discuss with reference to statutory provisions, if any.

23. 'A' sued 'B' in a representative capacity for prohibitory injunction. Notice was given of the institution of the suit to all persons interested by public advertisement under sub-rule (2) of Rule 8 of the Code of Civil Procedure, 1908. In the course of the suit, a compromise was arrived at between 'A' and 'B' and the suit was decreed based on the compromise. What are the statutory provisions which

were not complied with in the matter of passing such a decree? Give particulars of such provisions and discuss as to whether such a decree would bind the defendant and persons interested in the suit.

24. Can the provisions of the Code of Criminal Procedure, 1973 be invoked for the investigation, inquiry, or trial of a person prosecuted under the Army Act, 1950. Explain with reference to the relevant provisions in the Code of Criminal Procedure.

25. What is the procedure to be followed by a Judicial Magistrate who on receipt of a complaint of which he is competent to take cognizance, finds that the accused is residing in the adjacent District? Explain with reference to the relevant statutory provision and case law.

26. Discuss the concept of 'Issue Estoppel' in criminal proceedings.

27. What are the circumstances under which the police can conduct further investigation after laying the final report? Is the investigating officer required to take formal permission from any authority?

28. Mr.Rajan is accused of committing the offence of robbery. He absconded and there were materials before the court suggesting that there is no immediate prospect of securing his presence or arresting him. In his absence, can the court competent to try the offence, examine the witnesses and if the evidence is recorded, can the same be used against the accused and if so, under what circumstances?

29. In a case instituted otherwise than on a police report, it is made to appear to the Magistrate, in the course of inquiry held by him, that an investigation by the police is in progress 'in relation to the offence which is the subject matter of the enquiry or trial held by him. What is the procedure to be followed by the Magistrate?

30. Mr. X has several previous convictions to his credit. The prosecution intends to prove those previous convictions against Mr. X for the purpose of effecting his punishment under Sections 236 and 248 (3) of the Cr.P.C. What are the aspects that are to be borne in mind while framing the charge? 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 judgments (Name of Court alone to be indicated. Other details in the cause title and appendix not required)

31. Prepare a Judgement on the following materials, after framing the issues.

> The case of the plaintiff in the plaint is that the property on the western side of the property of the plaintiff scheduled in the plaint belongs to the defendant; that on 03.07.2015, a tree which stood in the property of the defendant fell into the property of the plaintiff causing damage to the compound wall, pipeline and roof of the building in the property of the plaintiff; that the tree that fell into the property of the plaintiff was in a dangerous condition; that since damage was caused to the structures in the property of the plaintiff on account of the fall of the tree, the plaintiff called upon the defendant to compensate him to the tune of Rs.50,000/- by issuing a lawyer's notice and that the defendant has sent a reply to the lawyer's notice denying the liability. The prayer in the suit was for a decree permitting the plaintiff to recover a sum of Rs.50,000/- from the defendant with future interest at the rate of 18% per annum charged on the property of the defendant.

The defendant contested the suit contending, among others, that the tree which fell down was not in a dangerous condition; that the tree had not fallen down on account of any act of the defendant, but on account of the rain and strong winds; that the defendant is, therefore, not liable to the plaintiff for any loss caused to him as the cause for the fall of the tree was a vis major; that the alleged damage was exaggerated and that the amount claimed by way of damages is exorbitant.

In the course of the suit, an Advocate Commissioner was appointed to ascertain and report as to the extent of the damage and the loss caused to the plaintiff on account of the fall of the tree. The Advocate Commissioner reported that the loss caused to the plaintiff on account of the fall of the tree is Rs.30,000/-. Neither the plaintiff nor the defendant filed objection to the Commissioner's report.

When the case came up for trial, the plaintiff gave evidence as PW1 in tune with the plaint averments. In addition, it was specifically deposed by the plaintiff that the roots of the tree which fell down had in fact crossed over to the property of the plaintiff.

The lawyer's notice and the reply to the lawyer's notice were marked as Ext.A1 and Ext.A2 respectively on the side of the plaintiff.

Although the evidence tendered by the plaintiff in his deposition that the tree was in a dangerous condition was seriously challenged in cross examination, the defendant did not cross examine the plaintiff on his testimony that the roots of the tree had crossed over to the property of the plaintiff.

Despite the fact that the evidence tendered by the plaintiff that the tree was in a dangerous condition was seriously challenged in cross examination, the plaintiff did not give any independent evidence to prove his case that the tree was in a dangerous condition.

The defendant gave evidence as DW1 in tune with the averments in the written statement filed by him admitting the fall of the tree. In the evidence given by the defendant, he did not dispute the fact that the roots of the tree had in fact crossed over to the property of the plaintiff. No other witness was examined on the side of the defendant.

32. On 13.12.1997, at about 7.30 pm, the accused Nos. 1 and 2, in furtherance of their common intention voluntarily caused hurt to PWs 1 to 3 and grievous hurt to PW4 by beating them with sticks and thereby committed the offences punishable under Sections 324 and 326 r/w. Section 34 of the IPC. The alleged incident took place in a road in front of the shop of PW5. On appearance, the accused pleaded not guilty to the charge and claimed that they be tried.

On the side of the prosecution, PWs 1 to 9 were examined and Exts.P1 to P9 were marked.

PW1 is the injured who lodged Ext.P1 FI Statement. He deposed before court that on the relevant day, he heard a hue and cry and rushed to the place in front of the shop of PW5. On reaching there, he saw PWs 2 to 4 being attacked by the accused with wooden sticks. PWs 2 and 3 sustained injuries on their head and PW4 sustained a fracture on his left hand. When he attempted to interfere and dissuade the accused, he was also attacked and injuries were inflicted. He identified the sticks which were used by the accused to attack him and the other injured. In cross-examination, he added that the accused had taken the wooden sticks from behind the shop of PW5.

PW2 is another injured witness, who stated before court that he was attacked with a stick by the 1st accused consequent to which he suffered an injury on the left elbow. He stated that the 2nd accused also attacked him with a stick causing a lacerated wound on his eyebrow. During cross-

examination, he deposed that he had occasion to witness the infliction of injuries with sticks by the accused on PWs 1, 3 and 4. He also identified the wooden sticks.

PW3 stated that he sustained injuries at the hands of the accused. He stated that accused Nos. 1 and 2 inflicted injuries on his body with the sticks in their possession. He also stated that he had suffered a fracture on the right metacarpal.

PW4 is another injured witness who stated that on 13.12.1997 at about 7.30 pm, he was attacked by accused Nos. 1 and 2. He stated that he has lost sight of the left eye as a result of the injuries inflicted. In cross-examination, he denied the assertion that the injuries were sustained consequent to a fall. He also identified the weapons used by the accused.

PW5 is a person who was running a tea shop near to the place of occurrence. He stated that on the relevant date, he had no occasion to witness the incident in which the accused had attacked PWs 1 to 4 with wooden sticks and caused injuries. He was declared hostile to the prosecution, and the Public Prosecutor was permitted to cross-examine the said witness. He, however, stated that no such incident had taken place.

PW6 is the Head Constable, who recorded Ext.P1 FI Statement and prepared Ext.P1(a) series body notes of PWs 1 to 4.

PW7 is the doctor who treated the injured and issued Ext.P2, P3, P4 and P5 wound certificates in respect of PWs 1 to 4. She stated that the alleged cause of injury mentioned in the wound certificates is “attacked with sticks”. She also opined that the injuries found on the bodies of the injured can be caused as alleged.

PW8 is the attestor to Ext.P7 scene mahazar.

PW9 is the Sub Inspector of Police who conducted the investigation. He prepared Ext.P7 scene mahazar and recovered MOs 1 to 4 wooden sticks. He submitted Ext.P8 report before the court giving details of the name and address of the accused.

When the accused were questioned under Section 313 of the Cr.P.C., they stated that they are innocent of the allegations and the allegations are false.

On the side of the defence, DW1 was examined to prove that there was a property dispute between the family of 1st accused and PW2. In cross examination, he stated that he had come to know that PWs 1 to 4 had sustained injuries in connection with an incident and they were admitted in the hospital.

Write a judgment based on the above facts.