

HIGH COURT OF KERALA
KERALA STATE HIGHER JUDICIAL SERVICE EXAMINATION-2017
(WRITTEN EXAMINATION)

PAPER - I

Date of Examination: 22.12.2018

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 one 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 Multiple Choice Type 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.
 5. Answers to the questions in **Part -A** of the Question Booklet should be marked in the OMR Answer Sheet bearing Serial (A) which will be evaluated using OMR software.
 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.
 7. Answer to the question in **Part-C** of the Question Booklet should be written in the Answer Book bearing Serial (C). It should be tied separately using the piece of twine provided.
 8. The candidate may choose the Part to be answered first. But, the answers to the questions in each Part of the Question Booklet should be written only in the OMR Answer Sheet/Answer Booklet meant for the respective Part. If the candidates write answers to the questions in a particular Part of the Question Booklet in the Answer Book meant for a different Part, those answers will not be evaluated.
 9. The candidates should use only BLACK/BLUE INK ballpoint pen for filling the various entries and marking answers in the Serial (A) OMR Answer Sheet. But, the candidates may use BLACK/BLUE INK fountain pen/Ballpoint pen for filling the various entries and writing answers in the Serial (B) and Serial (C) Answer Books. Use of pencil, Gel pen or sketch pen and use of any colour ink other than black/blue is not permitted.
 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.
 12. Strict compliance of instructions is essential. Any malpractice or attempt to commit any kind of malpractice in the examination will result in summary disqualification of the candidate.
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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. An order by the appellate court for stay of execution of decree shall be effective from the date of

 - (A) filing the appeal
 - (B) communication of such order to the court of first instance
 - (C) passing the order of stay
 - (D) none of the above

2. An appeal is preferred before the District Court against the judgment and decree passed by the trial court. The Court, after admitting the appeal, posted it for hearing. When the appeal is called on for hearing the appellant did not appear. Respondent also abstained. Court on perusal of the impugned judgment and decree found that they cannot be sustained for legal reasons. Hence the appeal is allowed and the decree is reversed. The procedure adopted by the court below is

 - (A) incorrect, the court should have dismissed the appeal
 - (B) correct, since the judgment and decree was illegal
 - (C) incorrect, the appellate court should have remanded the case to the trial court

(D) correct, since the respondent was also absent

3. Power given to the appellate court to remand under Order XLI Rule 23A CPC can be exercised only when

(A) the decree is reversed in appeal

(B) a re-trial is considered necessary

(C) the appellate court in its discretion finds that it is a fit case to remand

(D) the decree is reversed in appeal and a re-trial is considered necessary

4. An order passed under Order XXI Rule 92 CPC to set aside a sale is.....

(A) a revisable order

(B) amenable to writ jurisdiction alone

(C) an appealable order

(D) amenable for review only

5. No second appeal shall lie from any decree when the subject matter of original suit is for recovery of money not exceeding

(A) Rupees one lakh

(B) Rupees fifty thousand

(C) Rupees twentyfive thousand

(D) Rupees ten thousand

6. In order to constitute an acknowledgment of liability under Section 18 of the Limitation Act, 1963 which of the following conditions are to be satisfied?

- (A) The debtor should acknowledge the liability in writing signed by him.
- (B) The debtor should acknowledge the liability before expiration of the prescribed period for a suit in writing signed by him.
- (C) The debtor may acknowledge the liability in writing signed by him even after the period of limitation.
- (D) The debtor acknowledging the liability in writing and making part payment to the creditor.

7. The arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996 means

- (A) An agreement by the parties to submit to arbitration certain disputes which have arisen between them in respect of a definite legal relationship.
- (B) An agreement by the parties to submit to arbitration all disputes which have arisen in respect of a definite legal relationship.

- (C) An agreement by the parties to submit to arbitration all or certain disputes which have arisen in respect of a definite legal relationship, whether contractual or not.
- (D) An agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a definite legal relationship, whether contractual or not.

8. Under Sub-section (3) of Section 34 of the Arbitration and Conciliation Act, 1996, an application for setting aside an arbitral award may not be made after three months have elapsed from the date of which the party making the application had received the arbitral award. However the court, if satisfied that the applicant was prevented by sufficient cause from making the application, can grant a further period of days.

- (A) 90
- (B) 60
- (C) 30
- (D) 45

9. "No consideration is necessary to create an agency ". This statement is

- (A) true

- (B) false
- (C) partly true
- (D) true only in the case of a sub agent.

10. The liability of a surety is co-extensive with that of the principal debtor

- (A) if it is expressly provided in the terms of the contract
- (B) if the agent undertakes the liability
- (C) unless it is otherwise provided by the contract
- (D) none of the above

11. A Will shall not be deemed to be insufficiently attested by reason of any benefit thereby given either by way of bequest or by way of appointment to any person attesting it or to his or her wife or husband; but

- (A) The bequest or appointment shall be void so far as concerns the person so attesting or the wife or husband of such person.
- (B) The bequest or appointment shall be void so far as concerns the persons so attesting or the wife or husband of such person or any person claiming under either of them.
- (C) The bequest or appointment shall be void so far as concerns the person so attesting or any person claiming under him

- (D) The bequest or appointment shall be void so far as concerns the person so attesting.

12. Probate of a Will when granted establishes the Will

- (A) from the date of execution of the Will
- (B) from the date of registration of the Will
- (C) from the date of grant of probate
- (D) from the death of the testator.

13. Where a mortgagor binds himself to repay the mortgage money on a certain date, transfers the mortgage property absolutely to the mortgagee but subject to a proviso that he will re-transfer the property to the mortgagor upon payment of the mortgage money as agreed, the transaction is called

- (A) usufructuary mortgage
- (B) mortgage by conditional sale
- (C) English mortgage
- (D) simple mortgage

14. If a lessee or under-lessee of a property remains in possession thereof after determination of the lease granted to the lessee and the lessor or his legal representative accepts rent from the lessee or under-lessee or otherwise assents to his continuing in possession, the lessee is

called.....

- (A) a lessee holding over
- (B) a lessee at sufferance
- (C) a lessee by prescription
- (D) quondam lessee

15. A contract made by a trusteecannot be specifically enforced.

- (A) in excess of his powers
- (B) in breach of trust
- (C) in excess of his powers or in breach of trust
- (D) if it conflicts with the object of the trust

16. If two or more heirs succeed together to the property of an intestate under Section 9 of the Hindu Succession Act, 1956 they shall take the properties

- (A) per capita and not per stripes
- (B) as tenants in common and as not joint tenants
- (C) per capita and not per stripes and as tenants in common and not as joint tenants
- (D) per stripes and not per capita and as joint tenants and not as tenants in common

17. A marriage solemnized between two Hindus when one party had a spouse living at the time of marriage is

- (A) voidable
- (B) valid
- (C) irregular
- (D) void

18. Unless the heirs consent thereto after the death of the testator, a Mahomedan cannot by Will dispose of more than of the surplus of his estate after payment of funeral expenses and debts.

- (A) a third
- (B) a half
- (C) a fourth
- (D) a tenth

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 this Part should be written in the answer book bearing Serial (B). Answers written elsewhere will not be valued].

1. Write short notes with relevant provisions in the CPC explaining the following:

- (a) Remand of a case by the appellate court when the trial court

has disposed of the suit upon a preliminary point without considering other issues. (2 ½ marks)

(b) When the trial court has disposed of the case otherwise than on a preliminary point. (2 ½ marks)

(c) When the trial court has omitted to frame or try any issue which is essential to the right decision of the suit upon merits. (2 marks)

2. Defeated plaintiff in a suit for declaration of title and recovery of possession filed an appeal before the District Court. In the appeal, the appellant wanted to produce additional evidence to establish his title to the property. Which provision he has to invoke? What are the essential ingredients to be established by the appellant for receiving the additional evidence in the appeal? What are the powers of the appellate court? Discuss the legal principles.

3. Write a short note on the special features of a suit relating to public charity. Who can file it? What are the procedure to be followed by the court when it is instituted?

4. 'A' and 'B' are siblings. 'A' filed a suit seeking partition and separate possession of the properties devolved on them after the death of their father. In defence, 'B' set up a Will said to be executed and registered by

their father in his name. 'A' contended that the Will is not genuine. On whom the burden of proving the Will rests? What are the essential things that are to be proved for sustaining a claim under the Will? How the Will can be proved? Illustrate with legal provisions and leading decisions.

5. 'A' filed a suit against 'B' for recovery of immovable property on the strength of his title alleging that 'B' had trespassed upon the property six months before the suit. In the suit 'B' raised a contention that he purchased the property six months prior to the suit from 'C', who was possessing the property for more than 15 years. 'B' also contended that 'A' has lost title, if any. 'A' refuted the allegations and contended that 'B' cannot claim any right since his assignment from 'C' was only six months before the suit. What are the essential ingredients of adverse possession and limitation? What are essentials required to tack on the claim of adverse possession? Discuss the merits of rival contentions with statutory provisions and precedents.

6. 'X', a minor was owning a certain extent of immovable property. When 'X' was 2 years old, 'Y' trespassed upon his property and reduced it into his possession. When 'X' was 15 years old, he became mentally ill. In spite of a prolonged treatment, his mental illness continued till his death as a bachelor at the age of 45 years. His brother, who is the only legal heir, filed a suit on the next year of his death for recovery of possession.

Y contended that the suit is barred by limitation. Analyse the contentions with statutory provisions.

7. What are the grounds to be established under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside an award?
8. What are the interim measures that can be adopted by a court under Section 9 of the Arbitration and Conciliation Act, 1996? At what stage of the arbitral proceedings the court can invoke its powers under Section 9. Explain.
9. What are the incidents of buyer's charge under Section 55(6)(b) of the Transfer of Property Act, 1882? What are the aspects to be established by the buyer for claiming the benefit? Against whom the charge can be enforced? Explain.
10. It is ordered in a partition suit that the immovable property involved in it be sold and proceeds divided. What are the procedure to be complied with for effecting a sale under Rule 234 of the Civil Rules of Practice, Kerala?
11. 'A' filed a suit for permanent prohibitory injunction against 'B' in 2014 contending that 'A' is in possession of 'B's property in part

performance of an agreement for sale and 'B' is trying to trespass upon the property in violation of terms of the agreement. In the plaint, 'A' clearly pleaded that he is ready and willing to perform his part of the contract, but when he approached 'B', he denied execution of the contract and refused performance. 'B' entered appearance and opposed the suit. Thereafter 'A' in 2018 filed a second suit against 'B' seeking specific performance of the agreement for sale. 'B' contended that the second suit is barred by the principles in Order II Rule 2 CPC and limitation. Discuss the principles in Order II Rule 2 CPC and the relevant provision in the Limitation Act, 1963 for a suit for specific performance.

12. (a) 'A' filed a suit against 'B' seeking cancellation of a sale deed executed by him in favour of 'B'. 'A' contended that he had borrowed a certain sum of money from 'B' and both agreed to execute a mortgage deed. 'A's contention is that 'B', instead of preparing a mortgage deed, got a sale deed prepared and 'A' was led to execute it by practising misrepresentation and fraud. 'A's illiteracy too was exploited. 'B' resisted the suit. In order to succeed, what are the aspects to be pleaded and proved by 'A'? What is the type of fraud that 'A' has set up? If 'A' proves his contentions, what will be its legal effect on the document? Discuss.

(4 marks)

(b) In the above problem, if 'B' mislead 'A' to execute a mortgage deed for Rupees ten lakhs, when the actual amount borrowed by 'A' from

'B' was only rupees one lakh, what are the facts to be pleaded and proved by 'A' to succeed? What type of fraud then 'A' has set up? What will be the legal effect on the document? Discuss. (3 marks)

13. A settlement deed was executed between the mother and four children, out of which one son was a minor at the time of settlement. Parties to the document are Muslims. Quondam minor, after attaining majority, challenged the settlement deed to be void saying that mother had no authority to act as guardian during his minority and the settlement is inequitable. Whether the contention is sustainable? Discuss the legal principles with leading decisions on the point.

14. Who is capable of making gifts under Mahomedan Law? What is the extent of donor's power? What are three essentials of a gift by a Mahomedan?

15. Parties referred to in the problem below are Hindus. 'A' married 'B' in 1980 in accordance with the customary rites. After the death of 'A' in 1990, 'C' along with her son 'D' filed a suit against 'B' seeking partition of the assets of 'A' contending that 'A' had married 'C' in 1981 and 'C' was unaware of 'A's first marriage. 'B' resisted the suit. She disputed 'C's marriage with 'A' and contended that 'D' is, at the most, an illegitimate son not entitled to inherit 'A's assets. What are the facts to be proved by the

plaintiffs to succeed in the suit? What are the legal principles applicable? Explain.

16. A Hindu widow died issueless inheriting certain immovable property from her father-in-law. She was survived by brother and sister. They filed a suit against the children of her husband's deceased brother claiming recovery of possession of property. What is the law applicable in such a situation? What difference it would make if she had inherited the property from her mother?

17. (a) A suit for specific performance of contract for sale of immovable property was decreed in favour of the plaintiff. The court granted two months time to deposit the balance consideration and directed the defendant to execute the sale deed on deposit of balance consideration. Plaintiff did not deposit the amount within the stipulated time. What is the remedy available to the defendant under the Specific Relief Act, 1963? (3 ½ marks)

(b) In the above case, though the plaintiff deposited the amount in time, the defendant failed to execute the document as directed. What is the remedy available to the plaintiff? (3 ½ marks)

18. (a) A filed a suit against B on a promissory note claiming Rupees Ten lakhs. The suit was decreed. B preferred an appeal by paying 1/3rd

court fee under second proviso to Section 52 of the Kerala Court Fees and Suits Valuation Act, 1959. After admission of the appeal, balance court fee was also paid within the stipulated time. Thereafter the appellant filed a memo before the court stating that he does not wish to prosecute the appeal as the disputes have been settled out of court. He also requested for refund of the court fee paid before the appellate court and the trial court. Can the request be allowed? What is the statutory provision applicable? What are the situations in which refund of court fee can be granted? To what extent court fee can be refunded?

(2 ½ marks)

(b) In the above problem, assume the parties have been referred to a mediation and the disputes are settled in the mediation. An agreement is filed before the court to that effect. Which provision of law then applies for refund? What is the procedure to be adopted and to what extent court fee can be refunded?

(2 ½ marks)

(c) Suppose the appellate court finds that the decree passed by the court below is faulty on some legal grounds and decides to remand the case to the trial court. Is the appellant entitled to get refund of court fee? Which provision of law applies? What is the extent to which he is entitled to get a refund of court fee?

(2 marks)

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]

Qn.: The Munsiff decreed a suit in part. The plaintiffs filed an appeal before the District Court on the grounds set out below. Write a judgment in the appeal.

I. Judgment of the Munsiff:

O.S. NO.....XXXX

PLAINTIFFS:-

1. AB
2. CD

DEFENDANT:-

EF

JUDGMENT

1. The suit is for a declaration of the plaintiffs' title to and possession of plaint B schedule property, prohibitory injunction and to declare an agreement null and void.
2. The plaint averments in brief are as follows:- The plaintiffs are husband and wife. The first plaintiff is represented by his wife, the second plaintiff. The suit is filed to protect the interest of the first plaintiff. First plaintiff is the absolute owner in possession and enjoyment of plaint 'B' schedule property. It is a part of plaint 'A' schedule property. He obtained it by virtue of a sale deed No.926 dated 04.07.1983 in his name

by using money of the second plaintiff. At the time of purchase, the first plaintiff was a mentally sound person. The defendant attempted to trespass upon plaint B schedule property claiming that the first plaintiff executed an agreement to sell it in favour of the defendant. The alleged agreement is not valid as it was executed by the first plaintiff while he was mentally unsound. It was executed not with free consent of the first plaintiff. Hence, the plaintiffs filed the suit seeking the aforesaid reliefs.

3. The contentions of the defendant are following:-

The allegation that the first plaintiff was a mentally unsound person is false. The second plaintiff has no right to represent the first plaintiff. On 16.07.2008, the first plaintiff executed an agreement to sell plaint B scheduled property in favour of the defendant. On 30.07.2008 the defendant sent an advocate notice to the first plaintiff demanding to execute the sale deed. After that on 21.08.2008 the defendant filed a suit for specific performance of the agreement to sell as O.S.191/2008 before the Sub Court at XXX against the first plaintiff. The plaintiffs filed this false suit after receiving the notice from the Sub Court. The defendant admitted title of the first plaintiff to plaint B schedule property. There is no cause of action for the suit. The defendant prays to dismiss the suit with her costs.

4. **Issues:-**

- (1) Is the first plaintiff a person of unsound mind ?

- (2) Whether the plaintiffs got title to and possession over the plaint B schedule property ?
- (3) Are the plaintiffs entitled to get a declaration as prayed for ?
- (4) Are the plaintiffs entitled to get an injunction as prayed for ?
- (5) Is the agreement dated 16.07.2008 liable to be declared null and void ?
- (6) What shall be the order as to costs ?

5. PW1 was examined on the side of the plaintiff and Exts.A1 and A2 were marked. DW1 was examined on the side of the defendant. Both sides were heard.

6. **Issue No.1:-** This suit was filed to protect the interest of the first plaintiff. The second plaintiff is none other than the wife of the first plaintiff. According to the plaint averments, the second plaintiff represents the first plaintiff who is a person of unsound mind. The second plaintiff filed I.A.4547/2008 for leave to conduct the case for and on behalf of the first plaintiff. An inquiry under Order 32 Rule 15 CPC was conducted. On inquiry it was found that the first plaintiff was not suffering from any mental infirmity and he was found competent to conduct the case. Consequently I.A.4547/2008 was dismissed. The first plaintiff filed a vakalth also. Hence, it is clear that the first plaintiff is not a person of unsound mind and he is competent to conduct the case. Issue No.1 found against the plaintiffs.

7. **Issues No.2 to 4:-** The plaintiffs filed the suit for declaration of

title and possession over B schedule property. The defendant admitted title of the first plaintiff to the plaint B schedule property. The defendant contended that the first plaintiff purchased the plaint schedule property not using the fund of the second plaintiff. Ext.A1 is the sale deed dated 04.07.1983 in favour of the first plaintiff in respect of plaint A schedule property. Ext.A1 shows that the first plaintiff purchased the plaint A schedule property. There is no recital in it to the effect that the first plaintiff purchased plaint A schedule property using the funds of the second plaintiff. Plaint B schedule property was a part of plaint A schedule property. Plaint B schedule property is the property left after selling a part of plaint A schedule. Ext.A2 is the tax receipt. Ext.A2 shows that the first plaintiff effected mutation and paid tax for plaint B schedule property. The evidence adverted to above proves that the first plaintiff got title to and possession of the plaint B schedule property. The plaintiffs failed to prove that the first plaintiff purchased the plaint B schedule property by using the funds of the second plaintiff. Issue No.2 is found partly in favour of the plaintiffs. Hence the plaintiffs are not entitled to get a declaration as prayed for. Instead, the 1st plaintiff is entitled to get a declaration with respect to plaint B schedule property in his favour. Issue No.3 is thus found partly in favour of the plaintiffs.

8. The plaintiffs prayed for a permanent prohibitory injunction restraining the defendant from trespassing upon the plaint B schedule property and from committing any act of waste therein. The plaintiffs

contended that the defendant trespassed upon the plaintiff schedule property claiming that the first plaintiff executed an agreement to sell it in favour of the defendant. It is stated in the plaint that the cause of action had arisen on 03.07.2008, being the last date of attempted trespass. But it is interesting to note that no evidence was adduced by PW1 to prove the alleged trespass of the defendant. It is pertinent to note that PW1 did not adduce any evidence as to whether the plaintiffs apprehended any trespass by the defendant. On analyzing the available evidence it is seen that the plaintiffs failed to prove the cause of action for claiming the relief of injunction. Hence the plaintiffs are not entitled to get an injunction as prayed for.

9. **Issue No.5:-** The plaintiffs prayed to declare the agreement to sell dated 16.07.2008 null and void. The plaintiffs contend that the first plaintiff who was a person of unsound mind executed the above said agreement and hence its execution was without free consent of the first plaintiff. It is pertinent to note that the plaintiffs did not produce even a copy of the agreement in question. The plaintiffs did not adduce any evidence to prove that the first plaintiff was of unsound mind at the time when he executed the agreement. The plaintiffs are therefore not entitled to get a declaration with respect to the agreement dated 16.07.2008. Issue No.5 is found against the plaintiffs.

10. **Issue No.6:-** Considering the facts and circumstances of the case, the plaintiffs are not entitled to get the costs of the suit.

In the result, the suit is decreed in part and it is hereby declared that the first plaintiff has title to and possession over the plaint B schedule property. No costs.

Munsiff

Exhibits for the plaintiff:-

- A1 4-7-1983 Sale deed with respect to the plaint A schedule property in favour of the 1st plaintiff. It is recited that the sale consideration was paid by the 1st plaintiff.
- A2 10.07.2007 Receipt for payment of tax for the plaint B schedule property by the 1st plaintiff.

No Exhibits for Defendant:-

Deposition of PW1

Affidavit in lieu of Chief Examination

ടി നമ്പർ കേസിൽ രണ്ട്ാം വാദിയായ ഞാൻ ദൈവം സാക്ഷിയായി സത്യത്തിന്മേൽ ബോധിപ്പിയ്ക്കുന്ന അഫിഡവിറ്റ്.

ഞാൻ ടി നമ്പർ കേസിൽ രണ്ട്ാം വാദിയാണ്. ഒന്നാം വാദി എന്റെ ഭർത്താവാണ്. ടിയാൻ കഴിഞ്ഞ ഇരുപതു വർഷത്തിലധികമായി മാനസിക രോഗിയാണ്. അതിനാൽ ടിയാന് കൂടി വേണ്ടി കേസ് നടത്തുന്നത് ഭാര്യയായ ഞാനാണ്. ഇപ്പോഴും ടിയാൻ ചികിത്സയിലാണ്. അന്യായം 'B' പട്ടിക 32 സെന്റ് നിലം 4.7.1983 ലെ 926-ാം നമ്പർ വിലയാധാരപ്രകാരം എന്റെ ഭർത്താവിന്റെ പേരിൽ വില വാങ്ങി. ടി വിലയാധാരം ഹാജരാക്കി(Exhibit A1). എന്റെ പണം കൊണ്ട്ാണ് ഭർത്താവിന്റെ പേരിൽ നിലം വാങ്ങിയത്. അന്യായം 'A' പട്ടിക 53 സെന്റിൽപ്പെട്ടതാണ് 'B' പട്ടിക 32 സെന്റ്. അന്യായം 'B' പട്ടിക 32 സെന്റിനും കരം ഒടുക്കിയ രസീത് ഹാജരാക്കി(Exhibit A2).

32 സെന്റ് നിലത്തിനു ചുറ്റും വ്യക്തമായ അതിരുകളുണ്ട്. അന്യായം 'B' പട്ടിക നിലം പ്രതി വിലയ്ക്കു ചോദിച്ചു, കൊടുത്തില്ല. പ്രതി 32 സെന്റ് നില

ത്തിൽ അതിക്രമിച്ചു കയറാനും അനുഭവം എടുക്കാനും ശ്രമിച്ചു. ടി നിലം വിലയ്ക്കു കൊടുക്കാമെന്നുപറഞ്ഞ് ഒരു കരാർ എന്റെ ഭർത്താവ് എഴുതികൊടുത്തുവെന്ന് പ്രതി അവകാശപ്പെട്ടു. അപ്രകാരം മാനസിക രോഗിയായ എന്റെ ഭർത്താവ് ഒരു കരാർ എഴുതി കൊടുത്തിട്ടില്ല. യാതൊരു വിധ പണവും ഞാനും എന്റെ ഭർത്താവും പ്രതിയിൽ നിന്നും കൈപ്പറ്റിയിട്ടില്ല. 16.07.2008 ൽ എന്റെ ഭർത്താവ് എന്റെ വീടിനടുത്തുള്ള അയൽവാസിയായ XYയുടെ വീട്ടിൽ സുഖമില്ലാതെ വിശ്രമം എടുക്കുകയായിരുന്നു. അന്നേ ദിവസം മറ്റൊരിടത്തും ടിയൻ പോയിട്ടില്ല. ടി 32 സെന്റ് നിലത്തിന്റെ കൈവശാവകാശ സർട്ടിഫിക്കറ്റ് വില്ലേജ് ഓഫീസിൽ നിന്നും എടുക്കുന്നതിനു വേണ്ടി എന്റെ ഭർത്താവും എന്റെ അയൽവാസിയായ കൊല്ലകോണം കിഴക്കുംകരവീട്ടിൽ മോഹനനും കൂടി ഒപ്പിട്ട കുറച്ച് ബ്ലാക്ക് പേപ്പർ കുരവറ ഭദ്രശത്ത് ഐശ്വര്യയിൽ താമസമുള്ള ഒരു പാർട്ടി പ്രവർത്തകനായ ചന്ദ്രനെ ഏൽപ്പിച്ചിരുന്നു. ആ ബ്ലാക്ക് പേപ്പറിൽ അവർ ഒപ്പിട്ടത് 20.07.2008 ലാണ്. അത് മോഹനന്റെ വീട്ടിൽ വച്ചാണ് ഒപ്പിട്ടത്. പ്രതി ഹാജരാക്കിയിട്ടുള്ള 16.07.2008 ലെ കരാർ എന്നു പറയുന്ന രേഖ കൃത്രിമ രേഖയാണ്. അപ്രകാരം ഒരു രേഖ എന്റെ ഭർത്താവ് പ്രതി പേർക്ക് എഴുതികൊടുത്തിട്ടില്ല. അന്യായത്തിൽ പറഞ്ഞിട്ടുള്ള കാര്യങ്ങൾ എല്ലാം ശരിയാണ്. പത്രികയിൽ പറഞ്ഞിട്ടുള്ളത് കളവാണ്.

അന്യായ പ്രകാരം വിധിയുണ്ടാകണം

2 -ാം വാദി

Cross-examination

എനിക്ക് ഇൗറപ്പണിയാണ്. നല്ല വരുമാനമില്ല. ഭർത്താവിന് ജോലിയില്ല. ഭർത്താവ് 1 1/2 വർഷം വിദേശത്തായിരുന്നു. ഭർത്താവ് ബോംബെയിൽ 5 വർഷത്തോളം ജോലി ചെയ്തിരുന്നു. എനിക്ക് 2 ആൺ മക്കളും ഒരു പെണ്ണുമാണ്. 'B' പട്ടിക വസ്തു ഭർത്താവിന്റെ പേരിൽ വാങ്ങിയതാണ്. 4/7/1983ൽ വസ്തു വാങ്ങി. വേറെയും വസ്തുക്കൾ ഭർത്താവിന്റെ പേരിൽ ഉണ്ട്. 'B' പട്ടിക ഒഴികെ ബാക്കി വസ്തുക്കൾ 1-ാം വാദി സഹോദരിയ്ക്ക് കൊടുത്തു. Ext.A1 Sub Registrar Office ൽ ഹാജരാക്കിയത് ആരാണെന്നറിയില്ല. 'B'

പട്ടിക വസ്തുവിൽ മരച്ചീനി കൃഷിയാണ്. 1-ാം വാദിയ്ക്ക് അനുബന്ധമാണെന്ന് കളവായി മൊഴി പറയുകയാണെന്ന് പറയുകയല്ലേ (Q) അല്ല. (A) 1-ാം പ്രതിയ്ക്ക് 1-ാം വാദി കരാർ എഴുതി കൊടുത്തിട്ട് ആ കരാറിൽ നിന്ന് ഒഴിവാക്കാൻ വേണ്ടി മനഃപൂർവ്വം കള്ളം പറയുകയാണെന്ന് പറഞ്ഞാൽ ശരിയല്ല. കരാർ സ്ഥാപിച്ച് കിട്ടാൻ 1-ാം വാദിയ്ക്ക് വക്കീൽ നോട്ടീസ് അയച്ച വിവരവും അത് 1-ാം വാദി കൈപ്പറ്റിയതും എനിക്കറിയില്ല. ആ നോട്ടീസ് കിട്ടിയ ശേഷമല്ല ഈ കേസ് കൊടുത്തത്. 1-ാം വാദിയ്ക്കെതിരെ Sub Court ൽ കേസുണ്ട്യെന്നറിയില്ല. അന്യായത്തിൽ 1-ാം വാദി ഒപ്പിട്ടിട്ടില്ല ? (Q) No answer. അന്യായത്തിൽ ആവശ്യപ്പെട്ട പ്രകാരം യാതൊരു പരിഹാരത്തിനും അർഹതയില്ലായെന്ന് പറയുന്നത് ? (Q) ശരിയല്ല. (A). 1-ാം വാദിയുടെ മാനസികാവസ്ഥയെ കുറിച്ച് ഈ കോടതിയുടെ തീരുമാനത്തിനെതിരെ ഒരു അപീലും നിലവിലില്ല. (Q) No answer അന്യായപട്ടിക എഴുതി കൊടുക്കാമെന്ന് കരാർ എഴുതി advance പറ്റിയിട്ടുണ്ട്യോ.(Q) ഇല്ല. (A) കളവായി അന്യായം ബോധിപ്പിച്ചു എന്ന് പറയുന്നത്. ശരിയല്ല.

മൊഴി വായിച്ചു കേട്ടു. ശരി.

Deposition of DW1

Chief Affidavit filed by the Defendant

ടി നമ്പർ കേസിൽ പ്രതിയായ ഞാൻ ഭയഭക്തി വിശ്വാസത്തോടും നിഷ്കളങ്കമായും ബോധിപ്പിക്കുന്ന സത്യവാങ്മൂലം

- 1) ഞാനീ കേസിലെ പ്രതിയാകുന്നു. കളവായ വിവരങ്ങൾ കാണിച്ചാണ് വാദി ഈ അന്യായം ഫയൽ ചെയ്തിരിക്കുന്നത്.
- 2) അന്യായത്തിൽ പറയും പ്രകാരം 1-ാം വാദിയ്ക്ക് ഏതൊരു അനുബന്ധവും ഇല്ല. 1-ാം വാദി unsound ആണെന്ന് പറഞ്ഞിരിക്കുന്നത് ശരിയല്ല. ആയത് കേസിന്റെ ആവശ്യത്തിന് കളവായി പറഞ്ഞിട്ടുള്ളതാണ്. അന്യായം B പട്ടിക വസ്തു വാദിയുടെ വകയാണ്. ആയത് ടിയാൻ വിലയ്ക്ക് വാങ്ങിയതാണ്. 2-ാം വാദിയുടെ പൈസ കൊടുത്താണ് 1-ാം വാദിയുടെ

പേർക്ക് വസ്തു വാങ്ങിച്ചിരിക്കുന്നതെന്ന് പറഞ്ഞിരിക്കുന്നത് ശരിയല്ല.

3) 1-ാം വാദി ഒരു കാലവും ചികിത്സയിലായിരുന്നില്ല. അന്യായം B പട്ടിക വസ്തു സെന്റോണിന് 12,000/- രൂപാ നിരക്കിൽ എനിക്ക് വിലയ്ക്ക് നൽകാമെന്ന് ഒന്നാം വാദി പറഞ്ഞതിനെ ഞാൻ അംഗീകരിച്ചു. 16.07.2008 ൽ 1-ാം വാദി എന്റെ പക്കൽനിന്നും 25,000/- രൂപാ രൊക്കം അഡ്വാൻസായി പറ്റി ഒരു വില കരാർ എഴുതി തന്നു. പിന്നീട് ഞാൻ പല തവണ ആവശ്യപ്പെട്ടിട്ടും 1-ാം വാദി വിലയാധാരം രജിസ്റ്ററാക്കി നൽകാൻ തയ്യാറായില്ല. മനഃപൂർവ്വം ഒഴിവ് കഴിവുകൾ പറഞ്ഞ് മാറി നിന്നു.

4) 30.07.2008-ൽ വസ്തു എഴുതി നൽകണമെന്ന് പറഞ്ഞ് ഞാൻ വകീൽ നോട്ടീസയച്ചു. എന്നിട്ടും 1-ാം വാദി വിലയാധാരം ചെയ്തു തന്നില്ല. 21.08.2008 ൽ ഞാൻ നെയ്യാറ്റിൻകര സബ് കോടതിയിൽ വാദിക്കെതിരെ അന്യായം ഫയൽ ചെയ്തു. അതിന്റെ നമ്പർ xxx ആണ്. ടി നമ്പർ കേസ്സിന്റെ അന്യായ കോപ്പി ഹാജരാക്കി. May be marked as Exhibit B1. വകീൽ നോട്ടീസിന്റെ കോപ്പി ഹാജരാക്കി. May be marked as Exhibit B2.

5) ടി നോട്ടീസ് കൈപ്പറ്റിയതിനു ശേഷം 2-ാം വാദിയും മകനും ചേർന്ന് ഗൂഢാലോചന നടത്തി ഇപ്രകാരം ഒരു കള്ളകേസ് നൽകിയതാണ്. അന്യായപ്പട്ടിക വസ്തുവിൻമേൽ മറ്റാർക്കും അവകാശമില്ല. എനിക്ക് വസ്തു എഴുതി തരാതിരിക്കാൻ xxx നമ്പർ കേസിനെ പരാജയപ്പെടുത്തണമെന്ന ഒരുഭേദത്തോടെ മാത്രം ഈ അന്യായം ഫയൽ ചെയ്തിട്ടുള്ളതാകുന്നു. 16.07.2008 ലെ ഒറിജിനൽ കരാർ ബഹുമാനപ്പെട്ട നെയ്യാറ്റിൻകര സബ് കോടതി മുന്പാകെ ഹാജരാക്കിയിട്ടുണ്ട്. പ്രതിയായ എന്നെ കഷ്ട നഷ്ടപ്പെടുത്താൻ വേണ്ടി മാത്രമാണ് ഈ അന്യായം ഫയൽ ചെയ്തിട്ടുള്ളത്.

6) പത്രികയിലെ വിവരങ്ങൾ ശരിയും സത്യവുമാണ്. അന്യായം ചിലവ് സഹിതം തള്ളി ഉത്തരവുണ്ട് ടാകണമെന്നപേക്ഷിക്കുന്നു.

മേൽ വിവരിച്ച സംഗതികൾ എന്റെ അറിവിലും വിശ്വാസത്തിലുംപ്പെട്ടിടത്തോളം ശരിയും സത്യവുമാകുന്നു. ഇത്രയും വിവരം സത്യം സത്യം സത്യം.

06.02.2010

Deponent

Documents sought to be marked as Exhibits B1 and B2 are photocopies.

Hence not marked.

Cross-examination

വിലയാധാരം എഴുതി തരാൻ ആവശ്യപ്പെട്ട് വകീൽ നോട്ടീസ് അയച്ചു. പ്രതി നോട്ടീസ് കൈപ്പറ്റിയില്ല. ഈ കേസിന് ശേഷമാണ് ഞാൻ സബ് കോർട്ടിൽ കേസ് കൊടുത്തത്. സത്യവാങ്മൂലത്തിൽ 5-ാം പാഠയിൽ നോട്ടീസ് കൈപ്പറ്റിയതിന് ശേഷം എന്ന് പറയുന്നത് ശരിയല്ലല്ലോ (Q) No answer. ഞാനും എന്റെ ഭർത്താവും അദ്ദേഹത്തിന്റെ സഹോദരനും കൂടി പോയാണ് കരാർ എഴുതിയത്. കരാർ നിങ്ങളുടെ പേരിൽ എഴുതിയിട്ടില്ലായെന്ന് പറയുന്നു (Q) ശരിയല്ല. (A). 1-ാം വാരിയ്ക്ക് എന്റെ ഭർത്താവ് കരാർ തുക കൊടുത്തു. നിങ്ങൾ 1 -ാം വാരിയ്ക്ക് യാതൊരു പണവും കൊടുത്തിട്ടില്ലായെന്നു പറയുന്നു. (Q) ശരിയല്ല. (A) വാരിയുടെ വീട്ടിൽ ഞാൻ പോയിട്ടില്ല. വാരിയുടെ മകനുമായി ഗൂഢാലോചന നടത്തിയാണ് ഈ കേസ് കൊടുത്തത്. 2-ാം വാരിയുടെ വസ്തു അന്യായമായി തട്ടിയെടുക്കാൻ വേണ്ടി നിങ്ങളും ഭർത്താവും കൂടി ഒരു കരാർ കൃത്രിമമായി എഴുതി പരിഷിച്ഛതെന്ന് പറയുന്നു (Q) ശരിയല്ല.(A)

മൊഴി വായിച്ചു കേട്ടു. ശരി.

III. Grounds of appeal.

1. The judgment and decree of the lower court are not sustainable either in law or on facts.
2. The lower court committed gross error in declaring that the first plaintiff is a person of sound mind by merely conducting an enquiry

HIGH COURT OF KERALA
KERALA STATE HIGHER JUDICIAL SERVICE EXAMINATION-2017
(WRITTEN EXAMINATION)

PAPER - II

Date of Examination: 23.12.2018

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 -X, Part -Y and Part -Z.** In **Part -X**, there are 18 Objective Type Multiple Choice questions carrying 2 marks each. All the questions are to be answered. In **Part -Y**, 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 one question in **Part -Z** (Judgement Writing) carrying 30 marks is compulsory.
 4. After opening the Question Booklet at 10 a.m., ensure that it has three parts - **Part -X, Part -Y and Part -Z**, that there are 18 Objective Multiple Choice Type questions in Part-X, that there are 18 descriptive type questions in Part -Y and that there is One question in Part-Z. 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.
 5. Answers to the questions in **Part -X** of the Question Booklet should be marked in the OMR Answer Sheet bearing Serial (**X**) which will be evaluated using OMR software.
 6. Answers to the questions in **Part -Y** of the Question Booklet should be written in the Answer Book bearing Serial (**Y**). It should be tied separately using the piece of twine provided.
 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.
 8. The candidate may choose the Part to be answered first. But, the answers to the questions in each Part of the Question Booklet should be written only in the OMR Answer Sheet/Answer Booklet meant for the respective Part. If the candidates write answers to the questions in a particular Part of the Question Booklet in the Answer Book meant for a different Part, those answers will not be evaluated.
 9. The candidates should use only BLACK/BLUE INK ballpoint pen for filling the various entries and marking answers in the Serial (**X**) OMR Answer Sheet. But, the candidates may use BLACK/BLUE INK fountain pen/Ballpoint pen for filling the various entries and writing answers in the Serial (**Y**) and Serial (**Z**) Answer Books. Use of pencil, Gel pen or sketch pen and use of any colour ink other than black/blue is not permitted.
 10. No candidate will be allowed to leave the examination hall without handing over the OMR Answer Sheet bearing Serial (**X**) and the separately tied answer books bearing Serial (**Y**) and Serial (**Z**) to the Invigilator. Candidates can take the Question Booklet with them.
 11. Answer Key to the questions in **Part -X** of the Question Booklet will be published in the website www.hckrecruitment.nic.in after the examination.
 12. Strict compliance of instructions is essential. Any malpractice or attempt to commit any kind of malpractice in the examination will result in summary disqualification of the candidate.
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PART - X

[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 shall be marked in the OMR answer sheet bearing serial (X). Answers marked else will not be valued].

1. Which one among the following crimes is not liable for punishment with death?

- a). Waging war against the Government of India.
- b). Attempting to wage war against Government of India.
- c). Collecting arms with the intention of waging war against Government of India.
- d). Abetting waging of war against Government of India.

2. An arrested person is entitled to meet advocate of his choice during interrogation under :

- a). Section 40C of Cr.P.C.
- b). Section 41A of Cr.P.C.
- c). Section 41D of Cr.P.C.
- d). Section 40A of Cr.P.C.

3. When the amount of fine to be imposed is not provided in the IPC, the amount of fine shall be :

- a). Less than Rs.10,000/-
- b). Not more than Rs.20,000/-
- c). It can be unlimited, but shall not be excessive.
- d). Shall be more than Rs.20,000/-

4. Transportation as a mode of punishment existed in the Indian Penal Code till:

- a). 1/1/1957
- b). 1/1/1956
- c). 1/1/1947
- d). 15/8/1947.

5. A finds a golden ring on the roadside. He takes it and waits there for five minutes. He straightaway goes to a shop and sells it. Is he guilty? If so, under which provision.

- a). Not guilty.
- b). Guilty under section 383 IPC
- c). Guilty under section 405 IPC
- d). Guilty under section 378 IPC

6. Who among the following is not liable for punishment for voyeurism ?

- a). Person who watches a woman engaged in changing dress inside her wash room.
- b). Person who watches the video image of a woman engaged in changing dress inside her washroom.
- c). Person who captures the image of a woman engaged in changing her dress inside her wash room.
- d). person who disseminates the image of a woman engaged in changing dress inside her wash room.

7. Which one among the following is a non bailable offence?

- a). 354B
- b). 354A (i)
- c). 354A(ii)
- d). 354A(iv)

8. Which one is not an offence under section 361 IPC.?

- a). Entices a male under 16 years from lawful guardianship.
- b). Entices a female under 18 years from lawful guardianship
- c). Entices an unsound person from the lawful guardianship.
- d). Entices a male aged 17 years from lawful guardianship.

9. A person accused of rape is liable to be examined by a medical practitioner under :

- a). Section 53A of Cr.PC.
- b). Section 51 A of Cr.P.C.
- c). Section 52C of Cr.P.C.
- d). Section 51 C of Cr.P.C.

10. When a jail appeal is disposed of, is it essential to forward the copy of the judgment challenged, along with the appellate judgment to the accused in jail? If so, under which provision?

- a). No.
- b). Yes. Under Rule 221 of Criminal Rules of Practice.
- c). Yes. Under Rule 117 of Criminal Rules of Practice.
- d). Yes under Rule 119 of Criminal Rules of Practice.

11. Can the Sessions Court call for records of appeal or revision directly from the Magistrate Court without the intervention of the Chief Judicial Magistrate ? If so, under which provision ?

- a). Yes. Rule 97 of Criminal Rules of Practice.
- b). No.
- c). Yes. Rule 99 of the Criminal Rules of Practice
- d). Yes. Rule 92 of the Criminal Rules of Practice

12. After committal to a Sessions Court, the accused absconds. What is the procedure to be followed?

- a). Rule 16 of Crl.Rules of Practice applies. Include in the Register for Long Pending Cases.
- b). Rule 16 and 17 of Criminal Rules of Practice apply. Report the matter to the High Court.
- c). Rules 16 and 18 of Criminal Rules of Practice apply
- d). Rules 15 to 18 of Criminal Rules of Practice apply. Include in the register for long pending cases and report the matter to the High Court.

13. For the purpose of one provision, imprisonment for life will be reckoned as imprisonment for twenty years. Which among the following is it?

- a). Section 55 of IPC
- b). Section 54 IPC
- c). Section 53 IPC
- d). Section 57 IPC.

14. When a confiscated item is sold in auction after advertisement in newspaper under Rule 188 of Criminal Rules of Practice, expenses for advertisement shall be paid out from which source?

- a). By auction purchaser.
- b). By the owner of the auctioned property.
- c). From the sale proceeds.
- d). From the amount remaining after receiving the dues.

15. Protection under the Indian Evidence Act against disclosure of communication made during marriage between the parties to marriage is available in which among the following?

- a). With the consent of party to marriage who made it
- b). In a suit between parties.
- c). In a prosecution of crime committed by party to marriage against another.
- d). In a proceeding by a party to marriage against the relative of other

16. An order rejecting an application for restoration of attached property is liable for challenge under which among the following provision?

- a). Section 83 Cr.P.C.
- b). Section 84 Cr.P.C.
- c). Section 86 Cr.P.C.
- d). Section 85 Cr.P.C.

17. Presumption as to gazette in electronic form is dealt with in :

- a). Section 80B of Indian Evidence Act.
- b). Section 81A of Indian Evidence Act.
- c). Section 80A of the Indian Evidence Act.
- d). Section 82A of Indian Evidence Act.

18. Certain provisions of a statute are statutorily saved from the effect of provisions of Chapter VI of Part II of the Indian Evidence Act. Which is the statute?

- a). Indian Succession Act.
- b). Transfer of Property Act.
- c). Hindu Succession Act.
- d). Wakf Act.

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. Complaining that a building is dilapidated and that it is likely to fall down, one person approaches the District Magistrate. A conditional order is passed under Cr.P.C. Land owner appears and contends that the building is in possession of a tenant, that the building is not in a dilapidated condition and that public right is not involved. After referring to the pleadings, the Magistrate orders to demolish the building forthwith. Is it proper? What is the remedy available? Can tenant challenge it?
2. What are the different yardsticks to be considered while considering the discharge of an accused under section 227 Cr.P.C, acquittal under section 232 Cr.P.C., and acquittal under section 235 Cr.P.C. ?
3. A blacksmith is seized during night by a gang of 6 dacoits. Under the threat of death, he is made to open the lock of the front door of a house. Dacoits enter the home and loot the house. Blacksmith stands near the front door. Hence, the house owner could not run out of the house. He is killed by the dacoits. Accused, including the blacksmith, are charged with Sections 302, 391, 396, 452 & 454 read with section 34 IPC. Blacksmith pleads protection under section 94 IPC. Is he entitled for protection?

4. Briefly mention the provisions relating to plea bargaining. Critically analyse how far it enables the court to bring down the pendency of cases ?

5. In a sessions case, the court acquitted the accused. Is the defacto complainant entitled to challenge it? If so, is permission of the higher court essential? What is the limitation period, if any ? Support with decisions.

6. Can Sessions court dismiss an appeal at the threshold? If so, what is the procedure ?

7, What are the powers of Sessions Court in disposing of a criminal appeal on merits ?

8. "Section 438 Cr.P.C.is an exceptional power and should be exercised only when situation demands. The considerations governing the exercise of discretion for granting anticipatory bail are entirely different from that of an application for bail". Analyse.

9. A person arrested on charge of committing offence under section 376 IPC refuses to undergo medical examination. Can he be compelled to undergo examination? What is the legal impact.?

10. Discuss the scope of presumption as to electronic records of 5 year old under the Indian Evidence Act.

11. "Where the accused had sustained serious injury, prosecution has to explain to the satisfaction of the court the circumstances under which occurrence originated". Critically analyse.

12. "As far as criminal cases are concerned, prosecution is not expected to prove motive of an offence, as motive is known only to the perpetrator of crime. Upon prosecution letting in evidence of motive, court has to consider whether it is adequate". Comment.

- 13.** Explain the probative value of extra judicial confession. Can it be the basis for conviction, even without corroboration.?
- 14.** A sells an extent of 3 acres of land to B by a registered document. The extent of land, lie and boundaries are described in the schedule. A map of the land is annexed to the document. In a suit filed by B against a neighbour in relation to the above property, plaintiff sets up a contention that a portion of land not included in the map, had always been regarded as part of the estate and the right was meant to pass by the title deed. Defendant opposes letting of evidence on it contending that it amounts to contradicting the terms of a registered deed. Decide with relevant provision of Evidence Act.
- 15.** In a proceeding between the husband and wife in which the legitimacy of the child born during the continuance of matrimonial relationship, is in dispute. Can the evidence let in by the husband about non access and the statutory presumption arising therefrom, be displaced by the wife, by producing DNA test in her favour? What are the limitations?
- 16.** Critically analyse the scope of the decision of the Supreme Court in Navtej Singh Johar v. Union of India (2018 (1) SCC 791), regarding decriminalisation of offence under section 377 IPC in certain cases.
- 17.** Briefly mention the amendments brought to section 376 IPC by Act 22 of 2018.
- 18.** Wife commits suicide. There is an allegation of demand for dowry. What are the ingredients that determine whether offence falls within the scope of section 304B IPC or 498A?

PART - Z

[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 (Z). Answer written elsewhere will not be valued]

Write judgment on the basis of the materials given below.

Session Case No. 100/2014

arising from Crime No.34/Kochi Police station

CP No.13/2014 of the Judicial First Class Magistrate, Kochi.

Charge - under section 302 IPC.

Prosecution case

Accused on 3/10/2014 at about 8 p.m., returned home along with one Kannan and their friend Ram. They had consumed liquor. When they reached the shop in front of CW1, accused due to his previous enmity beat Kannan with stick on his face, head and leg. He sustained injuries. He was rushed to the medical college hospital, Kochi. While, he was undergoing treatment, he died on 25/10/2014.

CW1 laid FIS. Crime was registered and after investigation, final report was laid. Accused faced trial.

PW1

Examination -in- Chief:

I know the accused. I am conducting a shop in the building owned by CW2. On 3/10/2014 I saw Kannan and the accused along with another person proceeding along the road. Thereafter, I saw all the three persons moving in different directions. After some time, I saw the accused following Kannan carrying a stick. He hit

on the head of Kannan. He fell down. Thereafter accused hit two or three times on the face and the leg. He ran away from the spot leaving the stick there. (He identified MO1 as the stick used). I laid FIS (marked as Ext.P1.) Accused is standing in the dock.

Cross Examination:

I saw the incident in the light of the electric street bulb which was glowing there. I deny the suggestion that there is no electric post in that area. I also deny the suggestion that at the relevant time, there was a power cut. The deceased did not make any noise. I do not know whether any other person has seen the incident. I could not count the exact number of beating done by the accused. It is not true to say that I only saw the back side of the assailant.

PW2:

Examination -in-chief

I am the friend of Kannan as well as the accused. On the relevant day, we had gone to a bar and had consumed liquor. We returned together. When we reached in front of the shop of PW1, we proceeded in three different directions. After some time I heard the cry of somebody. I ran to the spot and saw PW1 and others rushing along the road. I followed them. I saw Kannan lying on the road side with bleeding injuries. I saw the accused running away from the spot. While returning from the Bar, Kannan had picked up a quarrel with accused. Accused is standing in the dock. Scene Mahazar is Ext.P2. Exts.P3 & P4 are seizure mahazars of stick and items collected from scene as MOs 1 to 4. Ext.P5 is the inquest report. I have signed Exts.P2 to P5.

Cross Examination

I deny the suggestion that I was too intoxicated to remember

exactly what had happened. Though we were drunk, we were in our senses. I could recognise the cry of Kannan. That is why I rushed back. When I saw Kannan, he was lying unconscious with injuries. Myself, PW1 and PW3 and other persons who had reached the spot, immediately called a vehicle and send him to the hospital. I did not accompany them. I do not recollect why I did not go to the hospital. It is true that I have told the police that I helped other persons in carrying the body of the injured to the vehicle. I am a close friend of Kannan. It is not true to say that I had not gone to the hospital thereafter, nor enquired about the condition of Kannan. I had attended the funeral of the deceased.

PW3.

Examination-in-Chief

I am residing near the place of the incident. On the date of the incident, I heard loud cries of one person. I rushed to the spot. I saw the victim with bleeding injuries lying on the road side. I also saw the accused leaving the spot. He had a stick in his hand. He ran away from the spot leaving the stick. Myself and few other persons who had rushed to the spot immediately called a vehicle and took the victim to the hospital. PW1 and two other persons accompanied the deceased. I thereafter, went to the house of the victim and informed about the incident. Accused is standing in the dock.

Cross examination:

It is true that I have not seen the accused hitting the victim. I also do not remember whether the stick was blood stained. I do not exactly remember the dress worn by the accused. There is no streelight in front of my house(adds). I could see the accused in the light from my house and from the neighbouring houses. I deny the suggestion that I could not see the face of the person who ran

away from the spot. When I stepped out of the house, I clearly saw the accused. He is now standing in the box.

PW4

Examination-in-Chief

I am the village assistant who prepared the scene mahazar. I prepared the sketch and mahazar of the property. It is true that I have not noted any lamppost in the sketch. I do not exactly know whether at the time of the incident, there was sufficient light.

Cross Examination

Nil

PW5:

Examination-in-Chief

I conducted post mortem on the body of the victim. He had sustained four injuries on his body. One was on his forehead. Second one was near the ear and the third one was on his face. He had another contusion on the leg. All the three injuries on head in combination may cause death. None of the above injuries is by itself fatal. First three injuries are otherwise grievous. Ext.P8 is the Post mortem report.

Cross examination:

Exact cause for death has not been specifically mentioned in the post mortem report. It could have arisen due to complication following the injuries. I cannot specifically say whether the injuries have directly caused the death of the person. I know that the petitioner died after few days of prolonged treatment. Injuries had healed by then.

PW 6 :

Examination -in-Chief

I am the Doctor attached to the Medical College Hospital. I had treated the victim involved in this case. Ext.P6 is the hospital case record. The victim was admitted in the hospital on 3/10/2014. He died due to complications resulting from the injuries on 25/10/2014. He had sustained four injuries on the body. Three were above the neck and they were reported to be serious. Victim was initially in a critical condition. But he got gradually improved. I had personally attended him on those days. Ext.P6 is the relevant case sheet.

Cross Examination :

I cannot exactly say the reason for his death. It seems that he had developed some complications in the course of treatment. It is true that the entry on the date of death indicates that the victim had omitted blood stained food in the afternoon. He died in the evening. I can only presume that some complications had developed in the course of the treatment. It is true that the victim has been given anti inflammatory drugs. Injuries of the victim had substantially healed. It is not correct to say that the victim did not die of complications arising from the injuries. I cannot exactly say the reason that led to his death. The cause of blood in vomitus cannot be definitely stated by me. It is true that inflammatory drugs, in certain cases may cause internal ulcer and in exceptional cases bleeding also.

PW 7 :

Examination-in-Chief

I am the doctor attached to the Cardiology Department of the Medical College Hospital. I have treated the patient involved in

this case during his admission. He had no cardiological complications during the relevant period. Hence, I did not administer any specific medicines. He was kept under close investigation by our department.

Cross examination :

I cannot say what led to the death of the victim. It is true that anti inflammatory drugs given to the patient may in certain cases causes internal bleeding and ulcers. I cannot say whether the victim suffered from it.

PW8.

Examination - in - Chief

I am the SI attached to the Kochi Police station. I have recorded the FIS of PW1 and registered Ext.P9 FIR

Cross examination :

I cannot say whether there was substantial delay in lodging the FIS. It is true that FIS was given three hours after the incident.

PW9

Examination -in -Chief

I am the circle Inspector attached the Kochi Police station. I conducted investigation in the above case. I have conducted the questioning of all the witnesses, their statements were recorded. Accused was arrested by me. Weapon showed to me was recovered from the scene of occurrence (marked as MO1). Post mortem report is marked as Ext.P8.

Cross examination :

I deny the suggestion that I did not properly conduct the investigation.