

HIGH COURT OF KERALA
KERALA STATE HIGHER JUDICIAL SERVICE EXAMINATION - 2014
(WRITTEN EXAMINATION)

PAPER - I

Date of Examination: 12-07-2014

Roll Number:

Maximum Marks: 150

Duration: 3 Hours (10 a.m. to 1 p.m.)

INSTRUCTIONS TO THE CANDIDATES

1. Candidates should write their Roll Number in their Question Booklets at the space provided for the purpose.
2. Candidates should not open their Question Booklets before 10 a.m.
3. **This Question Booklet has three parts:- Part -A, Part-B and Part-C.** In Part -A, there are 18 Objective Type Multiple Choice questions carrying 2 marks each. All the questions are to be answered. In Part-B, there are 18 descriptive type questions (answers not to exceed 100 words) carrying 7 marks each. Of these 18 questions, 12 questions are to be answered (the first 12 answers alone will be evaluated if more than 12 questions are answered). The only question in Part-C (Judgement Writing) carrying 30 marks is compulsory.
4. After opening the Question Booklet at 10 a.m., ensure that it has three parts - Part -A, Part -B and Part -C, that there are 18 Objective Type Multiple Choice questions in Part -A, that there are 18 descriptive type questions in Part -B and that there is One question in Part -C. If there are any missing or illegibly printed questions, the matter should be brought to the notice of the Invigilator immediately and the Question Booklet should be got replaced.
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6. Answers to the questions in Part-B of the Question Booklet should be written in the Answer Book bearing Serial (B). It should be tied separately using the piece of twine provided.
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10. No candidate will be allowed to leave the examination hall without handing over the OMR Answer Sheet bearing Serial (A) and the separately tied answer books bearing Serial (B) and Serial (C) to the Invigilator. Candidates can take the Question Booklet with them.
11. Answer Key to the questions in Part -A of the Question Booklet will be published in the website www.hckrecruitment.nic.in after the examination.
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PART – A

(In this Part there are 18 Objective Type Multiple Choice questions carrying 2 marks each. All the questions are to be answered. Answers to the questions in this Part should be marked in the OMR Answer Sheet bearing Serial (A). Answers marked elsewhere will not be valued.)

- 1 A suit under Section 92 of the Code of Civil Procedure is being instituted. Which of the following statements is true?
- a) The suit may be instituted by the Advocate General with the previous assent of the Government.
 - b) The suit may be instituted by two or more persons having an interest in the trust with the permission of the Advocate General.
 - c) The suit may be instituted by two or more persons having an interest in the trust with the leave of the Court.
 - d) The suit may be instituted by the Advocate General only with the leave of the Court.
- 2 A instituted a suit for money against B. On A's application, immovable property belonging to B was attached. B contended and proved that attachment was applied for on insufficient grounds. B applies for awarding compensation to him payable by A.
- Which of the following statements is correct ?
- a) Court can award compensation not exceeding fifty thousand rupees.
 - b) Court has no jurisdiction to award compensation.
 - c) The only remedy of B is to file a suit for compensation.
 - d) Court can award compensation not exceeding ten thousand rupees.
- 3 A suit for recovery of possession of immovable property was decreed ex parte. The application to set aside the ex parte decree filed by the defendant was allowed. The plaintiff intends to challenge the order.
- Which of the following statements is correct ?
- a) The plaintiff can file an appeal challenging the order.
 - b) The plaintiff has no right of appeal against the order.
 - c) The appeal lies only to the High Court.
 - d) The appeal lies to the District Court if the valuation is not above Rs. Ten lakhs and to the High Court if the valuation is above Rs. Ten lakhs.

- 4 An appeal was filed by the defendant in a suit for money, beyond the period of limitation. The appellant filed an application for condoning the delay in filing the appeal. The appellant also filed an application for stay of execution of the trial court decree.

Which of the following statements is correct ?

- a) Appellate court shall not grant stay before condoning the delay after issuing notice to the respondent.
- b) Appellate court may grant a stay on condition that sufficient security for the decree amount is furnished.
- c) Appellate court may condone the delay without notice and grant a stay on condition of deposit of the decree amount.
- d) Appellate court shall dismiss the stay petition with a direction to file a stay petition after the delay is condoned.

- 5 In execution of a money decree for Rs. 25,000/-, the judgment debtor was arrested and detained for the maximum period provided under Section 58 of the Code of Civil Procedure. Immediately after the release of the judgment debtor from civil prison, the decree holder filed an Execution Petition for attachment and sale of the immovable property of the judgment debtor.

Which of the following statements is correct ?

- a) It amounts to harassment and the Execution Petition is liable to be dismissed.
- b) Since the judgment debtor was detained for the maximum period, the decree debt is wiped off and the E.P. is not maintainable in law.
- c) The Execution Petition could be filed only after one year of the release of the judgment debtor from civil prison.
- d) By the detention in prison, the judgment debtor is not discharged from the decree debt. The E.P. is maintainable.

- 6 The trial court passed a decree for recovery of possession of immovable property. The defendant filed Appeal. No stay of execution was granted. Pending the Appeal, the suit property was delivered to the plaintiff in execution. The appellate court allowed the Appeal and dismissed the suit.

Which one of the following remedies is available to the defendant ?

- a) file an application before the trial court for restitution under Section 144 C.P.C.
- b) file an application before the appellate court for restitution under Section 144 C.P.C.
- c) file an application under Rule 97 of Order XXI C.P.C..
- d) File a suit for recovery of possession.

- 7 Which one of the following statements is untrue ?
- a) Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other.
 - b) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.
 - c) Each material proposition affirmed by one party and not denied by the other shall form the subject of a distinct issue.
 - d) Issues are of two kinds: issues of fact and issues of law.

- 8 Which one of the following statements is untrue with regard to appeal ?
- a) No appeal shall lie from an original decree passed ex parte.
 - b) No appeal shall lie from a decree passed by the court with the consent of parties.
 - c) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by courts of small causes, when the amount or value of the subject matter of the original suit does not exceed ten thousand rupees.
 - d) Where any party aggrieved by a preliminary decree does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

- 9 'A' entered into an agreement with 'B' to purchase one acre of land for a consideration of Rs. Ten lakhs. An advance of Rs. One lakh was paid by A to B. Contrary to the terms of the agreement, B transferred the property to C. C cut and removed the valuable trees in the property and thereby the value of the property was considerably diminished. A's suit for return of advance amount was decreed against B. In execution, the property in question was sought to be sold for realization of the decree amount.

Which of the following statements is true ?

- a) A is entitled to a charge on the property as against B and C and therefore the property can be sold.
- b) The property cannot be sold since B had no title to the property at the time when the decree was passed.
- c) Since C is a bonafide purchaser, the property is not liable to be sold.
- d) Since C purchased the property before the institution of the suit, charge under Section 55 (6) (b) of the Transfer of Property Act is not available in favour of A.

- 10 During the continuance of the mortgage, mortgagee takes possession of the mortgaged property.

Which of the following statements is untrue ?

- a) The mortgagee must manage the property as a person of ordinary prudence would manage if it were his own.
- b) The mortgagee must try his best endeavours to collect the rents and profits thereof.
- c) The mortgagee must not commit any act which is destructive or permanently injurious to the property.
- d) The mortgagee shall not spend money for making his own title thereto good against the mortgagor.

- 11 Which one of the following statements is untrue, with regard to mistake under the Indian Contract Act ?

- a) When both parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.
- b) A contract is not voidable because it was caused by a mistake as to any law in force in India.
- c) A mistake as to a law not in force in India has the same effect as mistake as to any law in force in India.
- d) A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

- 12 Which one of the following statements is untrue ?

- a) The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released .
- b) Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to the transactions subsequent to the variance.
- c) Where there are co-sureties, a release by the creditor of one of them would discharge the others.
- d) Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

- 13 A person suing for specific performance of a contract for transfer of immovable property may, in an appropriate case, ask for possession or partition and separate possession of the property, in addition to such performance; or ask for refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

This statement regarding reliefs in addition to specific performance is:-

- a) incorrect.
- b) Fully correct.
- c) Correct only in respect of refund of earnest money.
- d) Correct only in respect of possession.

- 14 The plaintiff in a suit for perpetual injunction under Section 38 of the Specific Relief Act, or mandatory injunction under Section 39 of the said Act, may claim damages either in addition to, or in substitution for such injunction and the court may, if it thinks fit, award such damages.

This statement regarding the claim for damages is :-

- a) Correct.
- b) Incorrect.
- c) Correct, only in respect of a suit for perpetual injunction.
- d) Correct, only in respect of a suit for mandatory injunction.

- 15 A party aggrieved by a decree files a review petition without filing an appeal. The review petition is dismissed on merits. Which of the following is the remedy available to the party to challenge the order dismissing the review petition.

- a) He can prefer an appeal under Order 43 Rule 1 (w) of the CPC.
- b) He can prefer an appeal under Section 96 read with Order 41 Rule 1 CPC.
- c) He can file a Revision before the High Court under Section 115 CPC.
- d) He can file an application under Section 151 CPC

16 Pick the true statement.

- a) In the absence of any contrary intention appearing in the document the title in the case of sale of immovable property normally passes on execution of the sale deed.
- b) In the absence of any contrary intention appearing in the document the title in the case of sale of immovable property normally passes on execution and registration of the sale deed.
- c) In the absence of any contrary intention appearing in the document the title in the case of sale of immovable property normally passes on execution and registration of the sale deed and payment of full consideration.
- d) In the absence of any contrary intention appearing in the document the title in the case of sale of immovable property normally passes on execution and registration of the sale deed and payment of substantial portion of the consideration.

17. 'A' contracts with 'B' assuming 'B' to be 'C'. The contract is:

- a) voidable at the option of 'C'.
- b) voidable at the option of 'A'.
- c) void.
- d) It is a valid contract.

18 'A' and 'B' having separate funds, jointly purchased a property on payment of Rs. Four lakhs as consideration. 'A' contributed Rs. Three lakhs and 'B' contributed Rs. One lakh towards the consideration and it is so recited in the sale deed. 'A' files a suit for partition claiming $\frac{3}{4}$ shares.

Which of the following statements (including the provision of law) is correct ?

- a) 'A' is entitled to $\frac{3}{4}$ shares- under Section 45 of the Transfer of Property Act.
- b) 'A' is entitled to $\frac{3}{4}$ shares- under Section 5 of the Transfer of Property Act.
- c) 'A' and 'B' are entitled to equal shares.
- d) 'A' has to file a suit for declaration of his $\frac{3}{4}$ rights and a simple suit for partition is not maintainable.

PART B

[In this Part, there are 18 descriptive type questions (answers not to exceed 100 words) carrying 7 marks each. Of these 18 questions, 12 questions are to be answered. The first 12 answers alone will be evaluated if more than 12 questions are answered.) Answers to the questions in the Part should be written in the Answer Book bearing Serial (B). Answers written elsewhere will not be valued.]

1. On the basis of the following particulars on the certified copy of the judgment, what is the last date for filing Appeal before the District Court against a decree in a suit? Give reasons and discuss the principles of law.

Date of judgment:	1-1-2014
Date of copy application:	3-1-2014
Date of calling for stamp papers:	6-1-2014
Date of production of stamp papers:	9-1-2014
Date when copy was ready:	20-1-2014
Date notified to receive copy:	23-1-2014
Date when copy was delivered:	22-1-2014

2. What are the conditions to be satisfied for invoking the principle of constructive res judicata?
3. What are the salient aspects of the two decisions of the Supreme Court in Salem Advocate Bar Association Vs. Union of India ? Discuss at least five important provisions of the Code of Civil Procedure discussed therein.
4. Can the civil court refer unwilling parties to arbitration, exercising powers under Section 89 of the Code of Civil Procedure ?
5. (a) The sole defendant in the suit died. An application for impleading the legal representatives of the deceased defendant was filed on the 200th day of the date of death. State the nature of the applications to be filed by the plaintiff, with reference to the provisions of law. (4 marks)

(b) The first defendant died. One of the legal representatives of the deceased defendant is in the array of parties. Application for impleading was filed on 200th day of the date of death. Is there any difference between the examples in (a) and (b) ? Discuss the principles of law. (3marks)
6. Only the first defendant was served with summons in a suit. The plaintiff did not take steps to send fresh summons to the other defendants within time. The Court dismissed the suit for default Under Rule 5 of Order IX of the Code of Civil Procedure. Is the order correct ? Can the suit be restored to file ? If so under which provision of law ?

7. What are the requisite conditions for execution of an unprivileged will ? How can it be revoked ?
8. What is the court fee payable in the following types of suits ?
 - (a) partition suit
 - (b) suit for specific performance of contract for sale
 - (c) suit for recovery of possession of immovable property
 - (d) suit for injunction.
9. The general principle is that limitation only bars the remedy, but not the right. Is there any exception to this general principle ? Discuss.
10. Write short notes on :
 - (a) disinheritance as a result of conversion, under the Hindu Succession Act. (4 marks)
 - (b) What are the requisite conditions and ceremonies for a valid Hindu marriage ? (3 marks)
11. Discuss the principles under the Hindu Marriage Act pertaining to inheritance by illegitimate children .
12. The plaintiff granted a licence to the defendant. Licence was terminated. The defendant did not vacate the building. Suit was filed 12 years after the termination of license. The defendant contended that he has perfected title by adverse possession. Discuss the principles of law.
13. What are the main changes brought about by the Amendment Act 39 of 2005 in the Hindu Succession Act ?
14. Discuss the difference between Section 11 and Order 2 Rule 2 of the Code of Civil Procedure.
15. Write short note on the following: (3 ½ marks each)
 - (a) Duties of the guardian of the person of a ward under the Guardians and Wards Act.
 - (b) voidability of transfers made by guardian of a ward in contravention of the provisions of the Guardians and Wards Act.
16. Explain the distinction between liquidated damages and penalty clauses under the Indian Contract Act. Give illustrations.

17. Write short notes on: (3 ½ marks each)
- (a) Marz- ul- maut
 - (b) conditions for a valid talak. Discuss the recent precedents.
18. An application was filed before the court under a special statute beyond the period of limitation. The period of limitation provided under the Limitation Act is different from the period provided under the special statute. There is no provision in the special statute for condoning the delay. Can the delay be condoned ? Discuss the principles of law.

PART C

[The only question (Judgment Writing) carrying 30 marks in this Part is compulsory. Answer to the question in this Part should be written in the Answer Book bearing Serial (C). Answer written elsewhere will not be valued].

1. Question: Write a judgment disposing of an appeal filed by the plaintiff challenging the judgment and decree of the trial court. Materials are given below.

Parties

Plaintiff (Appellant) : 1 Chandran

Defendant(Respondent) : 1 Raman

The suit was instituted for specific performance of contract for sale of immovable property.

Gist of the averments in the plaint:

The plaint schedule immovable property belongs to the defendant. The mother of the defendant has a life estate in the property. The Plaintiff and the defendant executed an agreement for sale on 01.01.2006 for the sale of the defendant's rights as well as his mother's life interest in the plaint schedule property, for a total consideration of Rs. 1,75,000/-. On the same day, the plaintiff paid an advance amount of Rs. 75,000/-. The plaintiff is and has been always ready and willing to perform his part of the contract. Though the plaintiff requested the defendant to execute the sale deed after receiving the balance sale consideration, the defendant did not accede to the request. The defendant committed breach of contract. The plaintiff is entitled to a decree for specific performance of the contract or in the alternative for a decree for return of the advance amount, with a charge on the plaint schedule property.

Gist of the averments in the Written statement:

The defendant did not execute any agreement for sale. The defendant did not receive advance sale consideration as alleged in the plaint. Defendant's mother has a life estate in the property. The defendant alone therefore cannot execute a sale deed regarding the plaint schedule property. The averment in the plaint that the plaintiff was ready and willing to perform his part of the contract is untrue. The plaintiff is not entitled to a decree for specific performance or for return of advance sale consideration.

Issues framed by the trial court:

1. Whether the plaintiff and the defendant executed an agreement for sale on 01.01.2006 and whether in pursuance of that agreement the defendant accepted an advance sale consideration of Rs. 75,000/-?
2. Whether the plaintiff was ready and willing to perform his part of the contract?
3. Whether the plaintiff is entitled to a decree for specific performance of the contract or if not in the alternative a decree for refund of advance sale consideration as prayed for ?

Evidence:

PW1 – Chandran

PW2 – Krishnan Nair (Scribe)

PW3 – Govindan (Retired Surveyor)

Exhibits for the plaintiff:

- A1 : Agreement for sale dated 01.01.2006.
- A2 : Passbook pertaining to the savings bank account of the plaintiff showing a balance of Rs. 5,00,000/- as on 01.01.2006 and on the date of the suit.
- A3 : Certified copy of savings bank account of the defendant showing credit of Rs. 75,000/- on 03.01.2006 as per a cheque issued by the plaintiff.

Defendant's Evidence:

DW1- Raman (defendant)

Defendant's Exhibits: Nil

EVIDENCE OF PW 1:

PW 1 filed affidavit in lieu of chief examination reiterating the plaint averments and denying the averments in the written statement.

Cross-examination

I worked in Dubai for several years. I came back in 1995. Thereafter I did not go to Dubai. I had paid Rs. 75,000/- by cheque to the defendant. The agreement was executed at my residence at Palakkad. The defendant came to my residence with a photocopy of his title deed relating to the plaint schedule property. Thereafter, the defendant himself engaged the scribe Krishnan Nair. The plaintiff and Krishnan Nair came to my house on 01.01.2006 and I handed over a cheque for Rs. 75,000/- to the defendant. The defendant and I signed Exhibit A1 agreement for sale in the presence of Krishnan Nair. It was about 10 O'clock in the morning. I was always willing to pay the entire amount due to the defendant. The defendant agreed to convey his rights as well as his mother's life interest. However, the defendant was never earnest. He, under one pretext or the other put off the execution of the sale deed. Retired Surveyor, Govindan, measured the properties on 03.03.2006, in the presence of the defendant. I had money at that time. Even now, I have enough money in my bank account to pay the balance sale consideration. I deny the suggestion that I was never ready and willing to perform my part of the contract. I am relinquishing all claims with respect to the rights of the defendant's mother in the property and I would be satisfied by a conveyance with respect to the defendant's rights alone.

EVIDENCE OF PW 2:

Chief Examination: I am a scribe. I drafted exhibit A1 as directed by the defendant. The defendant approached me for drafting an agreement for sale. I was present in the plaintiff's house on 01.01.2006 when the plaintiff and the defendant executed Exhibit A1. I saw the plaintiff and the defendant putting their signature in Exhibit A1.

Cross- examination: I am not a relative of the plaintiff. In fact, my wife is related to the defendant. I have no enmity with the defendant. I deny the suggestion that I did not witness the execution of Exhibit A1. I deny the suggestion that the defendant did not approach me for preparing an agreement for sale.

EVIDENCE OF PW3:

Chief Examination: The property was measured by me on the request of the plaintiff. The defendant was present when the property was measured.

Cross- examination: I did not read Exhibit A1. I do not know anything about the contract between the plaintiff and defendant.

EVIDENCE OF DW 1

DW1 filed affidavit in lieu of chief examination reiterating the averments in the written statement and denying the averments in the plaint.

Cross-examination:

The signature in Exhibit A1 looks like my signature. I deny the suggestion that I signed Exhibit A1. Entry with respect to the credit of Rs. 75,000/- in exhibit A3 pertains to my bank account. I had borrowed money from the plaintiff and I had handed over a blank signed paper. I never engaged PW2. I deny the suggestion that Exhibit A1 was prepared by PW2 on my request. I never went to the plaintiff's house on 01.01.2006. I deny the suggestion that I went to the Plaintiff's house on 01.01.2006. I deny the suggestion that the plaintiff was always ready to pay the balance of sale consideration.

Findings of the trial court:

1. The defendant executed Exhibit A1 agreement after accepting an advance sale consideration of Rs. 75,000/-. There was an agreement for the sale of the plaint schedule property for a total consideration of Rs. 1,75,000/-
2. The plaintiff was always ready and willing to perform his part of the contract and the defendant committed breach of the contract.
3. Specific performance of part of a contract alone is not permissible. A vested remainder subject to an intervening estate cannot be conveyed.
4. The plaintiff is only entitled to a decree for re-payment of advance sale consideration.

RESULT:

The suit was therefore decreed by the trial court for return of the advance sale consideration with a charge on the plaint schedule property. The prayer for specific performance of Exhibit A 1 agreement was refused.

HIGH COURT OF KERALA
KERALA STATE HIGHER JUDICIAL SERVICE EXAMINATION-2014
(WRITTEN EXAMINATION)

PAPER - II

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Roll Number:

Maximum Marks: 150

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7. Answer to the question in **Part-Z** of the Question Booklet should be written in the Answer Book bearing Serial (Z). It should be tied separately using the piece of twine provided.
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PART - X

[In this Part there are 18 Objective Multiple Choice Type questions carrying 2 marks each. All the questions are to be answered. Answers to the questions in this Part should be marked in the OMR Answer Sheet bearing Serial (X). Answers marked elsewhere will not be valued.]

1. Which one among the following offences under the Indian Penal Code is exclusively triable by a Court of Session?
 - A) Sec.185
 - B) Sec.195
 - C) Sec.205
 - D) Sec.215

2. Identify the wrong statement.
 - A) Facts not otherwise relevant are always irrelevant
 - B) Facts not otherwise relevant are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.
 - C) When the court has to form an opinion upon a point of art, the opinions upon that point of persons specially skilled in such art are relevant facts.
 - D) When the question is whether the death of a person was caused by poison, the opinions of experts as to the symptoms produced by the poison by which the deceased is supposed to have died are relevant.

3. A is a party to a criminal conspiracy to commit an offence punishable with rigorous imprisonment for a term of 10 years. No express provision is made in the Indian Penal Code for the punishment of such a conspiracy. A shall be punished
- A) with rigorous imprisonment for a term not exceeding three years
 - B) with simple imprisonment for a term not exceeding three years
 - C) in the same manner as if he had committed such offence
 - D) in the same manner as if he had abetted such offence
4. How the fees for the services and the expenses of an expert witness from the Finger Print Bureau shall be disbursed?
- A) The fees shall be paid to the expert in cash at once.
 - B) The fees shall be credited to the State Government, except the travelling allowance which shall be paid to the expert.
 - C) The fees shall be sent to the expert by cheque or demand draft.
 - D) The fees including travelling expenses shall be credited to the State Government.

5. No District Magistrate has the authority to direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate unless it is in respect of a
- A) cognizable or bailable offence
 - B) cognizable and bailable offence
 - C) cognizable or non-bailable offence
 - D) cognizable and non-bailable offence
6. A is the son of B whose husband is C. C admits the marriage but denies that he is the father of A. According to C, A is the son of D with whom B had illicit relationship. How could C establish his contention?
- A) By proving that C had no sexual intercourse with B at any time when A could have been begotten.
 - B) By proving that A was born within 280 days after the marriage
 - C) By proving that B & D had access to each other at any time when A could have been begotten
 - D) By proving that B & C had no access to each other at any time when A could have been begotten.

7. Which among the following offences in the Indian Penal Code is not triable by an Assistant Sessions Judge?
- A) Sec.372
 - B) Sec.366 A
 - C) Sec.364 A
 - D) Sec.373
8. An accused was remanded to judicial custody at 5.05 p.m. The remand was extended from time to time. How the period of 60 days mentioned in the proviso to sub-sec (2) of Sec.167 of the Code of Criminal Procedure is computed under the Criminal Rules of Practice, Kerala?
- A) The day on which the remand was made and the day on which the accused is ordered to be produced shall be excluded.
 - B) The day on which the remand was made shall be included but the day on which the accused is ordered to be produced shall be excluded.
 - C) The day on which the remand was made and the day on which the accused is ordered to be produced shall be included.
 - D) The day on which the remand was made shall be excluded but the day on which the accused is ordered to be produced shall be included.

9. When can a Sessions Judge u/s.299 of the Code of Criminal Procedure record the deposition of a witness produced on behalf of the prosecution?
- A) When it is proved that the accused person has absconded and that there is no immediate prospect of arresting him.
 - B) When it is proved that the accused person has absconded and that the witness is about to leave India.
 - C) When it appears that the accused person is likely to abscond.
 - D) When it appears that the accused person is likely to influence the witness.
10. Mark the odd one.
- A) Sec.53 of the Indian Evidence Act
 - B) Sec.54 of the Indian Evidence Act
 - C) Sec.55 of the Indian Evidence Act
 - D) Sec.56 of the Indian Evidence Act

11. Which among the following is the correct statement?
- A) The members of an unlawful assembly are guilty of the offence of rioting only if both force and violence are used by such assembly in prosecution of the common object of the assembly.
 - B) All the members of an unlawful assembly are liable to be punished u/s.148 of the Indian Penal Code if any of them while rioting was armed with a deadly weapon.
 - C) An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.
 - D) Whoever hires or engages any person to join an unlawful assembly shall be punishable as an abettor but not as a member of such unlawful assembly.
12. Identify the Rule in the Criminal Rules of Practice, Kerala which is not made applicable to sessions cases.
- A) Rule 15
 - B) Rule 16
 - C) Rule 17
 - D) Rule 18

13. Which among the following is incorrect?

- A) A is tried upon a charge of theft and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with criminal breach of trust upon the same facts.
- B) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may not afterwards be tried for culpable homicide upon the same facts.
- C) A is charged before the Court of Session and convicted of culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.
- D) A is charged by a Magistrate of the First Class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the consequence had not happened or were not known to the court to have happened at the time when he was convicted.

14. Identify the document in favour of which the presumption u/s.80 of the Indian Evidence Act is not available.
- A) Statement of a prisoner given to a Magistrate, recorded by him in accordance with the law and signed by him.
 - B) Confession of an accused made to a Magistrate, recorded by him in accordance with the law and signed by him.
 - C) Statement given by a witness u/s.164 of the Code of Criminal Procedure to a Magistrate, recorded by him in accordance with the law and signed by him.
 - D) Deposition of a witness recorded by a Magistrate in a judicial proceeding in accordance with the law and signed by him.
15. A hurt which causes the sufferer to be during the space of..... in severe bodily pain is designated as 'grievous'.
- A) 10 days
 - B) 14 days
 - C) 18 days
 - D) 20 days

16. A Court of Session has taken cognizance of an offence punishable u/s.500 of the Indian Penal Code upon a written complaint filed by the Public Prosecutor. The complaint alleges that the accused published a libel against a Minister of the Union. What shall be the procedure to be followed?

A) The Sessions Judge shall frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the First Class.

B) The Sessions Judge shall try the case in accordance with the procedure for the trial of sessions cases.

C) The Sessions Judge shall try the case in accordance with the procedure for the trial of warrant-cases instituted otherwise than on a police report before a Court of Magistrate.

D) The Sessions Judge shall try the case in accordance with the procedure for the trial of warrant-cases instituted upon a police report before a Court of Magistrate.

17. Choose the correct statement.

A) A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

- B) Witnesses to character may be cross-examined but not re-examined.
- C) An accomplice is not a competent witness against an accused person.
- D) A person summoned merely to produce a document can be cross-examined.

18. Two courts subordinate to different High Courts have taken cognizance of the same offence. A question arises as to which of those two courts ought to try that offence. The question shall be decided by

- A) the Supreme Court of India.
- B) the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced.
- C) any of the High Courts as the Supreme Court may direct.
- D) the High Court which was first approached to decide it.

PART - Y

[In this Part, there are 18 descriptive type questions (answers not to exceed 100 words) carrying 7 marks each. Of these 18 questions, 12 questions are to be answered (the first 12 answers alone will be evaluated if more than 12 questions are answered). Answers to the questions in this Part should be written in the Answer Book bearing Serial (Y). Answers written elsewhere will not be valued.]

1. A person is arrested on a charge of committing rape. He refuses to subject himself to medical examination. Discuss the law on the subject.

2. What is primary evidence? Secondary evidence of the existence, condition and contents of a document may be given when?
3. When does the right of private defence of the body extend to causing death?
4. How disposal of counterfeit coins, forged currency notes and arms and ammunition is made by a Court of Session?
5.
 - a) Briefly discuss the power of Courts to examine accused persons u/s.313 of the Code of Criminal Procedure.
 - b) An accused person during his examination u/s.313 of the Code of Criminal Procedure expressed his willingness to be a witness for the defence. The Court examined him. Comment.
6. Write a note on 'Dying Declaration'.
7. When is a person said to abet an offence and doing of a thing? What is the punishment for it?
8. Upon committal of a case to it, a Court of Session has taken cognizance of an offence against a person who is not named as an offender in the charge-sheet filed by the police but whose complicity is evident from the materials available on record. He appeared and contended that he could not be arraigned as an accused except u/s.319 of the Code of Criminal Procedure. Decide.

9. a) Can admission be proved by or on behalf of the person who makes it? (3 marks)
- b) When is oral admission as to contents of documents and electronic records relevant? (2 marks)
- c) Are admissions relevant in civil cases? (2 marks)
10. Discuss briefly the situations where accused persons are entitled to bail as of right.
11. Who are public servants within the meaning of Sec.21 of the Indian Penal Code?
12. When are judgments, orders or decrees of Courts of Justice relevant and conclusive proof?
13. What particulars should a charge framed by a court contain? What shall the court do when it alters a charge?
14. Define culpable homicide and murder. State when culpable homicide is not murder.
15. Write short note on
- a) Thirty year old documents
- b) Estoppel

16. Briefly discuss the provisions in the Code of Criminal Procedure regarding the custody and disposal of property pending trial and disposal of property at the conclusion of trial.
17. Write a note on 'legal insanity'.
18. Discuss and explain *autrefois acquit* and *autrefois convict*.

PART - Z

[The only question (Judgement Writing) carrying 30 marks in this Part is compulsory. Answer to the question in this Part should be written in the Answer Book bearing Serial (Z). Answer written elsewhere will not be valued.]

1. Write judgment on the basis of the materials given below:

Sessions Case No. 300 of 2010

Accused : Valsala

Crime No.290 of 2009, Kottayam East Police Station

C.P No.152 of 2010 on the file of the Judicial Magistrate of the

First Class – I, Kottayam

Charge – Under Secs. 302 and 318 of the Indian Penal Code

Prosecution Case

The accused gave birth to an illegitimate female baby at 2.00 p.m on 15.09.2009 at the District Hospital, Kottayam. On the next day she brought

the baby to her house bearing door No.9/510 of Kottayam Municipality. She killed the child on 17.09.2009 by smothering with a pillow. She secretly buried the corpse in her bedroom. She did so to conceal the birth of the child.

Prosecution Evidence

PWs 1 to 8 were examined

Exts P1 to P10, C1 and MOs 1 to 4 were Marked

Prosecution Witnesses

PW1	-	Rajan
PW2	-	Dr.Elza
PW3	-	Sarada
PW4	-	Dr Mathew
PW5	-	Dr Bindu
PW6	-	Joseph
PW7	-	Hassankutty
PW8	-	Sukumaran

Exhibits

- P1 - FI Statement
- P1(a) - FIR
- P2 - IP Register
- P2(a) - Entry in Ext.P2 at page 816 regarding the delivery of a child by Smt.T.Valsala (Accused)
- P3 - Seizure Mahazar (IP Register)
- P4 - Postmortem certificate
- P5 - Medical certificate issued by Dr Bindu after examining the accused
- P6 - Inquest report
- P7 - Scene Mahazar
- P8 - Seizure Mahazar (MOs 1 to 4)
- P9 - Ownership certificate
- P10 - Plan of the scene of occurrence
- C1 - Chemical analysis report

Material Objects Marked

- MO1 - Bedsheet
- MO2 - Pillow
- MO3 - Shirt
- MO4 - A piece of cloth

PW1**Examination-in-chief**

I know the accused. She resides in her own house. My house is adjacent to her house. My wife Sarada (CW 5) told me that a few days ago the accused delivered a female child and that the child was missing. As suggested by my wife and others I went to Kottayam East Police Station on 20.09.2009 to report the matter. The Sub-Inspector of Police recorded my statement and I signed it. This is the statement given by me and it bears my signature (FI Statement shown and marked as Ext.P1).

Cross-examination

I did not tell the Sub-Inspector that the accused killed her baby. Witness adds - But I told him that I had strong suspicion about the missing of the child. I deny that I did not give any statement to the police on 20.09.2009. I deny that I gave the statement a week thereafter.

PW2

Examination-in-chief

I am a Gynecologist. I am working at the District Hospital, Kottayam. I had attended the accused in this case at the District Hospital before and after her delivery. I examined the accused on 15.09.2009. She had labour pain at that time. She delivered a female baby at 2.00p.m on 15.09.2009. She was discharged from the hospital on the next day at her request. The details of the case are available in the IP register maintained in the District Hospital, Kottayam for the year 2009. I produced it before the Circle Inspector as directed by him. This register shown to me is the said IP register (Marked as Ext.P2). The Circle Inspector seized it and prepared a seizure mahazar which I attested. This document shown to me is the said seizure mahazar and it bears my signature (Marked as Ext.P3). Ext.P2 was returned to me on execution of a bond. I produced it in court today as directed in the summons received by me. The entry in Ext.P2 pertaining to the accused and made by me is this (The witness points out the entry - The said entry is marked as Ext.P2(a)). Smt.T.Valsala, 28 years, W/o.Rajan, 9/510 Thayyil House, Kanjikkuzhy, Kottayam was admitted in the hospital as I.P No.3311 at 11.30 a.m on 15.09.2009; she delivered a female baby at 2.00 p.m on the same day and she was discharged at her request at 12.30 p.m on 16.09.2009. The police questioned me and recorded my statement.

Cross-examination

Nil

PW3

Examination-in-chief

PW1 Rajan is my husband. I am a neighbor of the accused. My house is adjacent to her house. We are relatives also. The house where the accused stays belongs to her. The husband of the accused used to come to her house occasionally only. He used to visit her only once or twice a year. The accused delivered a female baby on 15.09.2009 at the Government Hospital, Kottayam. I visited her at her house on 16.09.2009 to see her and the newborn. I saw both the mother and the child and talked to the mother. At that time the accused was feeding her child. The baby was a normal child. I saw the accused on the days which followed but not the child. I did not see the child in the house when I visited the accused two days later. I enquired about the baby, but the accused did not reply. Madhavi (CW6) told me that something had happened to the child of the accused. It became a talk among the neighbours. I told my husband and wanted him to report the matter to the police. The police questioned me and recorded my statement.

Cross-examination

The accused has a son by name Harshan who is now approximately 12 years old. The accused and her son were staying in her house at the relevant time. The husband of the accused was not residing there, but he used to come there once or twice a year. I deny that the husband of the accused was also residing in the same house. I did not see the husband of the accused on 15.09.2009 and 16.09.2009. I put to you that the husband of the accused was present in their house on 15.09.2009, 16.09.2009 and 17.09.2009 (Q). I did not see him (A). I put to you that he was missing from the noon of 17.09.2009 (Q). He was not there on that day or on the previous days (A). I did not see the husband of the accused in her house when I visited her on the next day of her delivery. I even enquired about him and the accused told me that she was expecting him within a couple of days. I deny that I am speaking falsehood.

PW4

Examination-in-chief

While working at the District Hospital, Kottayam as Police Surgeon I conducted postmortem examination on the exhumed body of a female child at 3.00 p.m on 20.09.2009 at the site of exhumation. The child was aged 3 days. I was present at the time of exhumation. I found the following ante mortem injuries on the corpse.

- (i) A contusion 8x5 cms on the back of the head

(ii) Subarachnoid bleeding on the back of the brain over cerebellum and occipital lobes.

Postmortem findings were consistent with the history of death due to asphyxia. Asphyxia could be caused by strangulation or smothering. A child aged 3 days could be smothered to death using a pillow. This document shown to me is the postmortem certificate prepared and signed by me (Marked as Ext.P4). The investigating officer recorded my statement.

Cross-examination

Any factor which would obstruct breathing would cause asphyxia. Asphyxia could be caused by diseases as well.

Re-examination

In this case asphyxia was caused not by any disease. I said so because there was a contusion on the back of the head of the baby.

PW5

Examination-in-chief

I am working at the District Hospital, Kottayam as Assistant Surgeon. The accused in this case was sent to the District Hospital on 21.9.2009 by the Investigating Officer for medical examination. As directed by the Superintendent of the District Hospital, I examined the accused at 10.00 a.m. On examination it was revealed that the accused had delivered a child about 5

or 6 days ago. Urine pregnancy test was also positive. I issued a certificate which is the one shown to me and it bears my signature (Marked as Ext.P5).

Cross-examination

Nil

PW6

Examination-in-chief

On 20.09.2009 I was the Tahsildar, Kottayam. I retired on 31.03.2010. On 20.09.2009 the dead body of a female child was exhumed. I was present at the time of exhumation. The corpse was buried in the bedroom of the house bearing door No.9/510 of Kottayam Municipality. I conducted inquest at the site of exhumation itself and prepared inquest report. The same is shown to me now and it bears my signature (Marked as Ext.P6).

Cross-examination

I do not know whether the house bearing door No.9/510 was in the ownership of the accused at the relevant time.

PW7

Examination-in-chief

While working as the Sub-Inspector of Police, Kottayam East Police Station, I recorded the FI Statement given by PW1 on 20.09.2009 . The same is Ext.P1 which is shown to me now. I registered the case as Crime No.290/2009 of Kottayam East Police Station under the caption 'child missing'. This is the FIR prepared by me and it bears my signature (Marked as Ext.P1(a)). I forwarded the FIR to the Magistrate and a copy of it to the Circle Inspector of Kottayam East.

Cross-examination

I did not conduct any investigation in this case. The entire investigation was conducted by the Circle Inspector. The FI Statement was recorded at about 10.00 a.m at the police station. I was present at the scene of occurrence along with the Circle Inspector at the time of exhumation, inquest and postmortem.

PW8

Examination-in-chief

I am Inspector of Police, Kottayam East Circle. On getting information from PW7, I proceeded to the house of the accused and reached there at about 11.00 a.m on 20.09.2009. When I inspected the floor of the bedroom, I

understood that something was buried there. I thought the dead body of the child was buried there. I therefore made arrangements for exhumation and it started within an hour. I gave separate requisition to the Police Surgeon and the Tahsildar and it was in their presence the exhumation had taken place. The dead body of a baby was found in a pit made on the floor of the bedroom of the house. The dead body was wrapped in a shirt. A piece of cloth was seen in the pit at the bottom.

I examined the scene of occurrence and prepared scene mahazar. It was attested by CW7 Hamza and CW8 Joseph. Both of them are in Dubai now. This is the said scene mahazar prepared by me and it bears my signature (Marked as Ext.P7).

I saw blood stains on the shirt with which the corpse was wrapped and also on the piece of cloth which was found at the bottom of the pit. I therefore seized them. There was a cot in the bedroom. I saw a pillow on the cot. A bedsheet was seen kept under the pillow. I seized the bedsheet as well as the pillow. I saw blood stains on the pillow and the bedsheet. I seized the aforesaid bedsheet, pillow, shirt and piece of cloth. I prepared a seizure mahazar at the time of seizure of the above said material objects. It was attested by CW10 Kumaran and CW11 Santhosh. Both of them died in an accident three months ago. This is the said seizure mahazar which bears my signature (Marked as Ext.P8). I can identify the aforesaid material objects seized by me under Ext.P8. This is the said bedsheet (Marked as MO1). This is

the said pillow (Marked as MO2). This is the said shirt (Marked as MO3). This is the said piece of cloth (Marked as MO4).

The Tahsildar conducted inquest and the Police Surgeon conducted autopsy at the site of exhumation. I arrested the accused at about 6.00 p.m. At that time WPC 312 and WPC 113 were present. The accused was kept in the lock up of the Women Cell, Kottayam till the next morning.

Next day I forwarded the accused to the District Hospital escorted by two women police constables attached to the Women Cell. PW5 examined the accused and forwarded Ext.P5 medical certificate to me. On the same day I went to the District Hospital, Kottayam. Ext.P2 (IP Register) was produced before me by PW2. I perused the relevant entry in it which is Ext.P2 (a). Since the Register was necessary for daily use in the hospital, I returned it to PW2 on a kychit executed by her. On the same day I forwarded MOs 1 to 4 to the Forensic Science Laboratory for chemical examination. This is the report of chemical examination (Marked as Ext.C1).

I produced the accused before the Magistrate at 4.00 p.m on 21.09.2009 along with remand report. On my requisition, the Secretary of Kottayam Municipality issued this certificate shown to me (Marked as Ext.P9). It is certified therein that the house bearing door No.510 of Ward-9 of Kottayam Municipality was assessed in the name of Smt.T.Valsala, 9/510 Thayyil House, Kanjikkuzhy, Kottayam. It is also certified by the Secretary that he verified the

assessment register for the years 2005 to 2010 to issue Ext.P9. I made a request to the Village Officer to prepare the plan of the scene of occurrence. The plan prepared by him was forwarded to me. This is the said plan (Marked as Ext.P10). I questioned the witnesses, concluded the investigation and filed the final report.

Cross-examination

Nobody saw the accused smothering the child. I did not fix the place of occurrence basing on my guess. The dead body was buried on the floor of the bedroom. I saw a blood stained pillow and a bedsheet on a cot kept in the same room. I did not suspect the husband of the accused. I therefore did not conduct any investigation against him. I do not know whether the husband of the accused is absconding. I do not know to whom did MO3 shirt belong. It was the shirt with which the corpse was seen wrapped. I put to you that it was the shirt of the husband of the accused (Q). I do not know (A). I am not sure whether the accused and her husband were on unfriendly terms. The husband of the accused visited her house occasionally only. I put to you that the child and the husband of the accused were missing since 17.09.2009 (Q). The child was missing. I do not know about the husband of the accused (A). I put to you that the accused was under the impression that her husband had taken the child with him (Q). If that be true, the accused would definitely have complained to the police, which she did not do(A). I put to you that you did not conduct the investigation properly(Q). I deny(A).