Kerala Judicial Service (Mains) 2024

Paper III · compulsory paper

Marks: 100 · Duration: 3 hours

PART - I

Answer all the questions (Answers to the questions in this Part should be marked only in the O.M.R. answer sheet. Answers marked/written elsewhere will not be evaluated) (15 x1 mark = 15 marks)

1. Proceedings under Section 31(1) of the Protection of Women from Domestic Violence Act, 2005 can be initiated for breach of..... [1 mark]

(A) Protection Order
(B) Residence Order
(C) Maintenance Order
(D) All of the above.

2. The minimum age of a person who is entitled to consume or use any liquor under the Abkari Act, 1077 is ..... [1 mark]

(A) 18 years,
(B) 21 years,
(C) 23 years
(D) none of the above.

3. Which among the following is not a 'public place' to attract Section 15C of the Abkari Act, 1077 where consumption of liquor is prohibited? [1 mark]

(A) Cinema Theatre
(B) Travellers' Bungalow
(C) Police Station
(D) Room in a lodging house

4. Which among the following can be considered as the relevant date for applying the provisions of Section 6(1) of the Probation of Offenders Act, 1958? [1 mark]

(A) Date of commission of the offence
(B) Date of filing of complaint/final report
(C) Date of taking cognizance
(D) Date on which the sentence is passed against the accused

5. The reckoning date for the determination of the age of the juvenile is ..... [1 mark]

(A) date of commission of offence
(B) date when the juvenile is produced before the authority or in the court
(C) the date of the final report
(D) the date of taking cognizance

6. Which of the following is an exception to the rule against hearsay evidence? [1 mark]

(A) Confession
(B) Dying declaration
(C) Res Gestae
(D) All the above.

7. Which among the following applies while considering the admissibility of character evidence under the Indian Evidence Act, 1872? [1 mark]
(A) Character evidence is always admissible.
(B) Character evidence is never admissible.
(C) Character evidence is admissible in certain circumstances
(D) none of the above

8. While a woman was using the lavatory, 'X', her neighbour captures her image on his mobile phone and uploads the picture on his Facebook page. Which of the following offence is attracted? [1 mark]
(A) Sexual assault
(B) Outraging the modesty of a woman
(C) Voyeurism
(D) Stalking

9. A 'holder in due course' of a Negotiable Instrument; [1 mark]
(A) Can sue on the instrument in his own name.
(B) Can sue on the instrument, if permitted by a 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.

10. Which of the following is not "sine qua non" for imposing criminal liability on a person? [1 mark]
(A) Actus reus
(B) Mens rea
(C) Motive
(D) All the above

11. 'A' engages in consensual sexual relations with 'X', the wife of 'Z'. 'X' gives 'A' a valuable watch belonging to her husband, which she is not authorized to give to anyone. 'A' takes the watch with dishonest intent. Which offence, if any, is attracted against 'A'? [1 mark]
(A) Criminal breach of trust
(B) Criminal misappropriation.
(C) Theft
(D) Theft and criminal breach of trust

12. Which of the following is primary evidence of a document? [1 mark]
(A) Certified copy of such document
(B) Counterpart of the document as against the party who executed it.
(C) Counterpart of the document as against the party who did not execute it.
(D) Copies made from the original.

13. When all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused then: [1 mark]
(A) the inference of guilt can be justified
(B) the inference of guilt cannot be justified
(C) benefit of doubt should be given
(D) none of the above.

14. 'A' is convicted and sentenced by the learned Magistrate to undergo imprisonment for a period of four months and to pay a fine of Rs.1000/- for the offence under Section 323 of the IPC. What is the maximum default sentence that could be imposed by the learned Magistrate? [1 mark]

(A) 1 months
(B) 2 months
(C) 3 months
(D) 4 months

15. In a legal proceeding where the court needs to form an opinion on a matter related to information stored in a mobile phone, which of the following person is legally competent to provide an opinion on the matter? [1 mark]

(A) Director, Central Forensic Science Laboratory
(B) Director, State Forensic Science Laboratory
(C) Examiner of Electronic Evidence
(D) Any person who has technical expertise in the field of mobile phones.

PART - II

Answer any 15 questions. Answer 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 mark = 45 marks)

16. In a case where five persons are charged with attempting to commit murder and one of the accused absconds during the proceedings, the prosecution relies on a confession made by the absconding accused, which implicates both himself and the others. Can this confession be used against the accused who are currently facing trial? Explain with reference to statutory provisions and case law, if any. [3 marks]

17. Can a proceeding initated under the Protection of Women from Domestic Violence Act, 2005 before a Judicial Magistrate of the First Class be transferred to the Family Court? Explain with reference to case law. [3 marks]

18. Can a Magistrate entertain a claim for a protection order and maintenance under the Protection of Women from Domestic Violence Act, 2005, if the wife had already filed a petition seeking patrimony and maintenance before the Family Court, which Court had granted her interim maintenance of Rs. 2000/-? [3 marks]

19. Can the Magistrate exercising jurisdiction under the Protection of Women from Domestic Violence Act, 2005 strike off the defence for the failure of the respondent to pay interim maintenance ordered by the court? [3 marks]

20. The accused was found in possession of 40 sealed bottles of Indian Made Foreign Liquor, each with a capacity of 180 ml. The officer who seized the bottles took a sample from only one of the sealed bottles, which is within the permissible quantity for personal possession. The accused contends that since the sample was drawn from only one bottle, the remaining bottles cannot be considered as liquor. Can this contention be accepted? [3 marks]

21. What are the major changes brought out in the Bharatiya Nyaya Sanhita, 2023 regarding Sexual Offences against women and children? [3 marks]

22. Explain as to whether the presumptions against the accused under Section 35 and 54 of the Narcotic Drugs and Psychotropic Substances Act, 1985 are rebuttable? [3 marks]

23. Does the provision contained in Section 106 of the Indian Evidence Act, 1872 dilute the burden of the prosecution to prove the guilt of the accused beyond reasonable doubt. Under what circumstances will the onus shift? [3 marks]

24. Can an application for interim custody of a vehicle, seized by the police on the allegation that it was used for transportation of narcotic drugs, be maintained under Section 451 of the Cr.P.C. by the jurisdictional court, in light of Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985? [3 marks]

25. Can the prohibition contained in Section 23 of the Bharatiya Sakshya Adhiniyam be made applicable to a confession made to a Forest Officer or a Range Forest Officer under the Kerala Forest Act, 1961? Explain. [3 marks]

26. 'X', a person aged 19 years was found guilty for having committed offence under Section 392 of the IPC. What is the procedure to be followed for releasing the accused on probation invoking powers under the Probation of Offenders Act, 1958? [3 marks]

27. An Indian citizen commits murder in Canada. Can he be tried and convicted of murder in India? Explain. [3 marks]

28. A child, eleven years of age, quarrelled with the deceased. The child threatened the deceased that he would cut him into pieces. Immediately thereafter, the child picked up a knife and stabbed the deceased leading to his death. Whether the accused is entitled to immunity u/s. 83 of the Indian Penal Code? [3 marks]

29. 'A' threatens 'Z' and informs him that he shall publish a libel concerning 'Z' unless he transfers money to 'A'. Under the above threat, 'Z' transfers money to 'A'. What is the offence committed by 'A'? Explain. [3 marks]

30. 'A' meets 'Z' on the road, brandishes a pistol and demands 'Z's purse. 'Z' in consequence surrenders his purse. What is the offence committed by 'A'? Give reasons. [3 marks]

31. 'A' puts jewels into a box belonging to 'Z', with intention that they may be found in that box, and that these circumstances may cause 'Z' to be convicted of theft. Will the act committed by 'A' constitute any offence? [3 marks]

32. 'A' and 'B' decide to rob a bank. They planned in advance that they will not hurt anybody and they will escape with the money. 'A' directs 'B' to guard the gate and 'A' decides to go inside and take out the money. While 'A' was coming out with the money, a security guard confronts him and during the confrontation, 'A' out of fear, stabs the security guard with a knife consequent to which, he sustains grievous hurt. Thereafter, 'A' and 'B' fled from the place. Can 'B' be convicted for the offence of committing grievous hurt? [3 marks]

33. 'A' sells leather to 'B', a company incorporated under the Companies Act, 2013. In discharge of the amount due to 'A', a cheque signed by the Managing Director of the Company is issued. The cheque on presentment is dishonoured for want of funds. Explain with reference to the statutory provisions the formalities for filing a complaint under Section 138 of the Negotiable Instruments Act, 1881. Who can be made as the accused? [3 marks]

34. Name the situations under which a police officer can be charged and tried under the Kerala Police Act, 2011? [3 marks]

35. Both Sections 118 and 139 of the Negotiable Instruments Act, 1881, deals with presumptions - Explain the scope and effect of the provisions? [3 marks]

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. What is the difference between medical insanity and legal insanity? - Comment with reference to McNaughton's principle. [8 marks]

37. The basis of liability under section 34 of the IPC is the existence of common intention whereas the liability under section 149 of the IPC is based on the existence of the common object or knowledge of the probability of commission of offence - Explain. [8 marks]

38. What are the key changes brought out in the Bharatiya Sakshya Adhiniyam, 2023 with regard to the admissibility of electronic/digital record and other documents as evidence? Outline the requirements for submitting a certificate for establishig the authenticity of an electronic record. [8 marks]

39. Presumptions can be raised only when they are permitted under the law. Explain the scope and implications of the Rule of Presumption Evidence? [8 marks]

40. No statement made by a person to a police officer in the course of an investigation can be used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when such statement was made. Under what circumstances, can such a statement be used? What are the exceptions? [8 marks]

41. If two or more persons conspire together to commit an offence, can a conspirator be held responsible for the acts/statements made by the other conspirators in furtherance of their common intention even if the conspirator was not directly involved in the specific act? Explain with reference to Section 120B of IPC and Section 10 of the Indian Evidence Act? [8 marks]

42. Under what circumstances can a Dying Declaration be accepted and acted upon in the absence of a certificate of a doctor as to the fitness of mind of the declarant? When can the First Information Statement given by the victim be treated as Dying Declaration? [8 marks]

Answer the above questions in the context of admissibility, reliability, and evidentiary value of Dying declaration.

43. A child in conflict with law commits murder and is apprehended by the police. [8 marks]

a) What is the procedure to be followed?

b) Is he bound to seek bail?

c) Can he be tried as an adult?

Explain with reference to statutory provisions and case law.