Kerala Judicial Service (Mains) 2025: Paper III — Solution

Time: 3 hours · Maximum marks: 100

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 evaluated) (1 x 15 = 15 marks)

(1) Nothing done by a child under .....years of age is an offence. **[1 mark]**

Answer: (B) seven

Section 20 of the Bharatiya Nyaya Sanhita gives a child below seven absolute immunity from criminal liability. A child above seven and under twelve may come within the separate exception in section 21, which depends on the child's maturity on the occasion in question.

(2) On 31.07.2024, James was found in an intoxicated condition on a public road, incapable of looking after himself. James is liable to be prosecuted for the offence u/s..... **[1 mark]**

Answer: (C) 118 (a) of the Kerala Police Act, 2011

The facts fit the Kerala Police Act provision concerning a person found intoxicated in a public place and unable to take care of himself. A public road satisfies the location element, and the provision covers both the state of intoxication and an inability to look after oneself. These facts bring James within section 118(a).

(3) In respect of persons accused of offences u/ss. 19, 24 or 27-A of the N.D.P.S. Act, the reference to ninety days in s.167 of Cr.P.C shall be considered as reference to..... **[1 mark]**

Answer: (C) one hundred and eighty days

Section 36A(4) of the NDPS Act substitutes 180 days for the 90-day period for the specified offences. An extension up to one year requires a report by the Public Prosecutor showing the investigation's progress and specific reasons for continued detention, and an order by the Special Court.

(4) What kind of security can be insisted by the Court while temporarily releasing a vehicle used for committing an Abkari offence? **[1 mark]**

Answer: (A) Cash security

Section 53B of the Abkari Act provides for cash security equal to the market value of the seized vehicle or conveyance. The court may direct temporary release on that condition, with production on demand. The order does not prevent the authorised officer from pursuing confiscation.

(5) Which new offence relating to group violence is specifically introduced in the Bharatiya Nyaya Sanhita, 2023? **[1 mark]**

Answer: (B) Mob lynching

Section 103(2) of the Bharatiya Nyaya Sanhita provides for murder by a group of five or more persons acting in concert on specified grounds such as caste, community, sex or language. Each member of the group is liable to the punishment laid down in that subsection.

(6) To what extent the confession of an accused can be used as evidence against the co-accused? [1 mark]

Answer: (C) Can be used to tilt the balance against the co-accused when rest of evidence is sufficient for a conviction

Under section 24 of the Bharatiya Sakshya Adhiniyam, a confession affecting the maker and another accused may be taken into consideration where they are jointly tried for the same offence. The court first examines the independent evidence. The confession may lend assurance to that evidence but cannot by itself establish the other accused's guilt.

(7) Which provision in the Bharatiya Sakshya Adhiniyam, 2023 permits production of treatises containing opinions of experts for proving the same without examining the author? [1 mark]

Answer: (B) Section 55

The first proviso to section 55 permits an expert opinion and its grounds to be proved by producing a treatise commonly offered for sale. The exception applies where the author is dead, cannot be found, is incapable of giving evidence, or cannot be called without unreasonable delay or expense.

(8) Which provision in the Bharatiya Sakshya Adhiniyam, 2023 shifts the burden to the accused to prove certain facts especially within his knowledge? [1 mark]

Answer: (D) Section 109

Section 109 of the Bharatiya Sakshya Adhiniyam places the burden of proving a fact especially within a person's knowledge on that person. The prosecution still has to establish the elements of the offence. The rule concerns facts that the accused is especially placed to explain.

(9) Which provision in the Bharatiya Sakshya Adhiniyam, 2023 is an exception to the General Rule that hearsay is not admissible? [1 mark]

Answer: (C) Section 4

Section 4 of the Bharatiya Sakshya Adhiniyam makes facts forming part of the same transaction relevant. A spontaneous statement inseparably connected with the event may come in under this rule. A subsequent account given after an interval does not become part of the transaction simply because it describes the event.

(10) The provisions in the NDPS Act creating reverse burden of proof on the accused are..... [1 mark]

Answer: (B) sections 35 and 54

Section 35 of the NDPS Act deals with the presumption of a culpable mental state where the offence requires one. Section 54 permits a presumption from possession of specified illicit substances or articles where the accused fails to account for that possession satisfactorily. The prosecution must first establish facts that trigger the relevant presumption.

(11) Which offence is committed when a person interferes or attempts to interfere with an electoral right? [1 mark]

Answer: (C) Undue influence

Section 171 of the Bharatiya Nyaya Sanhita covers voluntary interference, or attempted interference, with the free exercise of an electoral right. A threat of injury to an elector or candidate is one way to interfere. The provision excludes a declaration of public policy made without intent to interfere.

(12) Can the wife of an accused be a competent witness in a criminal proceeding? [1 mark]

Answer: (C) She is competent regardless of consent from her husband

Section 126(2) of the Bharatiya Sakshya Adhiniyam makes the accused's spouse a competent witness. Section 128 separately protects communications made during marriage, subject to consent and the exceptions stated in that section. The wife may therefore testify to matters such as what she saw without first obtaining her husband's consent.

(13) The opinion of a handwriting expert is: [1 mark]

Answer: (B) A relevant fact

Under section 39 of the Bharatiya Sakshya Adhiniyam, an expert's opinion about the identity of handwriting is relevant. Its weight depends on the quality of the comparison, the reasons given and the other evidence. The court must evaluate the opinion before deciding whether to accept it.

(14) Which of the following statement is correct? [1 mark]

Answer: (B) In all robbery, there is either theft or extortion

Robbery is an aggravated form of theft or extortion under section 309 of the Bharatiya Nyaya Sanhita. The provision specifies the circumstances involving violence or immediate fear in which each form amounts to robbery. Ordinary theft and ordinary extortion remain distinct offences when those additional circumstances are absent.

(15) When a juvenile is apprehended for commission of an offence, which of the following statement is correct? [1 mark]

Answer: (D) Bail can be denied in exceptional circumstances

Section 12 of the Juvenile Justice Act favours release on bail. Reasonable grounds to believe that release would associate the child with a known criminal, expose the child to moral, physical or psychological danger, or defeat the ends of justice justify refusal. The authority must record reasons.

Part - II

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

(16) Define 'mens rea' and its role in determining criminal liability. [3 marks]

Mens rea is the mental element that the definition of an offence requires. Depending on the provision, it may take the form of intention, knowledge, dishonesty or another specified state of mind. It connects the prohibited act or omission to the accused's responsibility for it. The prosecution generally proves that element from conduct and surrounding circumstances, including acts before and after the event. The statute governs both the mental element and any departure from the ordinary requirement. A motive may help explain conduct, but proof of motive cannot substitute for proof of the mental element prescribed for the offence.

(17) Explain the concept of criminal conspiracy u/s.120A and its punishment u/s.120B of Indian Penal Code, 1860. [3 marks]

The essence of criminal conspiracy under section 120A IPC is an agreement between at least two persons to do an illegal act or a legal act by illegal means. Where the agreement is to commit an offence, the agreement itself suffices. In other cases, one or more parties must also act in pursuance of it. Under section 120B, a conspiracy to commit an offence punishable with death, life imprisonment or rigorous imprisonment for two years or more is punished as abetment where there is no express provision for punishment. Other conspiracies carry up to six months' imprisonment, fine, or both. (BNS section 61.)

(18) Ramu spreads false statements against Thomas, causing harm to his reputation. Which sections of the Indian Penal Code, 1860 are relevant in the prosecution of Ramu and what are the defences available to him? Explain. [3 marks]

Sections 499 and 500 IPC govern the prosecution. Ramu published the imputation by communicating it to others. The prosecution must show that it concerned Thomas and that Ramu intended, knew, or had reason to believe it would harm Thomas's reputation. The first exception requires truth and public good. On the facts, falsity prevents that defence. Depending on evidence, Ramu could rely on a good-faith complaint to a competent authority, or a good-faith imputation to protect a legitimate interest or for the public good. Repeating allegations without due care weakens a plea of good faith. (BNS section 356.)

(19) While hearsay evidence is generally inadmissible, 'res gestae' evidence is admissible. Why? [3 marks]

A spontaneous statement may be so closely linked to an event that the two form one transaction. Section 6 of the Evidence Act (BSA section 4) makes such a statement relevant. Its connection with the occurrence, including proximity in time and continuity of action, supplies the reason for admitting it. A cry identifying an assailant while an attack is unfolding may qualify. A later reconstruction made after an opportunity to reflect or fabricate normally falls outside the rule. The court asks whether the statement was part of the event and assesses its reliability in context.

(20) Can a person be prosecuted simultaneously for the offences u/ss.406 and 420 of Indian Penal Code,1860? Discuss with the support of precedents. **[3 marks]**

Both allegations may be examined if the facts disclose the independent ingredients of each. Sections 405–406 IPC require entrustment or dominion over property and later dishonest dealing with it. Section 420 requires deception and dishonest inducement to deliver property or deal with a valuable security. In Hridaya Ranjan Prasad Verma v. State of Bihar, the Supreme Court treated dishonest intention at the time of inducement as essential to cheating. A subsequent failure to perform supplies neither that initial intention nor entrustment. Where the facts support distinct offences in the same transaction, section 220 CrPC permits a joint trial. (BNS sections 316 and 318.)

(21) Is the previous good or bad character of an accused relevant in a criminal proceeding? Explain. **[3 marks]**

The accused's previous good character is relevant in a criminal case under section 53 of the Evidence Act (BSA section 47). Previous bad character is generally irrelevant under section 54 (BSA section 49), but can be given in reply where the accused has introduced evidence of good character. The restriction also does not apply where bad character is itself a fact in issue. A previous conviction is evidence of bad character when that evidence is relevant. The court assesses character alongside the other evidence, and guilt still turns on proof of the offence charged.

(22) Explain the standard of proof for rebutting the presumptions u/ss.118 and 139 of the Negotiable Instruments Act, 1881. **[3 marks]**

Once execution is admitted or established, section 118(a) presumes consideration and section 139 presumes that the holder received the cheque for discharge of a debt or other liability. Rangappa v. Sri Mohan explains that the latter includes a legally enforceable debt or liability and that the accused may rebut it on a preponderance of probabilities. A probable defence may come from the complainant's own documents, cross-examination or defence evidence. The accused need not enter the witness box. Once the presumption is rebutted, the complainant must establish the liability from the evidence.

(23) Explain the maxim 'Falsus in uno, falsus in omnibus' in the Indian context. **[3 marks]**

The maxim means that a witness who speaks falsely on one point is treated as false on all points. Indian courts reject it as a compulsory rule. Jayaseelan v. State of Tamil Nadu explains that the court may separate trustworthy evidence from exaggeration or falsehood. It should examine the importance of the inconsistency, look for independent support, and state why it accepts the reliable part. Where truth and falsehood are so mixed that separation would require the court to invent a new account, it is unsafe to rely on the testimony.

(24) Explain the maxim 'Salus populi est suprema lex' with reference to s.129 of the Bharatiya Sakshya Adhiniyam, 2023. [3 marks]

The maxim means that the welfare of the people is the supreme law. Section 129 of the Bharatiya Sakshya Adhiniyam protects evidence derived from unpublished official records concerning affairs of State. It requires permission from the head of the department concerned. The object is to prevent injury to public interests through disclosure. State of Uttar Pradesh v. Raj Narain illustrates that official confidentiality is grounded in the public interest and requires regard to the nature of the information. The privilege serves the community and does not arise merely because a document was prepared by government.

(25) Explain the importance of dock identification of the accused and the duty of the trial Court at that stage. [3 marks]

Dock identification connects the accused present in court to the person whom the witness saw during the occurrence. It is substantive testimony. A prior identification parade ordinarily tests memory during investigation and corroborates the testimony at trial. The judge should require the witness to indicate the particular person without prompting, record whom the witness indicated and any difficulty or failure, and allow cross-examination about opportunity to observe, prior familiarity, delay and earlier exposure to the suspect. First-time identification of a stranger generally requires particular caution. Identification of a person already known stands on a different footing.

(26) Can a Judicial Magistrate entertain an application u/s.53A of the Abkari Act? Explain. [3 marks]

Yes. Section 53A(2) of the Abkari Act authorises the officer referred to in section 67B to apply to a Magistrate in respect of notified seized articles. The Magistrate may certify the inventory, certify photographs taken in the Magistrate's presence, or allow representative samples to be drawn in that presence and certify the list. Under subsection (3), the Magistrate must allow the application as soon as may be. Subsection (4) requires prior permission in the custody situations it specifies. The certified records are primary evidence under subsection (5). Disposal itself is for the authorised officer under the statutory procedure.

(27) Explain the powers of the Court to release the vehicle u/s.53B of the Abkari Act. [3 marks]

Section 53B permits temporary release of a vehicle or other conveyance seized or detained for an Abkari offence. If the court considers release appropriate, it must require a bond by way of cash security equal to market value. The statutory valuation is by an Excise Mechanical Engineer or a State Public Works Department Mechanical Engineer of at least Assistant Executive Engineer rank. The vehicle must be produced on demand before the court or authorised officer. The release order leaves the authorised officer free to begin or continue confiscation under section 67B.

(28) Is it proper to base a conviction on extra judicial confession? Explain the principles to be followed. [3 marks]

A voluntary and credible extra-judicial confession may support a conviction. The court must first determine admissibility, especially whether the confession was induced by pressure or is barred because it was made to a police officer or while in police custody. It should examine the exact words, the setting, why the accused would confide in the witness, and whether the witness is reliable. Consistency with independently proved facts adds assurance. The court should seek corroboration where the confession is doubtful, retracted or inconsistently reported. A confession lacking reliability cannot sustain a finding of guilt merely because it was reported as an admission.

---

(29) Enumerate the principles to be applied for deciding the guilt of the accused in a case of circumstantial evidence. [3 marks]

Each circumstance relied on must first be firmly proved. The proved circumstances must be consistent with guilt and of a conclusive nature. They must exclude reasonable explanations consistent with innocence. Read together, the circumstances must form a complete chain leading to the conclusion that the accused committed the offence. Motive, last-seen evidence and a false explanation may each have weight in context, but an explanation offered by the accused cannot supply a gap in the prosecution's proof. Where two reasonable conclusions remain open on the entire evidence, the accused receives the benefit of doubt.

---

(30) What is meant by a 'fact'? When is a fact said to be proved? Explain the terms 'proved', 'disproved', and 'not proved'. [3 marks]

A fact includes a thing, state of things or relation capable of being perceived by the senses, and a mental condition of which a person is conscious. Under section 3 of the Evidence Act (BSA section 2), a fact is proved when the court believes it exists or considers its existence so probable that a prudent person would act on that assumption. It is disproved when the court believes it does not exist or considers its non-existence so probable that a prudent person would act on that assumption. It is not proved when the materials establish neither position. The applicable standard of proof depends on the proceeding and the issue.

---

(31) What is the distinction between legal presumptions and factual presumptions? [3 marks]

A legal presumption arises under a rule that attaches a consequence to a proved foundational fact. A mandatory rebuttable presumption requires the court to treat the presumed fact as proved until disproved. Conclusive proof excludes evidence to disprove the fact once the foundation is shown. A factual presumption is a permissible inference from ordinary events, human conduct or business practice. The court may draw it or require proof. Section 4 of the Evidence Act (BSA section 2) explains the statutory expressions, and section 114 (BSA section 119) illustrates discretionary inferences of fact.

---

(32) Explain the term unlawful assembly. [3 marks]

Section 189(1) BNS requires at least five persons and one of the specified common objects. These include overawing government, the legislature or a public servant by criminal force, resisting execution of law or legal process, committing an offence, using criminal force to take property or enforce a claimed right, or using it to compel a person to act or refrain from acting contrary to that person's legal entitlement. A lawful gathering may become unlawful once it adopts such an object. Membership requires joining or remaining with knowledge of the facts that make the assembly unlawful. (IPC equivalents: sections 141–142.)

(33) What is the effect of the absence of a forwarding note in a prosecution under the Abkari Act? [3 marks]

The issue is whether the prosecution has proved that the sample analysed came from the seized article and remained intact. A forwarding note records the sample sent and helps establish continuity of seals and custody. If it is absent and the remaining evidence cannot identify the sample or establish an unbroken chain, the chemical report cannot safely connect the accused to the prohibited substance. The court should examine the seizure, inventory or sampling records, seal, transfer and laboratory acknowledgment together. The prosecution bears the risk of a reasonable doubt about identity or tampering. Section 53A provides for judicial certification in the cases it covers.

(34) Can a cheque issued as a security for a debt be the basis for a prosecution u/s.138 of the Negotiable Instruments Act, 1881? Discuss. [3 marks]

A security cheque can attract section 138 if, when presented, it represents a subsisting and legally enforceable debt or liability and the other statutory conditions are met. For example, a cheque securing a loan may become payable after an instalment falls due and remains unpaid. If the liability never arose, was discharged, or cannot be enforced, the cheque's dishonour by itself is insufficient. Section 139 applies once execution is admitted or established. The drawer may rebut the presumed liability through evidence of the underlying agreement, repayment or another probable defence.

(35) Explain the principle of 'de minimis non curat lex' with reference to the statutory provision in India. [3 marks]

The maxim means that the law disregards trifles. Section 95 IPC (BNS section 33) excludes harm so slight that a person of ordinary sense and temper would not complain of it. The test is objective and depends on context, including the nature of the act and the degree of harm. The exception can apply even where the person intended the slight harm or knew it was likely. An ordinary jostle causing no appreciable injury in a crowded passage illustrates the idea. Conduct causing real injury or substantial interference calls for assessment under the ordinary offence provisions.

Part - III

Answer any 5 questions. Answer shall not exceed 250 words (2 pages). If more than 5 questions are answered, then the first 5 answers only will be evaluated. Answers to the questions in this Part should be written in the Common Answer Book. (8 x 5 = 40 marks)

(36) Does right to life include the right to die? Should attempt to commit suicide be continued as a punishable offence? Discuss with the aid of precedents. **[8 marks]**

Article 21 protects life and personal liberty, including dignity at the end of life, but creates no general right to end life prematurely.

In Gian Kaur v. State of Punjab, the Supreme Court overruled P. Rathinam v. Union of India and upheld the validity of the former IPC provision on attempted suicide. It distinguished cutting short life from the dignity of a person whose natural process of dying has begun. Common Cause v. Union of India recognised the right to die with dignity in the terminal-care context. It permitted withdrawal or withholding of life-sustaining treatment with safeguards, including the use of advance directives.

Section 115 of the Mental Healthcare Act presumes severe stress in a person attempting suicide, unless proved otherwise, and protects the person against trial and punishment under former section 309 IPC in that situation. It also places a duty of care, treatment and rehabilitation on the government. The BNS does not reenact a general offence of attempted suicide. Section 226 concerns the special case of an attempt intended to compel or restrain a public servant in the discharge of official duty.

The general response should be medical care and support. The narrow provision turns on proof of the specified coercive intent.

(37) Explain the right against self-incrimination on the basis of the decision in State of Bombay v. Kathi Kalu Oghad. **[8 marks]**

Article 20(3) protects a person accused of an offence from being compelled to furnish testimonial evidence against himself. In State of Bombay v. Kathi Kalu Oghad, the Court distinguished communicating personal knowledge from supplying material used for identification.

Three matters must be established. The person must be accused of an offence, there must be compulsion, and the compelled material must amount to being a witness against oneself. The protection extends to compelled answers during investigation as well as testimony at trial. Mere police custody does not by itself establish compulsion. Threat, coercion or duress must be assessed from the facts.

Specimen handwriting, signatures and fingerprints ordinarily supply material for comparison with evidence already obtained. Requiring them does not by itself compel the accused to narrate any fact within personal knowledge. By contrast, forcing the accused to explain involvement in an offence would make the accused a source of testimonial evidence. The protection can also operate where compelled production communicates incriminating personal knowledge.

A court should ask what the act required of the accused communicates and whether it was compelled. The label given to the investigative step does not decide the question.

(38) Explain the procedure for contradicting a witness by his previous statement, in view of the judgment in Tahsildhar Singh and Another v. State of U.P.. **[8 marks]**

Section 145 of the Evidence Act allows cross-examination on a previous statement in writing or reduced to writing. Before using it to contradict, counsel must direct the witness's attention to the precise part relied on.

First record the version given in court. Then put the inconsistent words or material omission to the same witness and give an opportunity to admit, deny or explain it. If the witness admits the earlier version, further proof of that passage is ordinarily unnecessary. If denied, prove the relevant part through the person who recorded it. In the case of a police statement, this ordinarily means putting the marked passage to the investigating officer.

Tahsildhar Singh v. State of U.P. explains that a contradiction arises where the two versions cannot reasonably stand together. Mere silence does not automatically contradict later testimony. An omission may qualify where it materially changes the account in its setting. Section 162 CrPC limits the use of a police statement to contradiction in the prescribed manner, with the court's permission when the prosecution seeks to use it against its own witness. It is not substantive proof of its contents. (BSA section 148 and BNSS section 181.)

---

(39) Explain the doctrine of burden of proof in the context of a plea of unsoundness of mind by the accused. **[8 marks]**

The prosecution must prove the ingredients of the offence, including its mental element, beyond reasonable doubt. The accused who invokes the exception of unsoundness of mind bears a separate and lighter burden.

Under section 84 IPC (BNS section 22), the question is whether at the time of the act the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that it was wrong or contrary to law. Medical diagnosis alone is insufficient. Relevant material includes treatment history and behaviour before, during and after the act, so far as it illuminates capacity at the decisive time.

Section 105 of the Evidence Act (BSA section 108) requires the accused to establish circumstances bringing the case within the exception. Dahyabhai Chhaganbhai Thakker v. State of Gujarat explains that the defence can discharge this burden on a preponderance of probabilities and can rely on the prosecution's evidence as well as its own.

Even if the exception is not affirmatively established, the same material may leave a reasonable doubt about an ingredient the prosecution must prove. The court must distinguish acquittal because the exception is established from acquittal because criminal intent or another element remains unproved.

---

(40) Can the result of a DNA test be used to prove access u/s. 112 of the Indian Evidence Act, 1872? Explain. **[8 marks]**

A DNA result addresses biological parentage. Access under section 112 of the Evidence Act concerns whether the spouses had an opportunity for marital intercourse at the time when the child could have been conceived.

Birth during a valid marriage, or within 280 days of its dissolution while the mother remains unmarried, is conclusive proof of legitimacy subject to proof of non-access. Chilukuri Venkateswarlu v. Chilukuri Venkatanarayana distinguishes the opportunity for intercourse from proof that intercourse actually occurred. The party disputing legitimacy therefore has to establish non-access during the relevant period. Evidence of separation or whereabouts may bear directly on that question.

In Kamti Devi v. Poshi Ram, the Court distinguished the scientific accuracy of DNA evidence from the statutory rule governing legitimacy. A negative result by itself does not prove that the spouses had no opportunity to meet. Goutam Kundu v. State of West Bengal counsels against routine testing and requires a strong factual basis before the court makes such an order.

A court should therefore keep the precise issue in view and assess whether non-access is actually shown, taking into account the consequences to the child. (BSA section 116.)

---

(41) Explain the distinction between s.113A and s.113B of the Indian Evidence Act, 1872. **[8 marks]**

Section 113A permits a court to presume abetment of suicide. Section 113B requires it to presume dowry death once the prescribed foundational facts are proved.

Under section 113A, the woman must have committed suicide within seven years of her marriage and the husband or his relative must have subjected her to cruelty. The court considers all other circumstances before drawing the inference. Cruelty bears the meaning in section 498A IPC and need not be linked to a dowry demand. The question is whether that person abetted the suicide.

Under section 113B, the question is whether the accused caused a dowry death within section 304B IPC. That offence concerns death by burns or bodily injury or otherwise than under normal circumstances within seven years of marriage. The evidence must show that soon before death the specific accused subjected the woman to cruelty or harassment for, or in connection with, a dowry demand. On that foundation the court must draw the presumption unless rebutted.

The differences are the kind of death, the connection with dowry, the requirement of proximity to death and the court's discretion once the foundation is established. (BSA sections 117 and 118.)

---

(42) Explain the presumptions u/ss.139 and 146 of the Negotiable Instruments Act, 1881. **[8 marks]**

Section 139 addresses the purpose for which the cheque was received. Section 146 addresses proof of its dishonour. They operate at different stages of a section 138 prosecution.

Where execution is established or admitted, section 139 directs the court to presume that the holder received the cheque towards discharge, in whole or in part, of a debt or other liability. Rangappa v. Sri Mohan treats this as including a legally enforceable liability. The accused can rebut it on a preponderance of probabilities, including by using the complainant's materials. If rebutted, the complainant must establish the liability on the evidence.

Under section 146, production of the bank's slip or memo bearing its official mark denoting dishonour requires the court to presume that the cheque was dishonoured unless that fact is disproved. The memo ordinarily removes the need to call a bank witness simply to prove the return. The accused can dispute the memo's authenticity or show that the cheque was not dishonoured as alleged.

The complainant must still establish other statutory conditions, including timely demand and failure to pay within the prescribed period. A bank memo cannot prove the underlying transaction.

---

(43) Differentiate between 'culpable homicide' and 'murder'. **[8 marks]**

Culpable homicide is the wider category. Murder is a more serious form of culpable homicide defined by the higher degree of intention or knowledge set out in section 300 IPC.

Under section 299, a person commits culpable homicide by causing death with intent to cause death, intent to cause bodily injury likely to cause death, or knowledge that the act is likely to cause death. Section 300 treats it as murder where the act is intended to cause death, the intended injury is known to be likely to kill that particular person, or the intended injury is sufficient in the ordinary course of nature to cause death. Its fourth clause concerns knowledge that an act is so imminently dangerous that it must in all probability cause death or likely fatal injury, coupled with absence of an excuse for taking that risk.

A section 300 exception may reduce murder to culpable homicide not amounting to murder. Examples are grave and sudden provocation within its limits, and a sudden fight without premeditation where the offender took no undue advantage and did not act cruelly or unusually.

The court first establishes causation and the mental element under section 299, then tests the clauses and exceptions in section 300. (BNS sections 100 and 101.)
