

HIGH COURT OF KERALA
KERALA JUDICIAL SERVICE MAIN (WRITTEN) EXAMINATION, 2020

Paper – 1: General English

Duration: 3 Hours

Total Marks: 100

(Questions 1 to 30 carry 1 mark each)

• **Correct the following sentences: -**

1. A black and a white cow was grazing in the field.
2. The magistrate acquitted him from the crime.
3. He says that he will return just now.
4. He was even blamed by his colleagues.
5. Everyone should mind one's own business.
6. Sam as well as Shyam are intelligent.
7. What is the cost of this pen?
8. Once close friends, they are now fast enemies.
9. Bear with me, there is no other alternative.
10. This house is too much small for the large family.

• **Identify the miss spelt word in each set and correct it:-**

11. Twelth	Cemetery	Symmetry	Sans
12. Aficionados	furlough	opprobrium	Disimulation
13. Rescind	tranquillity	tantrum	concessionire
14. Procastination,	heist,	hygiene	sleaze
15. Incendiary	beleagured	stodgy	stocky

• **Use in sentences: -**

16. Kick up a row
17. Blow hot and cold
18. Quid pro quo
19. At a crossroads
20. Throw in the towel

42. Summarize the following into a passage of about one third of its length retaining the essence of the passage: - (15 Marks)

Indian law on extradition is spread across the Indian Penal Code as well as various laws pertaining to narcotic drugs, information. Technology, hijacking, and so on. Procedural laws have the Code of Criminal Procedure as their backbone but there are other laws, too such as the Extradition Act, the Narcotic Drugs and Psychotropic Substances Act, the Prevention of Corruption Act, the Prevention of Money Laundering, and so on.

In the absence of a coordinated database , and a well-integrated investigation and prosecution mechanism, criminals can go undetected .The bulk of the investigation and prosecution work happens at police stations in the States. While Central agencies take up the important cases. Central agencies have developed reasonable expertise because they are focused only on investigation and prosecution work, whereas State police forces (except specialized wings) are engaged in law- and-order work as well as investigations. There is a tendency to close investigations once the accused or during interrogation before closing investigations. It would be interesting to know what proportion of arrest warrants obtained by investigation agencies of States pertain to persons who have absconded or are 'wanted', whether within India or abroad. Some police stations do initiate proceedings for attachment of property and declaration of the accused as proclaimed of fenders, but the number of cases where coordinated efforts are made to pursue fugitives- domestically or internationally are hardly documented. If the numbers of Red Corner Notices issued are of any indication, only about 750 such criminals are wanted by Indian agencies. The number of Blue Corner Notices issued is about 300.

Theoretically there exists a system of tracking criminals worldwide through Interpol. Notices and the sharing of immigration databases of different countries but there is no coordinated system or database for tracking criminals or wanted persons domestically . In the absence of such a system. It is relatively easy for criminals from one police station /jurisdiction to melt into the population in any other area, almost undetected.

The creation of a nationwide database of wanted persons, which could be accessible for police agencies, the public and others (like passport and immigration authorities), is imperative. The Crime and Criminal Tracking Network and Systems and the National Intelligence Grid are efforts in the right direction, but more integration is desirable, Perhaps a nation-wide system of 'Wanted Persons Not. Ices', similar to Interpol Notices, is required, to help track fugitives domestically, Countries like the

U.S have functional inter State extradition and fugitive tracking systems, India needs to set up such dedicated 'fugitive tracking units'. There needs to be enhanced integration between immigration agencies. State police agencies, Interpol. New Delhi, the External Affairs Ministry and Home Ministry and central investigation agencies. Intelligence agencies also need to pool in.

What may also help india plug loopholes is sharing its 'wanted' data base or providing access to it to foreign embassies on a reciprocal basis or through treaties or arrangements. All this will help detect possible plants of criminals to abscond abroad.

Signing of more bilateral and multilateral conventions on criminal matters would help plug legal infirmities. Signing bilateral agreements on cooperation in policing matters would also help. All relevant legal processes and requirements should process and requirements should be incorporated into one consolidated law on international cooperation.

The entire gamut of activities pertaining to fugitives, from investigation to extradition, needs to be incorporated into a specialized set-up with an Integrated International Cooperation Division (IICD) at the top. The IICD should have linkages with proposed fugitive tracking units at the State level. This would ensure that requisite expertise and forward-and backward linkages are created. Making systems watertight would deter criminals from hoodwinking the law.

43. Translate the attached Malayalam passage into English: - 15 Marks

അതിമിത്തൊഴിലാളികളുടെ ജീവനും സ്വത്തിനും സുരക്ഷ വേണം : ഹൈക്കോടതി

അതിമിത്തൊഴിലാളികൾ പ്രതികളാകുന്ന കേസുകളിൽ ശരിയായ അന്വേഷണം നടത്തി സത്യം പുറത്തുകൊണ്ടു വന്നില്ലെങ്കിൽ ജന്മിത്ത സമ്പ്രദായത്തിന്റെ അവശിഷ്ടങ്ങൾ സമൂഹത്തിൽ വീണ്ടും ഉയർത്തണീൽക്കുമെന്നു ഹൈക്കോടതി. ബംഗാൾ സ്വദേശിയായ അതിമിത്തൊഴിലാളി 2004 ൽ കൊല്ലപ്പെട്ട കേസിൽ പുനരന്വേഷണം നടത്താൻ നിർദ്ദേശിച്ച് ജസ്റ്റിസ് കെ.വിനോദ് ചന്ദ്രനും ജസ്റ്റിസ് എം.ആർ അനിതയ്യമൂൾപ്പെട്ട ഡിവിഷൻ ബെഞ്ചാണ് ഇക്കാര്യം പറഞ്ഞത്. കേസിൽ ജീവപര്യന്തം ശിക്ഷിക്കപ്പെട്ട ബംഗാൾ സ്വദേശി സഞ്ജയ് ഒറനെ കോടതി വിട്ടയച്ചു.

പ്രതിയെ വിട്ടയക്കുക മാത്രം ചെയ്ത് നടപടി അവിടെ നിർത്തിയാൽ നിരപരാധികളായ അധിമിത്തൊഴിലാളികൾ അവരുടെ പരിസരങ്ങളിലുണ്ടാകുന്ന എല്ലാ കുറ്റകൃത്യങ്ങൾക്കും കുറ്റക്കാരാകുന്ന അവസ്ഥയുണ്ടാകുമെന്നും കോടതി പറഞ്ഞു. നിയമം നടപ്പാക്കുന്ന ഏജൻസികളുടെ ഉത്തരവാദിത്തരഹിതമായ ഇത്തരം നടപടികൾ തടയാൻ കേസിൽ പുനരന്വേഷണം നടത്തേണ്ടതുണ്ടെന്നും കോടതി പറഞ്ഞു.

2014 ജൂൺ 18 ന് ആലപ്പുഴ ജില്ലയിലെ നൂറനാട്ടെ ഫർണിച്ചർ ഷോപ്പിലെ ജീവനക്കാരനായിരുന്ന ഹഫിജുൾ മുഹമ്മദ് (കാലിയ) കൊല്ലപ്പെട്ടതു സംബന്ധിച്ച കേസിലെ അപ്പീലിലാണ് ഹൈക്കോടതിയുടെ വിധി. ഹഫിജുളിന് ഒപ്പം താമസിച്ചിരുന്ന അതേ നാട്ടുകാരനായ സഞ്ജയ് ഒറനെയാണ് കേസിൽ അറസ്റ്റ് ചെയ്തത്. ഇരുവരും തമ്മിലുണ്ടായ തർക്കം കൊലപാതകത്തിൽ കലാശിച്ചുവെന്നായിരുന്നു പ്രോസിക്യൂഷൻ കേസ്. പിന്നീട് മാവേലിക്കര സെഷൻസ് കോടതി ജീവപര്യന്തം തടവുശിക്ഷ വിധിച്ചു.

ഇതിനെതിരെയെയാണ് അപ്പീൽ നൽകിയത്. ശമ്പളത്തെക്കുറിച്ചൊല്ലി സ്ഥാപനയുടെ മധ്യമകനുമായുണ്ടായ തർക്കമാണ് കൊലപാതകത്തിൽ കലാശിച്ചതെന്നും തന്നെ കേസിൽ കുടുക്കുകയായിരുന്നുവെന്നുമാണ് സഞ്ജയ് ഒറൻ വാദിച്ചത്. പല തെളിവുകളും മൊഴികളും കെട്ടിചമച്ചതാണെന്നും ഹൈക്കോടതി വിലയിരുത്തി. ഇരുവരും നാട്ടുകാരും അടുത്തസുഹൃത്തുക്കളുമായിരുന്നു. ചെറിയകാര്യത്തിന്റെ പേരിലുള്ള തർക്കം കൊലപാതകത്തിൽ കലാശിച്ചെന്നത് വിശ്വസനീയമല്ലെന്നും കോടതി കുട്ടിച്ചേർത്തു. ഹഫിജുൾ മുഹമ്മദിന്റെ കൊലപാതകത്തെക്കുറിച്ച് ഡിവൈഎസ് പി റാങ്കിലുള്ള ഉദ്യോഗസ്ഥൻ പുനരന്വേഷിക്കണമെന്നും കേസന്വേഷിച്ച എസ്എക്കെതിരെ വകുപ്പുതല അന്വേഷണം നടത്തണമെന്നും നിർദ്ദേശിച്ചിട്ടുണ്ട്.

ഈ വർഷം അവസാനത്തോടെ പുനരന്വേഷണം പൂർത്തിയാക്കാനാണ് നിർദ്ദേശം. അന്വേഷണ പുരോഗതി വിലയിരുത്താനായി കേസ് ഓഗസ്റ്റ് 25ന് വീണ്ടും പരിഗണിക്കും. അതിമിത്തൊഴിലാളികൾ സംസ്ഥാനത്തിന്റെ വികസന പ്രവർത്തനങ്ങളിൽ നൽകുന്ന സംഭാവന ചെറുതായി കാണരുതെന്ന് കോടതി പറഞ്ഞു. ഇവരുടെ ജീവനും സ്വത്തിനും സുരക്ഷ ഉറപ്പാക്കി ഭയമില്ലാതെ ജോലി ചെയ്യാനുള്ള സാഹചര്യം ഒരുക്കേണ്ടതുണ്ടെന്നും ഹൈക്കോടതി ഒർമ്മപ്പെടുത്തി.

HIGH COURT OF KERALA

KERALA JUDICIAL SERVICE MAIN (WRITTEN) EXAMINATION - 2020

Marks: 100

Duration : 3 Hours

PAPER - II

PART - I

Answer all the questions (Answers to the questions in this Part should be marked only in the OMR Answer sheet. Answers marked/written elsewhere will not be valued)

(15 x 1 = 15 marks)

- 1) When does the period of limitation for a suit for recovery of possession on the strength of title begin to run?
 - (A) When the defendant enters into possession
 - (B) 12 years after the date on which the defendant enters into possession
 - (C) 12 years from the date on which possession of the defendant becomes adverse
 - (D) None of the above.

- 2) A Will executed by a Hindu is governed by the provisions of
 - (A) Hindu Succession Act
 - (B) Indian Succession Act
 - (C) Wills Act
 - (D) Registration Act.

- 3) The time fixed for averting an order of eviction passed under Section 11(2) of the Building (Lease and Rent Control) Act by deposit of arrears of rent, interest and costs can be extended.
 - (A) once
 - (B) more than once
 - (C) by one month
 - (D) cannot be extended.

- 4) What is the period of limitation to file an Execution Petition for execution of a decree for prohibitory injunction?
 - (A) 3 years
 - (B) 12 years
 - (C) 30 years
 - (D) None of the above.

- 5) Which among the following relationships does not require consideration?
- (A) Agency (B) Partnership
(C) Indemnifier and indemnified (D) none of the above.
- 6) Lispendense applies,
- (A) From the filing of the suit till its decree
(B) From the filing of Execution till satisfaction of decree
(C) From the filing of the suit till satisfaction of the decree
(D) None of the above
- 7) When can an agent delegate?
- (A) When he is expressly or impliedly permitted
(B) nature of agency require
(C) custom or trade permits
(D) All of the above.
- 8) What is a holograph Will ?
- (A) A Will in the testator's handwriting
(B) A type written Will
(C) A Will which omitted to give details of the assets
(D) A lost Will
- 9) Which among the following documents is to be attested by 2 witnesses?
- (A) Sale deed (B) Power of attorney
(C) Gift deed (D) All of the above.
- 10) Section 5 Limitation Act apply to:-
- (A) Institution of suits
(B) Execution petitions

- (C) Applications other than in execution
- (D) Applies to all proceedings in the Court.

11) Which among the following vitiating factors render a contract void?

- (A) Fraud
- (B) Undue influence
- (C) Coercion
- (D) None of the above.

12) Which among the following is a discontinuous easement?

- (A) Right of way
- (B) Right to light
- (C) Natural flow of water
- (D) All of the above.

13) When no rate of interest is mentioned in the negotiable instrument on the amount due thereon, then at what rate is the payee entitled for interest?

- (A) No interest
- (B) 6 %
- (C) 12%
- (D) 18%

14) The fee payable on an application for re-fund of court fee is?

- (A) Five Rupees
- (B) Ten Rupees
- (C) No Court fee
- (D) Ad valorem court fee on the amount to be refunded

15) A, B and C inherited a property with a residential building thereon from their parents. A, who was residing in the building, refused to share income from the property and excluded B and C from possession. B filed a suit for partition and separate possession. The court fee payable is to be calculated on:-

- (A) The market value of the entire property
- (B) The market value of the plaintiff's share
- (C) One-half the market value of the property
- (D) Fixed Court fee is payable

PART II

Answer any 15 questions. Answer shall not exceed 120 words (1 page). If more than 15 questions are answered the first 15 answers alone will be evaluated. Answers to the questions in this Part should be written in the Common Answer Book.

(15 x 3 = 45 marks)

- 16) A avails a loan from a Bank. Few months later, A creates equitable mortgage of his immovable property as security for the loan earlier availed. No amount is paid to A by the Bank when the mortgage is created. Is there a valid mortgage? Is the mortgage supported by consideration? Elucidate.
- 17) A causes B to execute a gift deed in his favour representing to B that the document is a Power of Attorney. Subsequently B realises that the document he was made to execute was a Gift Deed. Should B file a suit to set aside the document or for declaring the document as void? What is the difference between void and voidable documents?
- 18) B owes a debt to A. An year later, when A demanded the amount, B issued a promissory note in favour of A. Consequent on the failure of B to pay the amount, A proposed to file a suit. Then he noticed that the promissory note is insufficiently stamped. Thereupon A filed a suit on the original cause of action. B sets up a defence of novation on the premise that, on execution of the promissory note the original contract has been substituted and that the remedy is only on the substituted agreement. Is the suit maintainable? Discuss.
- 19) A owes a debt to B. The debt became time barred. Thereafter, A executed a document in favour of B acknowledging and undertaking to pay the amount. B files a suit on the document, for recovery of money. A contends that, the claim is barred by limitation and that the document cannot operate as an acknowledgment of debt to save limitation, since it was executed beyond the period of limitation, and also that the undertaking is without any consideration. Is the suit maintainable? Comment.

- 20) A executed a gift of immovable property in favour of B, which is not onerous. After registration of the document, it is got back from the Sub Registry Office by B and he retained it. However, he omitted to effect mutation based on the gift. A few months later A and B fell apart and A executed a deed canceling the gift. Is the cancellation valid? Who retains title over the property?
- 21) A entered into a contract with B for supply of specified quantity of certain article on or before a specified date at a fixed price. Subsequently, availability of the article in the market became scarce and the price of the article soared high. A contends that the contract has become frustrated. Is the contention liable to be accepted. Discuss with reference to the doctrine of frustration?
- 22) A and B are neighbours. There arose a dispute between them regarding title over a strip of land lying in between their admitted properties. B fenced up the disputed portion with his property. Attempts for settlement through private negotiations failed. Finally A filed a suit for the relief of declaration of his title over the disputed plot. B raised a contention that the suit for mere declaration is not maintainable. Comment.
- 23) A owns 20 cents of property. It is bounded on three sides by properties of strangers and on the one side by a public road. Retaining the 15 cents adjoining the road, A sells the remaining 5 cents to B. The sale deed does not reserve a right of way for B. A obstructs B from using any portion of his remaining 15 cents for access to the road. What is the nature of the right of way that B could claim, explain ?
- 24) Explain the difference between a customary easement and a customary right.
- 25) On account of a breach of contract entered into with B, A suffered damages. A assigned to Z, the right to sue B for damages. Is the transfer valid? Is it an actionable claim?

- 26) A executed and registered an unilateral document in favour of B, undertaking to purchase 25 cents of property belonging to B at a consideration of Rs.2.5 lakhs. B was not a signatory to the document. On the date of execution of the document A paid an amount of Rs.1 lakh to B towards advance. A filed a suit for specific performance of the agreement for sale. B contends that the document is an unilateral one executed by A alone and hence there is no contract. Is the defence acceptable. Is there a valid agreement? Explain.
- 27) Explain the difference between acknowledgment of a debt under Section 18 and Section 19 of the Limitation Act.
- 28) A owes a debt to B. B dies. B's wife and children filed a suit against A for recovery of the debt. A raises an objection that the suit cannot be maintained without production of a Succession Certificate. Is the institution of the suit bad in the eye of law ? Can a decree be passed in the suit without a Succession Certificate.
- 29) A Rent Control Petition filed by the landlord for eviction of his tenant under Section 11(3) of the Building (Lease and Rent Control) Act for the bona fide need of his son was dismissed finding that the son is employed abroad. The son lost his job and returned to his native place. The landlord again files another petition on the very same ground. Is there any bar in maintaining the second petition?
- 30) Elucidate the difference between an order of eviction under Section 11(2) and 12 of the Kerala Buildings (Lease and Rent Control) Act.
- 31) A borrowed an amount of Rs.1 lakh from B. When B demanded repayment of the amount, A executed a document, styled as an agreement, in favour of B undertaking to pay the amount within six months. On default in repayment, B filed a suit on the document. A raises an objection that the document in question though styled as an agreement is a bond and is insufficiently stamped. Is the document an agreement or bond. Explain ?

- 32) Explain the mode of calculation of market value, for the purpose of payment of court fees, in respect of (1) agricultural land (2) building (3) non-agricultural land.
- 33) A issued a cheque to B for valuable consideration. The cheque when presented for payment, was dishonoured for insufficiency of funds. B filed a suit on the dishonoured cheque. A raises a contention that the suit is bad for non-issuance of a notice as mandated under Section 93 of the Negotiable Instruments Act. Discuss on the sustainability of the plea.
- 34) A Panchayat road is being widened by reducing properties of its adjoining owners, without any surrender or process of acquisition. The owners filed a suit for prohibitory injunction. The Panchayat raised a defence that the suit is not maintainable without a notice as mandated under Section 249 of the Panchayat Raj Act. Is the contention acceptable?
- 35) Pending suit, the parties were referred to mediation. At mediation, the parties entered into a settlement. On recording the compromise, the matter is sent back to Court. Is the Court required to pass any further orders thereon? Is there any difference if the settlement is before the Adalath held under the Legal Services Authorities Act, 1987?

PART III

Answer any 5 questions. Answers shall not exceed 250 words (2 pages). If more than 5 questions are answered the first 5 answers alone will be evaluated. Answers to the questions in this Part should be written in the Common Answer Book.

(5 x 8 = 40 marks)

- 36) A availed a loan from a bank for his business purposes. B stood as surety for the transaction. Along with the loan agreement and other security documents, A executed an agreement of hypothecation, hypothecating the goods in trade in favour of the Bank. On default in repayment, Bank filed suit against A and B.

By the time the suit was filed none of the hypothecated goods were available. B contended that consequent on the loss of the goods, he is discharged. (a) Comment. (b) What are the circumstances leading to discharge of surety?

- 37) What are the grounds on which a tenant can be evicted under the Kerala Buildings (Lease and Rent Control) Act, 1965. Mention the salient features of each ground.
- 38) What are the different types of Partnerships under the Indian Partnership Act? Discuss.
- 39) "Possession counts nine points in law", discuss.
- 40) "There is no single litmus test to distinguish licence and lease" - critically analyse.
- 41) What are the grounds of divorce available to a Muslim woman under the Dissolution of Muslim Marriage Act ? Explain.
- 42) "One cannot approbate and reprobate is the basic concept of doctrine of election under the Transfer of Property Act" - critically examine.
- 43) "Limitation bars the remedy and not the right"; Explain. Are there any exceptions to the rule ? Discuss.

HIGH COURT OF KERALA

KERALA JUDICIAL SERVICE MAIN (WRITTEN) EXAMINATION, 2020

PAPER - III

Marks : 100

Duration : 3 Hours

PART - I

Answer all the questions (Answers to the questions in this Part should be marked only in the OMR Answer sheet. Answers marked/written elsewhere will not be valued)

(15x1 mark = 15 marks)

- 1) What is the evidentiary value of the opinion of a finger print expert under Section 45 of the Evidence Act?
 - (A) Substantive
 - (B) Corroborative
 - (C) Conclusive
 - (D) None of the above.

- 2) Who can be the principal Magistrate of Juvenile Justice Board?
 - (A) Chief Judicial Magistrate
 - (B) Chief Metropolitan Magistrate
 - (C) Judicial First Class Magistrate with 3 years experience
 - (D) Any Judicial Magistrate

- 3) An accused charged with an offence under the Sec. 8 of the Abkari Act raised a plea of defence under the Sec. 84 of the Indian Penal Code. Can the Court consider that plea?
 - (A) No, a plea of defence under Sec 84 is available only if the offence is under the Indian Penal Code.
 - (B) Yes, in view of Sec. 40 of the Indian Penal Code
 - (C) No, the Abkari Act bars such a plea.
 - (D) Yes, the Abkari Act contains a specific provision allowing such a plea.

- 4) A Magistrate refused bail to a person accused of an offence under Section 22 of the NDPS Act, 1985 for possessing 900 grams of Ganja holding that there are reasonable grounds for believing that he has committed the offence. The order is
- (A) Correct; in view of the bar under Sec.37 of the NDPS Act, 1985.
 - (B) Wrong; since the Magistrate could not have entered such a finding.
 - (C) Wrong; since the offence is bailable.
 - (D) Correct; since the offence is non-bailable.
- 5) A 17 year old child who is alleged to have committed an offence under Sec. 302 of the Indian Penal Code is:
- (A) Liable to be detained in observation home, whether or not he is prepared to furnish bail.
 - (B) Entitled to be released on bail if he is prepared to furnish bail.
 - (C) Not entitled to be released on bail, since the offence is punishable with death sentence.
 - (D) Entitled to bail at the discretion of the Court.
- 6) In which among the following cases a Judicial Magistrate cannot release an offender after admonition?
- (A) An accused found guilty for rash driving in a public way
 - (B) An accused found guilty of theft
 - (C) An accused found guilty of committing theft of property of master
 - (D) A convict who commit any of the above offence and found guilty while on bail.

- 12) In a proceeding under the Protection of Women from Domestic Violence Act, the aggrieved person, apart from the monetary reliefs claimed under S.20, additionally seeks compensation for emotional distress caused to her. Can it be granted?
- (A) No
 - (B) Yes. But it should form part of monetary relief under S.20
 - (C) Yes, under S.22 of the Act
 - (D) Yes, under S.18(g) of the Act
- 13) A first information report for an offence under Section 498A of the Indian Penal Code can be lodged by
- (A) Wife
 - (B) Family member of the victim.
 - (C) (A) and (B)
 - (D) Public spirited individual
14. To constitute the offence of kidnapping, the person who is kidnapped must be:
- (A) Below 16 years of age
 - (B) Below 18 years of age
 - (C) Below 18 years if male and 16 years if female
 - (D) Below 16 years if male and 18 years if female
15. Robbery is an aggravated form of
- (A) Burglary
 - (B) Extortion
 - (C) Theft
 - (D) Either theft or extortion or both

PART – II

Answer any 15 questions. Answer shall not exceed 120 words (one page). If more than 15 questions are answered the first 15 answers alone will be evaluated. Answers to the questions in this Part should be written in the Common Answer Book.

(15x3 marks = 45 marks)

- 16) 'A' intentionally and falsely leads 'B' to believe that certain land belongs to 'A' and thereby induces 'B' to buy the land. The land afterwards becomes the property of 'A' and 'A' seeks to set aside the sale on the ground that, at the time of the sale, he had no title. Explain the application of S.115 of the Evidence Act in deciding the issue?
- 17) In the course of search conducted in a toddy shop, 2 samples were taken. 'A' sample was sent for chemical examination. Not satisfied with the report can the accused request the Court to send 'B' sample for chemical analysis?
- 18) Explain the ingredients which prosecution should establish to prove that accused committed offence under S.117(d) of the Kerala Police Act by giving false statement to mislead police investigation.
- 19) In a prosecution under S.138 of the Negotiable Instruments Act, the burden of proof required for conviction is "preponderance of probability and not proof beyond all reasonable doubts". Explain with decisions.
- 20) Explain the concept of "Reverse Onus".
- 21) In a criminal trial, the opinion given by the doctor regarding the nature of weapon used for commission of crime, did not tally with the consistent oral evidence of eye witness. How should the Magistrate

appreciate the testimony of doctor? Will it make any difference if the evidence of doctor on crucial aspects is totally contrary to the prosecution case?

- 22) "The proceedings contemplated under the Protection of Women from Domestic Violence Act, 2005, are in the nature of an inquiry without adjudicating the rights and obligations of parties". Examine this statement.
- 23) Explain the term 'Child in conflict with law'. What is the procedure to be followed on apprehension of a child in conflict with law and on a claim of juvenility being raised before any Court?
- 24) Distinguish between House trespass and House breaking under Indian Penal Code.
- 25) What are the ingredients to be established by the prosecution to attract offence of sexual harassment under the IPC?
- 26) Are empowered officers under S.53 of the NDPS Act 1985, police officers for the purpose of attracting bar under S.25 of the Indian Evidence Act?
- 27) Can the offence of stalking under S.354D, be attributed to a woman, by virtue of S.8 of the IPC, which defines gender?
- 28) How a hangman who hangs to death a convict, pursuant to a sentence of death is protected against his action?
- 29) How does a theft become robbery and extortion become robbery?
- 30) Under what circumstances can S.27 of the Evidence Act be attracted, if the recovery is from an open place?
- 31) Discuss the scope of S.50 of the Indian Evidence Act in evaluating the relationship between two persons. What are its limits?

- 32) What is the nature of trial of a forest offence, before a Magistrate? Is there any presumption under the Kerala Forest Act regarding ownership of a forest produce?
- 33) When does the right to exercise private defence to protect body commence? How long does it continue?
- 34) Explain with reasons whether a divorced woman is entitled to residence in a shared household, under S.17 of the Protection of Women from Domestic Violence Act, 2005.
- 35) What are the most important directions issued by the Supreme Court of India in Re:Expeditious Trial of cases under S.138 of the Negotiable Instruments Act, 1881.

PART – III

Answer any 5 questions. Answers shall not exceed 250 words (2 pages). If more than 5 questions are answered the first 5 answers alone will be evaluated. Answers to the questions in this Part should be written in the Common Answer Book.

(5x8 marks = 40 marks)

- 36) Explain how far the accused is protected against testimonial compulsion, when he is called upon to give his sample handwriting, blood or voice or to undergo lie detection test, NARCO analysis and BEAP test. Refer to case laws.
- 37) What are the statutory requirements for invoking the power of Court to release offenders on Probation of good conduct?
- 38) In a proceeding under S.138 of the Negotiable Instruments Act, accused admitted the signature on the cheque, but denied execution of cheque and receipt of consideration. What is the extent of burden of proof on either side. To what extent presumptions under the above Act can be called in aid?

- 39) Explain the powers, functions and duties of the Magistrate while considering an application of an aggrieved person under the Domestic Violence Act?
- 40) Explain the scope of S.27 of the Indian Evidence Act, 1872. Specifically refer to the law laid down in P. Kottayya v. Emperor (AIR 1947 PC 67).
- 41) What are the ingredients that should be proved to establish an offence under S.499 of the Indian Penal Code? What are the defences available to the accused? Is good faith an acceptable defence?
- 42) What are the offences relating to marriage, contemplated under the Indian Penal Code? Refer to the ingredients of each of the offences.
- 43) 'A' the servant of 'B' makes an attempt to steal some jewellery kept in an almirah by breaking it open. He finds that there is no jewellery in it. Has he committed any offence? If so, what will be the maximum punishment?

HIGH COURT OF KERALA

KERALA JUDICIAL SERVICE MAIN (WRITTEN) EXAMINATION, 2020

PAPER - IV

Duration : 3 Hours

Total Marks : 100

PART - I

Answer all the questions. Each question carries one mark. (Answers to the questions in this Part should be marked only in the OMR Answer sheet. Answers marked/written elsewhere will not be valued).

(15 x 1 mark = 15 marks)

- 1) A availed loans from X residing at Thiruvananthapuram, Y residing at Kollam and Z residing at Alappuzha. A has secured all the three debts with mortgage of his immovable property situated at Ernakulam. A resides at Kottayam. Suit for recovery of money by sale of the mortgaged property is to be filed at which court ?
(A) Kottayam (B) Ernakulam
(C) Kollam (D) Alappuzha.
- 2) Which among the following enables the Court to attach property situated beyond the territorial limits of that court?
(A) Precept (B) Third party proceeding
(C) Interpleader suit (D) None of the above
- 3) Can the Court take help of any person in preparing the questions to be put to the accused under S.313 Cr.P.C.
(A) No (B) Yes. Prosecutor
(C) Yes. Defence counsel (D) (B) and (C) above
- 4) S.34 CPC deals with interest for the period ----
(A) prior to filing of suit (B) Pending suit and till decree
(C) After decree and till recovery (D) (B) and (C)

- 5) Can the offence of adultery be compounded?
- (A) Yes, by the husband of the woman (B) No
- (C) Yes, by the adulteror (D) Yes, both by husband and adulteror
- 6) A suit is filed against Government seeking urgent and immediate relief. Can the Court grant *ex parte* interim relief in such a suit?
- (A) Yes (B) No
- (C) Depends on the emergency (D) Only when leave is granted under S.80(2).
- 7) In a suit filed for recovery of money with interest, the court finds that the plaintiff is entitled for the plaint claim with interest. However, in the decretal portion of the judgment, interest is not mentioned. What is the remedy of the plaintiff?
- (A) Appeal (B) Review
- (C) Seek for amendment under Section 152 CPC (D) Any of the above.
- 8) Can Court take cognizance of an offence under S.498A IPC on a police report.
- (A) No. Only on a complaint by wife
- (B) No. Only on a complaint by mother
- (C) No. Only on a complaint by blood relative
- (D) Yes. By virtue of S.198A Cr.P.C.
- 9) Issues can be amended?
- (A) only before trial commences
- (B) any time before decree is passed
- (C) only before steps are completed
- (D) none of the above
- 10) While considering the default bail, will intervening holidays be accountable under S.167(2) Cr.P.C.?
- (A) Holidays shall be excluded from the period
- (B) Local holidays shall be excluded
- (C) Holidays shall be accountable
- (D) None of above

- 11) Which among the following is within the power of a District Magistrate or a SDM conducting enquiry under S.137 or S.138 Cr.P.C?
- (A) To conduct local inspection by any person
 - (B) Summon and examine an expert
 - (C) To appoint a person to record evidence
 - (D) (A) and (B)
- 12) Pecuniary jurisdiction of the Munsiff's Court is?
- (A) Upto 10 lakhs
 - (B) Upto 20 lakhs
 - (C) Unlimited
 - (D) Upto 5 lakhs
- 13) In which among the following situations a Magistrate can direct that the accused will not be furnished copies of document under S.208 Cr.P.C, but will be permitted to inspect
- (A) If documents are confidential
 - (B) If documents are voluminous
 - (C) If documents produced are original registers
 - (D) If document is an electronic document
- 14) Pending a suit for realisation of money, plaintiff files an application for amendment of the plaint, seeking to enhance the plaint claim beyond the jurisdiction of the Court. What should the Court do?
- (A) Return the plaint along with the application for presentation to Court having jurisdiction.
 - (B) Allow the amendment and proceed with the suit.
 - (C) Allow the amendment and return the plaint for presentation to Court having jurisdiction.
 - (D) None of the above.
- 15) Under S.219 Cr.P.C, a person accused of three offences of same kind can be charged together, which means;
- (A) When they are punishable with same amount of punishment under same section of Indian Penal Code or
 - (B) When they are punishable with same amount of punishment under same section of any special laws or

- (C) When they are punishable with same amount of punishment under same section of any local laws
- (D) All the above

PART II

Answer any eleven questions. Answers shall not exceed 160 words (1½ pages). If more than eleven questions are answered, the first eleven answers alone will be evaluated. Answers to the questions in this part should be written in the Common Answer Book.

(11 x 5marks = 55 marks)

- 16) A suit is instituted on payment of one-tenth Court fee. When is the balance court fee payable? Does the Court have power to extend the time for payment of balance court fee beyond the 30 days period fixed under S.4A of Court Fees Act?
- 17) One person is arrayed as an accused in a criminal proceedings along with few others. He filed an application to discharge, which was allowed. In the course of trial of remaining accused, new evidence touching the complicity of the discharged person is revealed. Can the Court invoke S.319 Cr.P.C.? Explain with reasons?
- 18) A decree for recovery of possession obtained by X against Y is under execution. One Z obstructs the execution, claiming independent right and possession over the property. The execution court, on the available materials, found that Z is in possession of the property. Thereafter, Z was relegated to file a suit to establish his title. Discuss about the correctness or otherwise of the order with relevant statutory provisions.
- 19) What are the limits of exercise of powers under S.311 Cr.P.C. Explain with examples?
- 20) What are the particulars contained in A Diary and B Diary maintained under the Civil Rules of Practice?

- 21) 'X' files a suit for money against 'Y' based on promissory note. In his written statement 'Y' contends that his signature in the promissory note is forged. Simultaneously 'Y' files a criminal complaint against 'X' for cheating. What are the options available to the Magistrate before whom the complaint is filed? Elaborate with reasoning.
- 22) What is the time fixed under Order VIII Rule 1 CPC to file written statement? Do Courts, under any circumstances, have power to extend the time beyond the time fixed therein?
- 23) In a suit for prohibitory injunction against trespass, the defendant filed a counter claim for the same relief asserting his possession over the property. During the course of the plaintiff's evidence, the defendant filed an application for amendment of the Counter claim to incorporate a prayer for recovery of possession alleging that, after commencement of trial the plaintiff trespassed into the property. Is the amendment liable to be allowed? Discuss the scope of amendment after commencement of trial.
- 24) What are the contents of 'A' diary and proceedings papers to be maintained in a Court under the Criminal Rules of Practice?
- 25) Does the filing of a Caveat denude the power of the Court to pass ex parte interim orders under all circumstances? Discuss with reference to scope of caveat.
- 26) Is a fresh suit maintainable when,
- (a) A suit is dismissed for default for failure on the part of the plaintiff to take steps for service of summons.
 - (b) Plaintiff does not appear but defendant appears.
- 27) A witness, during trial, did not support the prosecution case. The prosecutor seeks permission to declare him hostile. What are the judicial proceedings to be done by the Magistrate thereafter in the course of examination of that witness?
- 28) When a right not pre-existing in common law is created by a statute and the statute provides a remedy, is the jurisdiction of the Civil Court ousted?

- 29) When can the police arrest a person without warrant? What are the rights of an arrested person?
- 30) A decree is executed under Order 21 CPC. Is there any provision for execution of an order? Explain.

PART III

Answer both the questions. Answers to the questions in this part should be written in the Common Answer Book.

(2 x15 marks = 30 marks)

Writing of judgment (Name of Court alone to be indicated. Other details in the cause title not required)

- 31) A agreed to purchase 10 cents of property owned and possessed by B, for a total consideration of Rs.6 lakhs. A written agreement was entered into on 01.02.2018 and an advance of Rs.1 lakh was paid. It was inter alia agreed that the entire amount of sale consideration would be paid by A to B within a period of six months from the date of agreement, on which day, sale deed would be executed. It was further agreed that, the seller would get the property measured, handover in advance copies of title deeds, all previous deeds, receipts evidencing payment of water and electricity connection, possession certificate and encumbrance certificate for 13 years. Time was recorded as the essence of the contract. After

five months, buyer issued a lawyer notice to the seller asserting that, he has not given copies of the title deeds and that the property has not been measured. He called upon the seller to measure the property, satisfy the title deeds, to accept the balance sale consideration and to execute the document of assignment. A reply was sent by the seller alleging that the buyer has no intention to purchase the property, has no financial ability, time was treated as the essence of the contract, and that, delay was caused by the buyer. A suit was instituted by the buyer in September 2018 for specific performance of the written agreement. It was claimed that, parties were governed by the Specific Relief Act as amended by Act 1 of 2018, which had come into effect on 01.10.2018.

The defendant filed a detailed written statement traversing the various allegations. It was contended that, though the agreement was entered into, time was considered as the essence of the contract. It was also contended that the plaintiff did not have sufficient means or funds to pay the balance sale consideration. Though copies of title deeds and previous title deeds were offered, the plaintiff refused to accept it. It was also contended that plaintiff was never ready and willing to perform his part of the

contract, and that, damage, if any, can be compensated in terms of money.

On the basis of the above pleadings, issues were framed and the parties proceeded for trial. On the side of the plaintiff, he got himself examined as PW1. He tendered evidence strictly in accordance with the plaint claim. In the cross examination, he admitted that, he did not have sufficient funds in his bank account during the relevant period though at the time of institution of the suit, he had sufficient funds with him. The agreement could not be performed due to the conduct of the defendant. He asserted that, he was ready and willing to perform his part of the contract.

PW2 was examined to support the case of the plaintiff. He also deposed that, he had seen the execution of the document and had signed the agreement as an attesting witness.

PW3 deposed that, he knew about the execution of the agreement and receipt of consideration. However, the defendant did not deliver his title deeds nor the property was got measured.

Defendant got himself examined as DW1. He asserted in terms of his pleadings. He asserted that, though he was ready and

willing to perform his part of the contract, the plaintiff failed to satisfy his part of contract. Time was the essence of the contract. Hence, the plaintiff was not entitled for damages or compensation. Though, he was confronted with the question whether he has given previous documents and title deeds, the reply was in the negative. It was also stated that, plaintiff did not have sufficient means to pay. He asserted that, he was ready and willing to execute the document, hand over possession of the title deed.

Frame issues on the basis of the above pleadings and draft judgment.

- 32) 'A' was the driver of a motor car. On 06.03.2021 at 6 a.m, while he was driving the car along the National Highway from Alleppey to Kollam, a scooter came from the opposite side. It overtook an autorickshaw and on seeing the car from opposite side, the rider applied break suddenly. Scooter skid and hit on the body of the car. He was thrown off and sustained serious injuries. He succumbed to the injuries, while in hospital. Crime was registered and after investigation, final report was laid against 'A' for offences punishable under sections 279, 338 and 304A IPC.

On appearance, the accused pleaded not guilty and demanded trial.

On the side of prosecution, one eye witness to the incident was examined as PW1. He stated that, he was an autorickshaw driver. On the relevant day, while he was proceeding along the National Highway a car came from opposite side with great speed. At same time, a scooter overtook his autorickshaw, proceeded towards the middle of the road and thereafter, the incident occurred. He attributed the incident to the rash and negligent driving of the driver of the car. He identified the accused as the person who was driving the car. In cross examination, he admitted that the road was sufficiently wide and the incident happened in the middle of the National Highway. The rider of the scooter was also riding the Scooter with great speed. He overtook his autorickshaw and hit head on, against the car. In the cross examination, he further admitted that the scooter had crossed the mid line and moved towards the side of the car. However, he could not mention the approximate speed.

PW2 was a petty shop owner, conducting the shop near the place of incident. He deposed that, on hearing the crash sound, he rushed to the spot and found the injured lying in a pool of blood. He identified the accused as the driver of the car. It was stated that the car was being driven in a rash and negligent manner with great speed. In the cross examination, he admitted that, he could not answer the approximate speed of the car. To a specific question as to whether the permitted speed in that locality of the National Highway was 60 kms per hour and whether the accused has crossed that limit, the answer was that, he did not know.

PW4 was the investigation officer, who deposed that, though PW1 and PW2 had stated that the car was driven at a great speed, but they could not ascertain the specific speed of the car. The remaining witnesses were the officials and mahazar witnesses.

Prosecution relied on the mahazar prepared by the Head Constable attached to the local police station. It showed that the road had a width of 110 feet. The road was lying north south. Car was proceeding from north to south and scooter from south to north. The place of incident was 60 cms towards the eastern side from the

central line. There were tyre marks of the two wheeler having applied the break, and that, the vehicle had moved towards east.

In the questioning under S.313 Cr.P.C., the accused specifically stated that, he had an experience of 35 years as a driver, he was not involved in any other crime earlier. He stated that, he was driving the vehicle, following the rules and on his side, the scooter came with great speed, overtook another vehicle, suddenly on seeing the car, he applied his break. The vehicle skid, crossed the mid line, came and hit the car. However, he did not adduce any oral or documentary evidence.

Write a judgment on the basis of the above facts.

* * *