Kerala Judicial Service (Mains) 2025

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 evaluated) (1 x 15 = 15 marks)

(1) A suit for damages for an injury caused to a person or movable property can be instituted.....
(A) in the place where the wrong is done [1 mark]
(B) either in the place where the wrong is done or in the place where the defendant resides
(C) in the place where the defendant resides
(D) in the place where the plaintiff resides

(2) What is the primary purpose of a precept issued under the Code of Civil Procedure, 1908? [1 mark]
(A) To serve summons on the defendant
(B) To compel production of a document
(C) To summon a witness to a Court
(D) To attach the property of a judgment debtor before a decree is sent for execution to another Court

(3) Which provision in the Code of Civil Procedure, 1908 deals with enforcement of a decree passed by a foreign court? [1 mark]
(A) Section 48
(B) Section 44A
(C) Section 46
(D) Section 10

(4) A judgment and decree of the Munsiff's Court, Nedumangad is challenged before the District Court, Thiruvananthapuram. However, it is to be noted that there is Sub Court available in Nedumangad. The Course open for the District Court is to [1 mark]
(A) return the appeal to present it before the Sub Court
(B) hear the appeal
(C) dismiss the appeal for want of Jurisdiction
(D) None of the above

(5) Under the Code of Civil Procedure, 1908, which of the following statements about the jurisdiction of a Court are correct?
i. Objection as to the pecuniary or territorial jurisdiction of a Court must be taken at the earliest possible opportunity and in all cases, before issues are settled;
ii. Objection as to the 'subject matter jurisdiction' of a Court can be raised at any stage, even in appeal;
iii. A decree passed by a Court lacking 'subject matter jurisdiction' is a nullity and can be challenged even in collateral proceedings;
iv. If parties consent a court lacking 'subject matter jurisdiction' can still validly decide the dispute.
(A) i, ii and iii [1 mark]
(B) i and ii

(C) i and iv
(D) All the above

(6) A suit relating to the recovery of possession of immovable property stands dismissed for the default of the plaintiff. Which of the following statement is correct? [1 mark]
(A) Dismissal of a suit for default bars a subsequent suit on the same subject matter
(B) Dismissal of a suit for default bars a subsequent suit of the same nature in all circumstances
(C) Dismissal of a suit for default bars a subsequent suit with the same cause of action
(D) Even if res judicata is not applicable to a suit dismissed for default, the principles of res judicata will apply irrespective of whether the subsequent suit is based on a different cause of action

(7) Which of the following statement is correct? [1 mark]
(A) A commission under Rule 9 of Order XXVI of the Code of Civil Procedure, 1908 shall be issued only to the pleaders practising before the Court
(B) The report of the Commissioner will not be evidence in the suit and will not form part of the record in the suit unless he is examined during the trial as a witness
(C) Even if the court appoints a Commissioner before the defendant appears in the suit, the Commissioner's report cannot be treated as evidence in the suit unless the defendant was given a chance to be present during the inspection
(D) The parties have no right to obtain a copy of the Commissioner's report directly from the Commissioner. They must apply to the Court for the same

(8) Which of the following Criminal Court/s can recall its order? [1 mark]
(A) The High Court in exceptional circumstances
(B) The High Court at any time
(C) The High Court and the District Courts
(D) None of the criminal courts can recall its order

(9) Which scheme is to be mandatorily notified by the State Government u/s. 398 of the BNSS?
(A) Electronic trials [1 mark]
(B) Zero FIR registration
(C) Forensic investigation
(D) Witness protection

(10) Under the BNSS, within how many days of completion of arguments, the Sessions Judge is required to pronounce Judgment? [1 mark]
(A) 15 days, extendable up to 30 days
(B) 30 days, extendable up to 45 days
(C) 45 days, extendable up to 60 days
(D) 60 days, no extension

(11) Which provision in the BNSS permits handcuffing of habitual offenders and those who have committed organised crime, terrorist act etc.? [1 mark]
(A) Section 39(2)
(B) Section 40(3)
(C) Section 42(1)
(D) Section 43(3)

(12) Within how many days of commitment of the case u/s.232 of the BNSS, should the accused prefer an application for discharge? [1 mark]

(A) No such specified period
(B) 90 days
(C) 30 days
(D) 60 days

(13) The maximum period for which an undertrial prisoner, who is a first offender can be detained is..... [1 mark]

(A) up to 1/4th of the maximum period of imprisonment specified for that offence
(B) up to 2/3rd of the maximum period of imprisonment specified for that offence
(C) up to 1/3rd of the maximum period of imprisonment specified for that offence
(D) up to 1/2 of the maximum period of imprisonment specified for that offence

(14) Which provision in the BNSS provides for the conduct of all trials, inquiries and proceedings in electronic mode? [1 mark]

(A) Section 308
(B) Section 530
(C) Section 321
(D) Section 263

(15) Which provision in the Criminal Rules of Practice enables a stranger to the proceeding to apply for the grant of copies of any proceedings or documents? [1 mark]

(A) Rule 222
(B) Rule 227
(C) Rule 226
(D) Rule 231

Part-II

Answer any 11 questions. Answer shall not exceed 160 words (one and a half page). If more than 11 questions are answered, then the first 11 answers only will be evaluated. Answers to the questions in this Part should be written in the Common Answer Book. (5 x 11 = 55 marks)

(16) Explain the difference between 'set off' and 'counter claim' in detail. [5 marks]

(17) A Munsiff decreed a suit for partition on a question of law. The parties to the suit did not challenge the decree and the Judgment in appeal. A few days later, the question of law relied on by the Munsiff for decreeing the suit was reversed by a superior Court in a different case. The plaintiff filed a petition to review the judgment on the basis of the superior Court's judgment. The Munsiff did not entertain the application and dismissed the same. Is the course of action adopted by the Munsiff legal and proper? What are the circumstances in which a review of a judgment is permissible? [5 marks]

(18) State the procedure to be followed while drafting a final decree. State with precision, the necessary requisites of law. [5 marks]

(19) Describe the procedure to be followed under the Civil Rules of Practice with regard to an election petition filed under the Kerala Panchayat Raj Act, 1994. [5 marks]

(20) A Small Causes Court entertains a suit based on title and adjudicates it. Is the finding binding on parties in a subsequent suit applying the principles of res judicata? Explain with reasons. [5 marks]

(21) Explain the principles governing the grant of temporary injunction under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908. When can such an injunction be varied or set aside? What are the safeguards in the Code of Civil Procedure, 1908 in favour of the opposite party when a temporary injunction is passed without hearing him? [5 marks]

(22) When can a suit be withdrawn with liberty to file a fresh suit? Can this power be exercised at the appellate stage? What is the consequence if a suit is withdrawn without obtaining such liberty? [5 marks]

(23) Describe the procedure to be followed for ordering the arrest and detention of a judgment-debtor in a civil prison. Distinguish between the proceedings under Rule 37 and Rule 40 of Order XXI of the Code of Civil Procedure, 1908. [5 marks]

(24) What are the principles governing the review jurisdiction of a Civil Court? What is the distinction between review power and the power conferred on the Court u/s.152 of the Code of Civil Procedure, 1908? Are all orders made while exercising the review power appealable? [5 marks]

(25) Are persons who are strangers to a suit entitled to obtain a certified copy of the judgment rendered in that suit? Under what circumstances may such strangers be permitted to obtain copies of the records of the suit or of other proceedings? Is it possible to apply more than one document in a single copy application? [5 marks]

(26) What is the nature of satisfaction required to arraign a person as accused invoking the power u/s. 358 of BNSS? Discuss with the support of precedents. [5 marks]

(27) Discuss the differences between seizure u/s.106 and attachment u/s.107 of the BNSS. [5 marks]

(28) What procedure is to be followed by a Magistrate if it appears that the accused facing trial is of unsound mind and consequently incapable of making his defence? [5 marks]

(29) Discuss the provisions in the BNSS providing protection to public servants from prosecution for offence alleged to have been committed in the discharge of their official functions or duties. [5 marks]

(30) Can a statement recorded u/s.161 of Cr.PC be used in a trial? Explain with reference to statutory provisions. [5 marks]

Part - III

Answer both the questions. Answers to the questions in this Part should be written in the Common Answer Book. (2 x 15 = 30 marks)

Writing of Judgments (Name of Court alone to be indicated. Other details in the cause title and appendix are not required.)

(31) Write a Judgment on the following facts: [15 marks]

'A' had two sons 'B' and 'C' and a daughter 'D'. 'A's wife predeceased him. 'A' during his lifetime, was residing with 'B'. He passed away on 14.7.2023. He had executed a Will on 10.1.2023 bequeathing all his properties in favour of 'B'. 'A' had 10 acres of property in his name. The Will was not registered. Soon after the demise of 'A', 'C' and 'D' approached 'B' for partition of the 10 acres equally but 'B' did not agree. Left with no alternative, a suit was filed by 'C' and 'D' as plaintiffs against 'B' for partition of the property by metes and bounds.

Plaintiffs' plea: The total extent of 10 acres was purchased by their father with his own funds, and on his death, the property has to be divided equally among the children as he died intestate. The plaintiffs and the defendant are the only legal heirs of 'A', as their mother predeceased their father, and therefore, the property has to be divided into 3 equal parts.

Defendant's plea:- 'B' resisted the suit, contending that 'A' had executed a Will bequeathing the entire properties in his name and on the death of 'A', the Will came into effect and thus, he is the absolute owner and therefore, the property is not partible.

During the trial, 'C' and 'D' were examined as PW1 and PW2. On the side of the defendant, 'B' was examined as DW1 and one of the attesting witnesses who was a neighbour, was examined as DW2.

Plaintiffs' evidence: The plaintiffs deposed that no Will was executed by 'A' in his lifetime, and the Will produced by 'B' is a fabricated Will, not executed by 'A'. If at all a Will is executed, it is not a registered one, and it is executed at the instance of 'B' by coercion and undue influence and also 'A' had executed it without knowing the contents. 'A' was bedridden for the last 2 years before his death and was staying with 'B'. Hence, there are suspicious circumstances surrounding the execution of the Will and it is not validly executed. Moreover, only one attesting witness was examined to prove the Will when the other witness was readily available.

Defendant's Evidence: The defendant deposed that the Will was validly executed, knowing fully the contents of the same, and two witnesses have counter-signed, making it a genuine one. One of the witnesses was already examined before the Court to prove the same. It was also contended that registration of the Will is optional and non-registration will not make it invalid.

Documents proved:

i. Ext.A1 – title deed of the plaint schedule property in the name of 'A'.

ii. EXT.A2 – Tax receipt in respect to the 10 acres

iii. Ext.A3 – Will dated 10.1.2023 executed by 'A'.

(32) Write a Judgment based on the following facts and contentions: [15 marks]

Akbar and his wife Jameela jointly owned 12 cents of land in Survey No.460/5 in Mankave, Kozhikode. On 15.06.2015, their neighbour Gopi filed civil suit before the Sub Court, Kozhikode praying for a specific performance decree. In his plaint, Gopi averred that on 01.03.2015, Akbar and Jameela had entered into an agreement with him for sale of their property. The sale price of the property was fixed as Rs.12 lakh, out of which Gopi had paid Rs.3 lakh as advance. As per the terms of the agreement, the sale deed was to be executed within six months. Contrary to the agreement, Akbar and Jameela attempted to sell their property at a higher price to Gireesh, another neighbour. Thereupon the suit was filed.

On being served with notice in the suit, Akbar and Jameela filed a criminal complaint before the jurisdictional Magistrate, alleging that they had never entered into an agreement for sale with Gopi and the agreement produced in the civil suit was a fabricated document. According to Akbar and Jameela, the agreement contains their forged signatures. The Magistrate forwarded the complaint for investigation u/s.156(3) Cr.PC and thereupon, Crime No.120 of 2015 was registered at the Kasaba Police Station, Kozhikode against Gopi for offences punishable u/ss.417, 468 and 471 of IPC. After conclusion of investigation, final report was laid and the court took cognizance of the aforementioned offences.

On issuance of summons, accused Gopi entered appearance. Thereafter, the Court framed charges for the offences u/ss.417, 468 and 471 of IPC and Gopi having pleaded innocence, proceeded to try the accused.

In the trial of the case, PWs.1 to 6 were examined on the prosecution side and Exts.P1 to P8 were marked.

Akbar and Jameela, the owners of the property, when examined as PW1 and PW2, denied the execution of any agreement with the accused and further deposed that on 01.03.2015, the day on which the agreement was alleged to have been executed, they were in Dubai. To prove this aspect, their passports were produced and marked as Exts.P2 and P3. The stamp vendor, when examined as PW3, stated that Gopi had purchased the stamp paper from him. Gireesh, the prospective buyer was examined as PW4 and deposed that he had entered into an agreement for purchase of the property from PWs.1 and 2. He further stated that the sale deed was not executed since, in the meanwhile, the accused had filed the suit for specific performance.

The learned Magistrate called for the original of the sale agreement from the Civil Court and forwarded it to the Government Forensic Science Laboratory for analysis. Ext.P4 was the agreement. In the Ext.P5, the report of analysis, the expert opined that the signatures in Ext.P4 were not the signatures of PW1 and PW2.

The accused denied the incriminating circumstances during his examination u/s.313 of Cr.PC. No witness was examined on the defence side. During arguments, a specific plea was raised on behalf of the accused that the sale agreement having been produced before the Civil Court, the bar u/s. 195(1)(b)(ii) of Cr.PC would apply. It was also contended that no reliance can be placed on the expert's opinion without examining the expert.