Kerala Judicial Service (Mains) 2023

Paper III · 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 of the following is correct?

A. the burden of proof that the accused was not insane at the time of commission of offence is on the prosecution.

B. the burden of proving that the accused was insane at the time of commission of offence is on the accused.

C. there is a rebuttable presumption of fact that accused was insane at the time of commission of the offence.

D. it is a matter of inference to be drawn by the court on the facts proved by the prosecution.

2. Which of the following is false of Section 34 of the Indian Penal Code ?

A. it is only a rule of evidence.

B. it does not create a distinct offence.

C. it lays down principle of liability.

D. it is a penal provision.

3. Two ladies of young age, 'A' & 'B' fight with each other. 'A' was having a blade with which 'A' inflicts injury on the face of 'B' leaving a scar on the cheek of 'B'. 'A' is guilty of offence of causing:

A. grievous hurt.

B. grievous hurt by rash or negligent act.

C. simple hurt.

D. simple hurt by rash or negligent act.

4. To invoke the doctrine of estoppel, which of the following condition must be satisfied ?

A. representation by a person to another.

B. the other shall have acted upon the said representation.

C. such representation shall have been detrimental to the interest of the person to whom the representation has been made.

D. all of them.

5. A 'Holder in due course' of a Negotiable Instrument:

A. Can sue on the instrument in his own name.

B. Can sue only if permitted by the competent court of law.

C. Can sue on the instrument if permitted by the payee.

D. Cannot sue on the instrument in his own name.

6. Illicit traffic under NDPS Act 1985 include.

A. production of a narcotic drug.

B. import of a narcotic drug.

C. cultivation of a narcotic drug.

D. all of the above.

7. Which kind of sentence cannot be passed against the child in conflict with law ?

A. imprisonment for a term exceeding 7 years.

B. life imprisonment without the possibility of release

C. death sentence.

D. C and B

8. As per Juvenile Justice (Care and Protection of Children) Act, 2015 child in need of care and protection means-

A. a child who is found without any home or settled place of abode and without any ostensible means of subsistence.

B. who is found working in contravention of labour laws.

C. who resides with the person and that person has injured, exploited, abused or neglected the child.

D. A, B and C.

9. Section 326B of the Indian Penal Code, 1860 brought on by an amendment of 2013 prescribes punishment for:

A. Voluntarily causing hurt by dangerous weapons.

B. Voluntary causing grievous hurt by use of acid.

C. Voluntarily causing grievous hurt by dangerous weapons or means.

D. Voluntarily throwing or attempting to throw acid.

10. The sentence of imprisonment prescribed for the offence under Section 511 of the Indian Penal Code, 1860 for attempt to commit an offence or any act done towards such offence is:

A. Half of the longest term of imprisonment provided for such offence.

B. One-third of the longest term of imprisonment provided for such offence.

C. One-fourth of the longest term of imprisonment provided for such offence.

D. same punishment as prescribed for such offence.

11. The contents of a public document under Section 77 of the Indian Evidence Act can be proved:

A. Only by examining the author of the document.

B. By producing the certified copy of such a public document.

C. By producing the true copies of the document.

D. By examining the person acquainted with the handwriting of the scribe of the document.

12. Which of the following is correct?

A. Admissions can be proved by the person who made the admission.

B. The confession of a co-accused is a substantive evidence.

C. All admissions are statements but all statements are not admissions.

D. A witness who is unable to speak cannot give evidence.

13. Under the Juvenile Justice (Care and Protection of Children) Act of 2015, the first mode of determination of the age of a child is by:

A. Birth Certificate from the Local Authority.

B. By evidence of parents.

C. By medical test.

D. Birth Certificate issued by the school or the matriculation certificate.

14. As per Section 125 of the Kerala Police Act, 2011 an offence under Section 116 of the said Act shall be cognizable. But a police officer shall have power to arrest a person accused of that offence only if atleast one of the following conditions exists:

A. The offence is non-bailable.

B. His arrest is necessary to prevent or not to continue with any offence.

C. The punishment which may invite the offence, considering its nature, is a minimum sentence of three years.

D. The act committed constitute an offence under Section 116 but also Section 117 of the Kerla Police Act.

15. Which among the following statements is incorrect in the context of Section 4 of the Probation of Offenders Act, 1958 ?

A. The provision applies only if the offence is not punishable with imprisonment for life.

B. Section 4 can be invoked only if the offender has a fixed place of abode.

C. The court has considered the report of the probation officer before applying the provisions of Section 4.

D. Section 4 shall not be invoked if the offence is punishable with imprisonment for a term of 10 years or more.

Part - II

Answer any 15 questions. Answers shall not exceed 120 words (1 page). If more than 15 questions are answered, the first 15 answers alone will be evaluated. Answers to the questions in this Part should be written in the Common Answer Book. (15 x 3 marks = 45 marks)

16. 'A', by putting 'B' in fear of grievous hurt, dishonestly induces 'B' to sign or affix his seal to a blank paper and deliver it to 'A'. 'B' signs and delivers the paper to 'A'. The paper so signed may be converted into valuable security. What offence, if any, has been committed by 'A' ? Support your answer with relevant provisions of law and reasons.

17. A cheque was dishonoured initially, and the payee did not initiate action. The cheque was presented for payment for the second time, and again it was dishonoured. State in this connection

whether the payee can subsequently initiate prosecution for the dishonour of the cheque.

18. 'A' commits house-trespass by making a hole through the wall of 'Z's house and putting his hand through the aperture. Is there any offence committed by 'A' ? State the reasons for your answer.

19. 'A' attacks 'Z' under such circumstances of grave provocation that his killing of 'Z' would be only culpable homicide, not amounting to murder. 'B', having ill will towards 'Z', and intending to kill him and not having been subject to the provocation, assists 'A' in killing 'Z'. What is the offence committed by 'A' and 'B' ? Explain.

20. Which kinds of questions are barred in cross-examination ?

21. A prosecution was launched against 'A' under Section 55(a) of the Kerala Abkari Act on the allegation that he was found in possession of 40 bottles of IMFL, each containing 180 ml. of liquor. The sample was taken only from one of the bottles containing 180ml. of liquor, which comes within the permissible limit. All the bottles were carrying the label Old Port XXX Rum. 'A' took up a contention that since the samples were not drawn from each bottle, the prosecution would not lie. Is the contention sustainable ? Explain.

22. What does "heinous offences" mean under the Juvenile Justice (Care and Protection of Children) Act, 2015 ?

23. Describe the powers of the court to release certain offenders after admonition and to release certain other offenders on probation of good conduct under the Probation of Offenders Act.

24. In a prosecution under Section 119(1)(a) of the Kerala Police Act, 2011, the allegation is that the accused made obscene gestures having sexual flavour, degrading the dignity of the woman passing through the road. In the FIR, It is not stated what the obscene or sexual gesture or act performed by the petitioner was. The accused contended that in the absence of any allegation that the petitioner performed any specific act or gesture which was sexual in nature, degrading the dignity of women, the offence under S.119(1)(a) of the Act is not attracted. Is the contention sustainable ? Explain.

25. Explain the presumption available against an accused of culpability in the NDPS Act.

26. What is the distinction between good faith in criminal law and that in civil law ?

27. What is the distinction between legal presumptions and factual presumptions ?

28. Can the result of a DNA test be used to prove access under Section 112 of the Indian Evidence Act, 1872 ? Explain.

29. What is meant by a "fact" ? When is a fact said to be proved ? Explain the terms "proved", "disproved", and "not proved".

30. A person is accused of an offence. He pleads that by reason of unsound mind, he was unaware of the nature of the act done by him. Explain the principles and the provisions of law which deals with the burden of proof in the above case.

31. Explain the distinction between Section 113A and Section 113B of the Indian Evidence Act, 1872.

32. Can a cheque issued as a security for a debt be the basis for a prosecution under Section 138 of the Negotiable Instruments Act, 1881 ?

33. Can a power of attorney holder file a complaint alleging offences under Section 138 of the Negotiable Instruments Act, 1881 ?

34. Can the proceedings under the Protection of Women from Domestic Violence Act, 2005 be referred for mediation ?

35. Explain the presumptions under Section 139 and Section 146 of the Negotiable Instruments Act, 1881.

Part - III

Answer any 5 questions. Answers shall not exceed 250 words (2 pages). If more than 5 questions are answered, the first 5 answers alone will be evaluated. Answers to the questions in this Part should be written in the Common Answer Book.

(5 x 8 marks = 40 marks)

36. Are Section 498-A and Section 304-B mutually exclusive ? For the purpose of Section 498-A of the Indian Penal Code, what does cruelty mean ?

37. The wife filed a petition against the husband under Section 12 of the Protection of Women from Domestic Violence Act, 2005, seeking various reliefs, including maintenance. She has also moved an application for interim maintenance under Section 23(2). It was allowed, and interim monthly maintenance of Rs.15,000/- was awarded.

The husband failed to comply with the order. The wife/petitioner filed an application to strike off the respondent's defence.

The husband contended that as per S.28(1) of the Protection of Women from Domestic Violence Act, 2005, all proceedings under Ss.12, 18, 19, 20, 21, 22 and 23 and the offence under Section 31 shall be governed by the provisions of the Code of Criminal Procedure and there is no provision in the Code to strike off the defence.

The following questions emerge from these facts:

Does the Court/Magistrate dealing with the complaint filed under the provisions of the Protection of Women from Domestic Violence Act, 2005, have the power to strike off the defence for non-compliance with the order to pay pendente lite maintenance ?

What is the nature of proceedings under the Protection of Women from Domestic Violence Act, 2005 — civil or criminal ?

Answer with reference to the latest case law on the point.

38. (A) 'A' finds a purse with money lying on the road. 'A' did not know to whom did the purse belong. Subsequently, 'A' learns that the purse belonged to 'B', but 'A' retained the purse and appropriated the money. What offence, if any, has 'A' committed ? Give reasons for your answer.

(B) 'A' makes an attempt to pick the pocket of 'Z' by thrusting his hand into 'Z's pocket. 'A' fails in the attempt in consequence of 'Z's having nothing in the pocket. State what offence, if any, 'A' has committed. Give reasons for your answer.

39. In a motor vehicle accident, the victim succumbed to the injuries. During the medical examination of the accused, it was revealed that there was a very large volume of alcohol in his blood at the time of accident. What offences can he be charged with ? Explain with reference to case laws.

40. What is secondary evidence ? Explain the circumstances when secondary evidence be adduced.

41. In a prosecution under Section 27 of the Kerala Forest Act 1961, can the court take judicial notice of a notification issued under Section 19 of the Forest Act, declaring a particular area as a reserve forest ? Explain.

42. Would the penalty provided under S.31 of the Protection of Women from Domestic Violence Act, 2005 be attracted when there is a violation of an order of maintenance issued under S.20 of the Act. Answer with reference to case laws.

43. A Police Officer who was not in uniform noticed a car parked under a No parking Board on the side of a road. He started pasting stickers on the car. The owner of the car came running towards the police officer who was in plain clothes pushed him aside with force, and shouted at him. Can the owner of the car be prosecuted and punished for any offence under Kerala Police Act 2011 ? Give reasons in support of your answer.

De Facto IAS