Kerala Judicial Service (Mains) 2023

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 Clerk working in the office of a temple was terminated from service. He filed a suit before a Munsiff's Court challenging the order of termination. The defendant-manager of the temple raised a contention that the dispute is not maintainable. Which among the following statements is correct ?

A. The dispute is with respect to the right to an office and therefore it is maintainable.

B. The question involved in the suit relates to service conditions and hence it is not maintainable.

C. The questions relating to religious rites can be decided by a civil court.

D. None of the above.

2. Read the following assertions and choose the correct option:

(1) A decree of a Munsiff having no territorial jurisdiction is always void.

(2) A decree of a Munsiff having no pecuniary jurisdiction is always void.

(3) A decree of a Munsiff having no subject matter jurisdiction is always void.

A. Statement 1 is correct.

B. Statement 2 is correct.

C. Statement 3 is correct.

D. All statements are correct.

3. In the execution of a money decree, an immovable property belonging to the Judgment Debtor was sold in auction. There was no charge on the property, the property was not attached also. The Judgment Debtor filed a petition for setting aside the same on the ground that the sale is invalid for want of charge or attachment. Choose the correct remark from the following:

A. Sale is invalid since attachment is a condition precedent for sale.

B. if a charge is created only, sale without an attachment is valid.

C. if the property sold is a movable one only, sale without attachment is valid.

D. Sale will be valid even if there is no attachment.

4. A Munsiff while dismissing the suit, on holding that there was no reasonable probable ground for instituting the same, ordered the plaintiff to pay the defendant a compensation of Rs.30,000/-. The order is .....

A. Wrong since the power of the Munsiff is to order compensation of a maximum of Rs.25,000/-.

B. Wrong since there was no application by the defendant claiming compensation.

C. Wrong since the Munsiff has jurisdiction to order cost only and not compensation.

D. Wrong since there is no finding that the claim in the suit is vexatious.

5. A summons issued to the defendant in a suit was served by affixure. In the application for setting aside the ex-parte decree, the contention of the defendant is that the service of summons is invalid since court did not order to serve the summons by affixure. Choose the correct answer:

A. Order of the Court allowing service of summons by affixure is mandatory.

B. If it is a substituted service only order of the court to affix the summons is mandatory.

C. It is for the officer serving summons to decide whether or not the summons shall be served by affixure.

D. In a case where summons is to be served outside the jurisdiction of the court issuing the same, order of the court is mandatory for serving the summons by affixure.

6. Order XIII Rule 1 of the Code of Civil Procedure, 1908 insist on production of all documentary evidence before settlement of issues. In a money suit based on a dishonoured cheque, after the chief examination of the plaintiff, the defendant produced a promissory note purportedly issued by the plaintiff in favour of the defendant, contending that the sub rule 3 of Order XIII Rule 1 permits production of documents for the cross examination. What shall be the use of that promissory note ?

A. If the plaintiff admits that promissory note, a decree for the reminder alone can be granted.

B. Even if the plaintiff admits the promissory note, unless there is a plea for set off, decree for the whole claim has to be granted.

C. If the plaintiff admits the promissory note, suit has to be dismissed for the reason of suppression of that document by the plaintiff.

D. The Court is bound to discard the promissory note since it was issued before settlement of the issues.

7. A judgment debtor paid money payable under a decree to the decree holder out of court. What is the period within which the judgment debtor has to apply to the court to record that payment ?

A. 30 days.

B. 3 years.

C. 90 days.

D. 1 year.

8. Date of the decree shall be .....

A. date on which the decree is signed by the Judge.

B. date on which the decree is prepared by the officer concerned.

C. date on which the judgment is pronounced.

D. date on which memo of costs is to be submitted.

9. Which among the following is not a requirement for obtaining a carbon copy of a judgment of a Munsiff ?

A. an oral application to the court immediately after pronouncing the judgment.

B. an application for an urgent copy.

C. order of the court to issue a carbon copy.

D. an application for leave to apply for getting a carbon copy.

10. On receipt of the complaint alleging an offence of criminal breach of trust punishable under Section 406 of the Indian Penal Code, the police registered a crime and conducted investigation. On completion of investigation, the police submitted a report under Section 173(2) of the Code of Criminal Procedure alleging an offence of dishonest of misappropriation of property under Section 403 of the Indian Penal Code. What shall the Magistrate do ?

A. Take cognizance treating it as a charge sheet.

B. Take cognizance treating it as a complaint.

C. Cannot take cognizance since the offence in the final report is a non-cognizable one,

D. Cannot take cognizance since no permission from the Magistrate was obtained.

11. When the injured is examined at the trial of an offence punishable under Section 326 of the Indian Penal Code, the Magistrate finds that an offence under section 307 of the Indian Penal Code is revealed. What is the appropriate procedure to be followed ?

A. Commit the case under section 323 of the Cr.PC.

B. Sent a report to the Court of Sessions requesting to withdraw the case.

C. Sent a report to the CJM requesting to take steps as provided in section 323 of the Cr.PC.

D. Sent a report to the CJM requesting to take steps as provided in section 325 of the Cr.PC.

12. A complaint was filed by a Public Prosecutor before a Court of Session alleging that the accused has committed an offence of defamation against a Secretary to Government regarding an act in discharge of his duties. The accused raises the following contentions:

(1) A Magistrate alone can take cognizance of that offence.

(2) Since the complaint was filed after six months, cognizance is barred by limitation.

Choose the correct option.

A. contention No.1 is correct and contention No.2 is wrong.

B. contention No.1 is wrong and contention No.2 is correct.

C. Both contentions are correct.

D. Both contentions are wrong.

13. A clerk in a Village Office was tried on a charge with single head that he dishonestly misappropriated various amounts from salaries of the employees in that office during the months from March, 2021 to February, 2022 and thereby committed an offence punishable under Section 409 of the Indian Penal Code, and convicted. Which among the following is a correct statement ?

A. He is entitled for an acquittal since the period of offence falls in two calendar years.

B. He is entitled for an acquittal since more than three offences involved in the charge.

C. He is not entitled to claim an acquittal since single trial for alleged acts of offence is legal.

D. He is not entitled to raise a contention in appeal regarding irregularity in framing the charge.

14. On the application of one of the accused in a pending case, the Sessions Judge tendered pardon to the applicant. The contention of the other accused during the final hearing is that the trial is vitiated since the accomplice was not examined as a witness before the jurisdictional Magistrate. That contention is .....

A. valid since his examination before the Magistrate is mandatory.

B. valid if the offence is punishable with death or imprisonment for life.

C. invalid if the offence is punishable with death or imprisonment for life.

D. invalid since Sessions Court also has jurisdiction to grant pardon.

15. A District Judge after conducting enquiry under Section 340 of the Code of Criminal Procedure filed a complaint alleging offence of giving false evidence before the Court. The Magistrate before whom the complaint was filed without conducting enquiry under section 244 of the Code of Criminal Procedure framed charge against the accused. Choose the correct statement from the following:

A. a complaint filed after an enquiry under section 340 of the Code of Criminal Procedure is treated as a police report.

B. since the complaint is filed by a District Judge, the Magistrate is bound to hold a trial.

C. since the case arose on a complaint, charge can be framed only after recording evidence under Section 244 of the Code of Criminal Procedure.

D. evidence of the victim of offence, atleast, has to be recorded if to frame a charge.

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. Even if a person is not an eo-nominee party, certain kinds of decrees shall operate as res judicata to a subsequent suit where the same right is the matter in issue. Explain with reference to the statutory provisions.

17. Three execution petitions are pending against a common judgment debtor in three different courts. An immovable property belonging to the judgment debtor is sold in auction in one of the execution petitions and delivery of the property is effected. The sale proceeds is in deposit in the court. Discuss about the scope of rateable distribution. What are the conditions subject to which, rateable distribution can be made ?

18. The plaintiff in whose favour a temporary injunction before giving notice is granted failed to comply with the requirements under the provisos (a) and (b) to Rule 3 of Order XXXIX of the Code of Civil Procedure, 1908. What are the consequences ?

19. An amount at the hands of a creditor to the defendant in a suit was attached before judgment. The garnishee did not immediately raise any objection. The suit is decreed. Can the garnishee raise an objection subsequently? Explain the procedure to be followed by the Court to realise the amount from the garnishee.

20. In a suit against Government, one of the grounds for defence is that there were errors and defects in the notice issued under sub section 1 of Section 80 of the Code of Civil Procedure, 1908. In what all circumstances, such defects will be fatal? What would be the effect if the period of limitation for institution of the suit expires during the period of two months mentioned in sub section 1 of Section 80 of the Code ?

21. In a case where an employee is terminated from service by a state instrumentality, breach of fundamental rights or constitutional rights can be agitated before the Civil Courts unless the jurisdiction of the civil suit is specifically barred. Discuss with reference to the provisions of law and precedents.

22. In a suit the defendant appeared. Upon hearing both sides, the court found that the plaint is liable to be returned for want of territorial jurisdiction. On the court finding so, what shall the court and plaintiff do? Describe the steps to be taken by the Court as well as the plaintiff in such a case.

23. A suit was scheduled for trial on 12.07.2023. Plaintiff and his witnesses were present in court and were examined in chief. On the application filed by the defendant the suit was adjourned to 15.07.2023 for cross examination of the plaintiff and his witnesses and also for the evidence of the defendant. Since the defendant or his counsel did not turn up on that day, the Court after hearing the counsel for the plaintiff rendered a judgment on merits. Examine the correctness of the procedure adopted by the Court and the remedies available to the defendant.

24. Section 207 of the Code of Criminal Procedure insist on supply to the copy of police report and other documents/materials. Which are the copies of the documents/materials to be supplied to the accused along with a copy of the police report? Explain the changes brought about in the Criminal Rules of Practice in this respect.

25. What are the purpose for which and the procedure for requiring attendance of a prisoner before a Magistrate?

26. A witness gave evidence in a language which is not known to the Court, accused or his pleader. Explain the procedure for recording evidence of a such witness with reference to the statutory provisions. What shall be the legality of conviction if such a procedure is not followed ?

27. Statutory bail under Section 167(2) of the Code of Criminal Procedure is an indefeasible right. Can the court impose conditions while granting statutory bail to the accused. If such a condition is violated, what consequence shall follow ?

28. 'Every omission shall not be a contradiction'. Explain with reference to the Statutory provision and the law laid down in the Tahsildar Singh's case.

29. In a case where offences punishable under sections 143, 147, 323 and 341 read with 149 of the Indian Penal Code are alleged, a petition for compounding of the offences was filed. The Magistrate recorded the compounding and acquitted the accused stating that offences under section 323 and 341 are compoundable and other offences are cognate offences. Comment.

30. The period of limitation for taking cognizance of an offence shall commence on the date of the offence. It is not so always. Explain. In which circumstances exclusion and extension of period of limitation can be claimed?

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 an order based on the following facts: (Refer Statutory provisions and case laws)

On 20.01.1980, the trial court passed a decree for declaration of title and recovery of possession in O.S.No.100/1979 in favour of the plaintiff. The defendants challenged the decree filing A.S.No.10/1980. The appeal filed by the defendants was allowed and the case was remanded to the trial court. After remand, the trial court again decreed the suit on 04.01.1992. The defendants filed A.S.No.65/1992 challenging the judgment and decree of the trial court. That appeal was dismissed for default on 10.08.2003. During the pendency of A.S.No.65/1992, there was no stay of execution of the decree.

The decree holder filed Execution Petition No.90/2004 on 15.10.2004. The judgment debtors opposed the Execution Petition contending that the same is time barred. According to the judgment debtors, the relevant date with reference to which the period of limitation is to be reckoned is 04.01.1992. The decree holders contended that the relevant date with reference to which the period of limitation is to be reckoned is 10.08.2003, the date of dismissal of the appeal for default.

32. A complaint was filed on the following allegations:

The first accused is running a travel and recruiting agency under the name "M/s.Kevin Enterprises". The head office is at Chennai and branch office is at Thiruvananthapuram. 2nd accused is the employee of the 1st accused in the office at Thiruvananthapuram. On getting information, the complainant approached the accused and he was asked to go over to Chennai to meet the 1st accused. 1st accused was informed of his desire to go on employment to the Middle-East. He promised to arrange a Visa. The complainant was got interviewed at the intervention of the 1st accused by one Sharaff. Thereafter, Rs.75,000/- was demanded informing that he was successful in interview and he will get Visa shortly. As a first instalment, the 1st accused wanted Rs.25,000/-. Since he had no amounts with him and as directed by the 1st accused, he returned to Thiruvananthapuram and paid Rs.25,000/- to the 2nd accused on 10.01.2000 for which a receipt was also given. Then he was frequently contacting the 1st accused at Chennai and he was being given encouraging information. He was also informed subsequently against the earlier assurance that the interview already conducted has been concluded and another Visa could be arranged without interview. The balance amount of Rs.50,000/- demanded by the 1st accused was handed over to him when he came over to Thiruvananthapuram on 20.03.2000. Thereafter, as directed by the 1st accused, the complainant reached Chennai for medical check-up. He underwent medical check-up and stayed there for sometime. Since the attitude of the 1st accused was not found encouraging, he had to return. Finally he realised that he was being cheated. Therefore, on 28.06.2000, he went to Thiruvananthapuram office, where both the accused were present. When the amount was demanded, the attitude of the 1st accused was denial coupled with a statement that his amount is in the Arabian sea.

The complainant examined himself as PW1. Two other witnesses were examined as PWs.2 and 3. Exhibit P1 is the document proved by him. DW1 is the witness examined for the defence. Ext.D1 is

the document proved for the defence.

PW1 has spoken to the entire case put forward by him. He said that it was on the basis of the deceipt and the fraudulent or dishonest inducement of the first accused that he parted with Rs.75,000/- by two instalments. He also said that he was induced to make the payment on the assurance given by the 1st accused that everything including N.O.C, Visa and job will be provided. The attitude of the 1st accused, including his conduct on the last date when the amount was demanded back, was also spoken to by him.

PW2, a parallel college teacher and a friend of PW1, was examined to prove the payment of Rs.50,000/- to the 1st accused on 20.03.2000 and refusal of the 1st accused to repay the amount on 28.06.2000. PW2 said that on both the occasions, he was present and he saw the payment as well as the refusal of the 1st accused with an observation that the amount is in the Arabian Sea.

PW3, a tea-shop owner, was examined only to prove that on 28.06.2000 when the complainant demanded the amount back, the 1st accused denied having received any amount and finally told him that his amount is in the Arabian Sea. The version of PW3 is that he came with a dual purpose viz., purchase of tea from a wholesale shop and making enquiries with the 1st accused regarding NOC for which arrangements were already made.

The defence was that on behalf of the first accused, an amount of Rs.25,000/- alone was received by the 2nd accused and at the request of the complainant, it was repaid by the 2nd accused.

In the cross examination of PW1, one suggestion made was that the amount was paid to DW1 who in turn paid the same to the complainant. Another suggestion was that the entire amount of Rs.25,000/- paid by the complainant was already spent for expenses in connection with recruitment, interview, etc.

While questioned under S.313 of the Code of Criminal Procedure, even though the first accused at first denied having received Rs.25,000/- through the 2nd accused on 10.01.2000, in answer to a subsequent question, he admitted that the amount was received by the 2nd accused and Ext.P1 is the receipt issued by him for that purpose. When he was asked during questioning whether he has anything more to say, he said that he did not receive any amount from anybody. At the time of questioning under S.313, neither himself nor the 2nd accused said that the amount was repaid through DW1 or otherwise or Ext.D1 receipt was received. Second accused did not even admit receipt of Rs.25,000/-. He denied Ext.P1 receipt also. Finally, in answer to the last question, he said that he did not receive any amount at all.

From the side of the defence, they examined DW1. He said that even the payment of Rs.25,000/- on 10.01.2000 was through him and that it was he who persuaded the 2nd accused to receive the amount inspite of his refusal on the ground that he cannot receive the amount without the direction from the 1st accused. He also said that again at the request of the complainant, he went to the 2nd accused and the 2nd accused at first refused to return the amount in the absence of the 1st accused. His further statement is that when he insisted and agreed to undertake the responsibility the second accused yielded but wanted Ext.P1 to be returned. He also said that the complainant informed that Ext.P1 is missing and therefore on his undertaking the amount was repaid by the 2nd accused to the complainant and the complainant issued Ext.D1 receipt in which he also signed.

Write a judgment based on the above facts.