

HIGH COURT OF KERALA

KERALA JUDICIAL SERVICE MAIN (WRITTEN) EXAMINATION-2022

Paper I- General English

Duration- 3 hours

Total Marks- 100

(Questions 1-30 carry 1 mark each)

- Fill in the blanks with suitable prepositions:-
 1. He is heir.....a large fortune.
 2. The commission will enquire.....the allegations.
 3. He has considerable influence.....the political heavy weights.
 4. You may send the parcel.....my address.
 5. He is good..... mathematics.
- Fill in the blanks with suitable articles:-
 6. He has.....ear for music.
 7. That isEuropean custom.
 8.hundred years make a century.
 9.English are fond of sports.
 - 10.It wasyear ago that I met him last.
- Identify the misspelt word:-
 11. (a) savvy (b) privilage (c) pristine (d) strut
 12. (a) hiccups (b) horde (c) burgler (d) dual
 - 13.(a) stoke (b) duel (c) bizzare (d) sod
 14. (a) feat (b) hegemon (c) Prise (d) seperate
 15. (a) aide (b) agog (c) stalk (d) grammer
- Substitute one word for the following:-
 16. A lover of humanity.
 17. A person who abstains from all alcoholic drinks.
 - 18.One who is indifferent to pain and pleasure.
 - 19.To speak without preparation.
 - 20.A state of lawlessness

- Give antonyms of the following words:-
 21. Segregation
 22. Embark
 23. Benevolent
 24. Zenith
 25. Effectual
- Pick out the phrasal verb which means the word underlined:-
 26. Terrorists attacked the patrolling soldiers.
 - (a) went at (b) got at (c) went against (d) got on
 27. The sponsors withdrew at the last minute.
 - (a) Pulled off (b) pulled back (c) pulled through (d) pulled up
 28. Those shoes don't match the dress.
 - (a) Go along (b) get along (c) go with (d) get with
 29. The government's unpopular moves caused a wave of protests.
 - (a) Kicked up (b) set off (c) kicked of (d) set out
 30. He is hoping to start a travel business of his own.
 - (a) Set about (b) set up (c) put up (d) bring up
- Write an essay on any two of the following:- (20x2- 40 marks)
 31. "It is public trust that upholds the judiciary, not the power to imprison on a charge of contempt".
 32. The dangers of cherry picking history.
 33. Pandemic as metaphor for human agony.
 34. Vigilance is better than arrest.
 35. Democracy's essence is the right of diverse people to live as equals.
 36. Demagogy in Democracy.
- 37. Make a précis of the following passage (15x1- 15 marks)

Pride month comes and goes, but homophobia in India is here to stay like a spectre. As a good omen for Pride month of this year, the Kerala High Court set a trailblazing precedent recently by sanctioning a lesbian couple to live together after they were coercively separated by their parents. The court simply asked the couple if they wished to live together, to which they replied yes. The joy of the couple spilled over into social media. People congratulated the court and many social media profiles talked about gender

spectrum. But alarmingly, it triggered rude homophobic chirpings too in the cyber streets. It exposed that the “God made Adam and Eve; not Adam and Steve” attitude lingers in Indian society.

The Indian Psychiatric Society authentically stated that homosexuality was not a mental disorder, but that sentiment has not convinced most Indian homes. Homophobia is defined by Britannica Encyclopedia as culturally produced fear of or prejudice against homosexuals that sometimes manifests itself in legal restrictions or, in extreme cases, bullying or even violence against homosexuals. The suffix ‘phobia’ generally designates an irrational fear; in the case of homophobia, the word instead refers to an attitudinal temperament ranging from mild dislike to abhorrence of people who are sexually or romantically attracted to individuals of the same sex. It is a culturally conditioned response to homosexuality. Homophobia runs against the constitutional values of fraternity and dignity.

J.B. Kripalani, a prominent member of the Constituent Assembly commented on the principle of fraternity in the Assembly: “I come to the great doctrine of fraternity which is allied with democracy. It means that we are all sons of the same God, as the religious would say, but as the mystic would say, there can be no fraternity without this. So I want this House to remember that what we have enunciated are not merely legal, constitutional and formal principles, but moral principles; and moral principles have to be lived in life. They have to be lived whether it is private or it is public life...” The social and psychological abhorrence prevailing in India against the LGBTQ+community nullifies the constitutional fraternity that is to be lived out in public and private life of the nation.

Queerness isn’t modern, western or sexual only, says mythologist Devdutt Pattanaik. He opens a treasure box of vast written and oral traditions in Hinduism, some over two thousand years old, to show us many overlooked tales, such as those of Shikhandi, who became a man to satisfy her wife; Mahadeva, who became a woman to deliver his devotee’s child; Chudala, who became a man to enlighten her husband; and many more.

Fraternity too is not a pure western ideal. Dr. B.R Ambedkar elucidated the Indian roots of the ideal of fraternity thus: My social philosophy may be said to be enshrined in three words - liberty, equality and fraternity. Let no one, however, say that I have borrowed my philosophy from the French Revolution. I have not. My philosophy has roots in religion and not political science. I have derived them from the teachings of my master, the Buddha.... he gave the highest place to fraternity as the only real safeguard against the denial of liberty or equality- fraternity which was another name for brotherhood or humanity, which was another name for religion. “ Dr. Ambedkar championed the ideal of fraternity to uphold the cause of the oppressed castes, Dalits. The same principle is felicitous to he Gender Dalits of present day India- the LGBTQ+ community. The society should not deprive the LGBTQ + Community of affection and regards thanks only to their sexual orientation.

In *Is God anti-gay*, Sam Allberry quotes the Bible: “I am the bread of life. Whoever comes to me will never go hungry, and whoever believes in me will never be thirsty”. Allberry concludes his booklet by saying that “ the invitation (of God) is there for everyone. And so precious is the gift that God cannot be truly said to be ‘anti’ anyone to whom this wonderful gift is being offered.” If God is not anti-gay, how can His sons and daughters be homophobic?

- 38. Translate the attached Malayalam passage into English (15x1- 15 marks)

വൈകിടരുത്, ഒരുതീരുമാനവും

ഇന്ത്യൻ ഭരണഘടനയുടെ 161-163 വകുപ്പുകളിലാണ് ഗവർണ്ണറുടെ അധികാരങ്ങളെപ്പറ്റി പറയുന്നത്. 1935 ലെ ഗവൺമെന്റ് ഓഫ് ഇന്ത്യ ആക്ടിലെ അനുചേദം 50 ൽ നിന്ന് കടംകൊണ്ടതാണിത്. 1935 ലെ നിയമം ഗവർണർക്ക് വിപുലമായ അധികാരങ്ങളാണു നൽകിയിരുന്നത്. സ്വാതന്ത്ര്യ പൂർവ്വ ഇന്ത്യയിൽ ഏറ്റവുംകൊടിയ അനീതികളുടെ ആസൂത്രണം ഗവർണർമാരുടെ ഓഫീസ് കേന്ദ്രീകരിച്ചാണു നടന്നിരുന്നതെന്നു ചരിത്രം പറയുന്നു. ഇക്കാരണങ്ങളാൽ തന്നെ ഭരണഘടനാ നിർമ്മാണസഭയിൽ ഈ വിഷയം അംഗങ്ങൾക്കിടയിൽ ചുടേറിയ ചർച്ചയ്ക്കാണ് ഇടവരുത്തിയത്. സ്വാതന്ത്ര്യ പൂർവ്വ അനീതികളുടെ പശ്ചാത്തലത്തിൽ ഗവർണർ പദവി തന്നെ നിലനിർത്തേണ്ടതുണ്ടോ എന്ന് അംഗങ്ങൾക്കിടയിൽ ചർച്ച നടന്നു. ഭരണഘടനാ നിർമ്മാണസഭയിലെ അംഗങ്ങൾ പലരും ഗവർണർ പദവി എന്ന ആശയത്തെത്തന്നെ എതിർത്തു. അതേസമയം ഡോ. ബി.ആർ.അംബേദ്കർ ഈ വാദങ്ങളെ അംഗീകരിച്ചില്ല എന്നു മാത്രമല്ല, ഗവർണർ പദവി നിലനിർത്തണം എന്നു വാദിക്കുകയുണ്ടായത്.

താൽക്കാലിക ഭരണഘടനയ്ക്കു രൂപം നൽകാനായി ഭരണഘടനാ നിർമ്മാണസഭ ചുമതലപ്പെടുത്തിയിരുന്ന കമ്മിറ്റി തയാറാക്കിയ റിപ്പോർട്ടിൽ ഗവർണർ പ്രധാനമായും മന്ത്രിസഭയുടെ സഹായത്തോടെയും ഉപദേശത്തോടെയും പ്രവർത്തിക്കണം എന്നായിരുന്നു. അതേസമയം ചിലകാര്യങ്ങളിൽ, ഉദാഹരണത്തിനു തന്റെ കീഴിലുള്ള സ്ഥലത്തെ സമാധാന ജീവിതം ഗുരുതരമായ ഭീഷണി നേരിടുന്ന സന്ദർഭത്തിൽ വിവേചനാധികാരം പ്രയോഗിക്കണം. ഗവർണ്ണറുടെ തീരുമാനം അന്തിമമാണെന്നും കോടതിയിൽ ചോദ്യം ചെയ്യാൻ കഴിയില്ലെന്നും ഭരണഘടനയുടെ 163 (2), (3) വകുപ്പുകളിൽ പറയുന്നുണ്ടെങ്കിലും നിയമപരമായ പുനർ ചിന്തനത്തിനു സാധ്യതയുണ്ടെന്നു പല കേസുകളിൽ സുപ്രീംകോടതി വ്യക്തമാക്കിയിട്ടുണ്ട്. തിരഞ്ഞെടുക്കപ്പെടാത്ത പദവിയിലുള്ള ഗവർണർമാർ സംസ്ഥാനങ്ങളിലെ നിർണായകമായ അധികാരം കയ്യാളുന്നവരാകരുത് എന്നാണ് ഭരണഘടന വിഭാവനം ചെയ്തിട്ടുള്ളത്. സംസ്ഥാനത്തിന്റെ തലവൻ എന്ന ആലങ്കാരിക പദവിയാണ് അവർക്കുള്ളത്. കാബിനറ്റിന്റെ തീരുമാനവും ഉപദേശവും അനുസരിച്ചാണ് ഗവർണർ പ്രവർത്തിക്കേണ്ടതെന്ന് ഭരണഘടനയിൽ പറയുന്നു. അതേ സമയം തന്നെ 163 (2), (3) വകുപ്പുകൾ അനുസരിച്ച് ഗവർണർക്ക് ചിലകാര്യങ്ങളിൽ വിവേചനാധികാരം പ്രയോഗിക്കാം. അതുപക്ഷേ ഏതൊക്കെ സന്ദർഭങ്ങളെന്നു ഭരണഘടനയിൽ പറയുന്നില്ല. ഭരണഘടനാ വീഴ്ചയുണ്ടാകുന്ന സന്ദർഭങ്ങളിൽ സേഫ്റ്റി വാൽവ് ആയി പ്രവർത്തിക്കാം. ഗവർണ്ണറുടെ ആശയ പ്രതിബന്ധതയെയും കഴിവിനെയും ആശ്രയിച്ചായിരുന്നെങ്കിലും അത്.

ഗവർണ്ണറുടെ അധികാരംകോടതി പരിമിതപ്പെടുത്തിയ ഏറ്റവും ഒടുവിലത്തെ സന്ദർഭമായിരുന്നു പേരറിവാളൻ കേസിലുണ്ടായത്. പേരറിവാളനെ മോചിപ്പിക്കണമെന്ന് 2018 ഒക്ടോബർ 9 നാണ് തമിഴ്നാട് നിയമസഭ പ്രമേയം പാസാക്കി ഗവർണർക്ക് അയച്ചത്. ന്യായമായ സമയപരിധിക്കുള്ളിൽ ഗവർണർ തീരുമാനമെടുക്കേണ്ടതായിരുന്നു. സർക്കാരിന്റെ ശുപാർശ പ്രകാരം പ്രവർത്തിക്കുകയല്ലാതെ മറ്റൊരുമാർഗവും അദ്ദേഹത്തിന്റെ മുന്നിലുണ്ടായിരുന്നില്ല. 2021 ജൂനുവരി 25 വരെ ഫയൽ വച്ചു താമസിപ്പിച്ചശേഷം ഇക്കാര്യത്തിൽ തീരുമാനമെടുക്കാൻ രാഷ്ട്രപതിക്ക് അയച്ചു. സർക്കാരിന്റെ ശുപാർശ വച്ചു താമസിപ്പിക്കാൻ ഗവർണർക്ക് അധികാരമില്ലെന്നും രണ്ടര വർഷത്തിനു

ത്തിനു ശേഷം അതു രാഷ്ട്രപതിക്കയച്ചത്. ഭരണഘടനാ വിരുദ്ധമാണെന്ന് സുപ്രീംകോടതി അസന്ദിഗ്ധമായി പറഞ്ഞു. ഗവർണ്ണർ സംസ്ഥാന സർക്കാരിന്റെ സംക്ഷിപ്ത രൂപമാത്രമാണെന്നു വരെകോടതി പറഞ്ഞു. സംസ്ഥാന സർക്കാർ നൽകുന്ന ഒരു ശുപാർശയും വൈകിപ്പിക്കാൻ ഗവർണ്ണർക്ക് അധികാരമില്ലെന്ന് സുപ്രീംകോടതി അസന്ദിഗ്ധമായാണ് ഈ വിധിയിലൂടെ പറയുന്നത്. വൈകിപ്പിച്ചാൽ അതും കോടതിയിൽ ചോദ്യം ചെയ്യാം.

ഗവർണ്ണറുടെ അധികാരം പരിമിതമാണ്. അധികാര ദുർവിനിയോഗം നടക്കുന്ന സാഹചര്യത്താൽ ഗവർണ്ണർക്ക് ഇടപെടാനും വകുപ്പുണ്ട്. ഭൂരിപക്ഷം നഷ്ടമാകുമ്പോൾ നിയമസഭ വിളിച്ചുകൂട്ടാൻ സർക്കാർ വിസമ്മതിച്ചാലോ സ്പീക്കർ അവിശ്വാസപ്രമേയത്തിന് അനുമതി നൽകാതിരുന്നാലോ ഗവർണ്ണർക്ക് ഇടപെടാം. കേന്ദ്ര സർക്കാരിന്റെ ആജ്ഞാനുവർത്തികളായി രാഷ്ട്രപതി ഭരണം ഏർപ്പെടുത്തുന്നതു പോലുള്ള സന്ദർഭങ്ങളിലാണ് സുപ്രീംകോടതിക്ക് ഇടപെടേണ്ടി വരുന്നത്. പേരറിവാളൻ കേസ് ഗവർണ്ണർമാരുടെ അധികാരത്തെ കൂടുതൽ കർശനമായി ചുരുക്കുകയാണ്. ഒരു ജനാധിപത്യ വ്യവസ്ഥിതിയിൽ തിരഞ്ഞെടുക്കപ്പെടുന്ന സർക്കാരിനെ തിരഞ്ഞെടുക്കപ്പെടാത്ത ഗവർണ്ണർ ബഹുമാനിക്കണമെന്ന ആശയത്തെയാണ് കോടതി ഉയർത്തിപ്പിടിക്കുന്നത്.

KERALA JUDICIAL SERVICE MAIN (WRITTEN) EXAMINATION, 2022

Marks:100

Duration: 3 Hours

PAPER - II

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= 15 marks)

- 1) Where both the parties to any agreement are under a mistake as to a matter of fact essential to the agreement.
 - A. The agreement is voidable.
 - B. The agreement can't be enforceable at law.
 - C. The agreement is void.
 - D. The agreement is not void

- 2) Which of the following actions can be brought into law for the recovery of specific immovable property.
 - A. A suit based on the title
 - B. A suit based on the possessory title
 - C. A suit based merely on the previous possession
 - D. All of the above

- 3) Transfer of Spes Succession is
 - A. Valid
 - B. Void
 - C. Voidable
 - D. Either A or B

- 4) 'A' promises to pay 'B', a sum of Rs.10,000/- if it rains and in return, 'B' promises to pay 'A' Rs.20,000/- if it does not rain. It is a/an.....
- A. Valid agreement
B. Contingent contract
C. Wagering contract
D. Uncertain agreement
- 5) Charge can be created by
- A. Act of parties
B. Operation of law
C. Both 'A' and 'B'
D. Neither 'A' or 'B'
- 6) As per Section 14 of the Hindu Succession Act, 1956, any property possessed by a female Hindu, whether acquired by her before or after the commencement of this Act, shall be held as a.....
- A. Half owner
B. Limited owner
C. Full owner
D. All of the above
- 7) Section 5 of the Limitation Act applies to
- A. suit
B. appeal & application
C. execution
D. all the above.
- 8) The award made by the Lok Adalat
- A. is deemed to be a decree of the civil court like arbitration Award
B. is deemed to be a decree of the civil court
C. is effective as an Arbitral award
D. is not binding on the party

- 9) An easement
- A. is extinguished when the servient owner leaves on his own.
 - B. cannot be extinguished.
 - C. is extinguished upon the death of the dominant owner.
 - D. is extinguished when the dominant owner releases it expressly or impliedly to the servient owner.
- 10) All litigation for or against the Municipality shall be conducted by or against
- A. Chairperson
 - B. Secretary
 - C. Council
 - D. None of the above
- 11) The laws relating to the testamentary succession as per the Indian Succession Act, 1925 are not applicable to.....
- A. Christians
 - B. Hindus
 - C. Muslims
 - D. Sikhs
- 12) Instruments to be assessed for stamp duty in Kerala State executed outside India will be stamped.....
- A. Within 3 months after it received in Kerala
 - B. Within 6 months after it received in Kerala
 - C. At the date of execution
 - D. At the date and time as decided by the executant

- 13) Which of the following types of leases of immovable property does not require registration?
- A. A lease for year to year
 - B. A lease for 6 months
 - C. A lease for a term exceeding one year
 - D. All the above
- 14) The amount of court fee to be paid on the plaint at the time of institution of the suit shall be:
- A. One-tenth of the amount of fee chargeable under the Kerala Court-Fees and Suit Valuation Act
 - B. One-fourth of the amount of fee chargeable under the Kerala Court-Fees and Suit Valuation Act
 - C. Half of the amount of fee chargeable under the Kerala Court-Fees and Suit Valuation Act
 - D. Full court fee chargeable under the Kerala Court-Fees and Suit Valuation Act
- 15) A promissory note, bill of exchange or cheque payable to bearer, is negotiable:
- A. By endorsement and delivery thereof.
 - B. By the holder by endorsement
 - C. By delivery thereof.
 - D. None of the above.

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) The plaintiff A schedule property belongs to the plaintiff and is in his possession. It is admitted that when the plaintiff purchased the plaintiff A schedule property, it was barren land. Thereafter he levelled the land and constructed a house in it. He also constructed a compound wall on the eastern side of the plaintiff A schedule property. The plaintiff B schedule property belongs to the defendants and is situated on the north eastern corner of the plaintiff A schedule property. The case of the plaintiff is that mud has been excavated from the plaintiff B schedule property to a considerable extent in such a manner affecting the eastern compound wall of the plaintiff A schedule property and losing its lateral support. The suit has been instituted by the plaintiff for a permanent prohibitory injunction restraining the defendants from removing mud from the eastern side of the plaintiff B schedule property and from causing any damage to the compound wall situated on the western boundary of the plaintiff B schedule property.

The defendants admitted the removal of earth. According to them, the 3rd defendant for the purpose of constructing a residential house therein removed earth at a height of 5 feet and left a considerable distance from the western boundary. It is their further case that, by such removal, no damage is caused to the eastern compound wall of the plaintiff A schedule property and apprehension of the plaintiff that its natural support would be affected is unfounded and without any basis.

The plaintiff seeks relief on the basis of his right to lateral support. Is the plea sustainable in view of the facts? Give reasons.

- 17) The petitioner is the landlord and the respondent is the tenant. The definite case of the petitioner is that the respondent ceased to occupy the petition schedule building for more than 2 years continuously prior to the filing of the petition without any reasonable cause. On the other hand, the respondent contended that he never ceased to occupy the petition schedule building but it is in his absolute possession and he is

conducting aquarium business therein. It is further contended that he could not open the shop for three months as he was laid up.

To prove the case of the petitioner, the petitioner himself gave evidence as PW1. He deposed in tune with the averments in the petition. A commission has been taken out immediately after filing of the petition. Commissioner reported that the petition schedule building remained closed as on the date of the inspection. The Commissioner further reported that the building was covered with cob-web and dust. The Commissioner was examined as PW2. The Commissioner conducted an inspection at 5 p.m. According to the respondent, he closed the building initially by 5 p.m. and the petitioner deliberately brought the Commissioner at 5 pm., after he closed the building. Thus, according to the respondent, even on the date of inspection by the Commissioner, he had opened the building and conducted business therein.

The respondent gave oral evidence. He did not produce any documentary evidence to show that he actually conducted business during the past six months prior to the filing of the petition. However, he produced D & O license fee receipt. He also did not produce any medical evidence to prove his illness.

Is the petitioner entitled to eviction? If yes, on what ground under Kerala Building (Lease and Rent Control), Act, 1965. Give reasons.

- 18) Distinguish between a customary easement and a customary right?
- 19) Write short notes on 'Joint Hindu family' and 'Hindu coparcenary'.
- 20) What are the major amendments brought out to the Specific Relief Act in 2018? Whether the amendment is retrospective?
- 21) The plaint schedule property belonged to the father of the plaintiff. Father died. According to the plaintiff, on the death of the father, the property devolved upon him and the defendant. He filed a suit for partition.

The defendant resisted the suit contending that it is his exclusive property. According to him, his father much before his death bequeathed the property to him as per Ext.B1 will.

The plaintiff specifically denied the execution of the will.

Both plaintiff and the defendant gave oral evidence in tune with their pleadings. One of the attesting witnesses to the will died. The remaining attesting witness was examined as DW2. He deposed that he witnessed the execution of the will. But his evidence is not sufficient to satisfy the ingredients of Section 63 of the Indian Succession Act.

Thereafter the plaintiff filed three petitions; one to send the admitted signature of the testator as well as Ext.B1 will for scientific examination to compare signatures contained in those documents and the second one to issue summons to the Joint Sub Registrar of SRO, to prove the registration of Ext.B1. The third petition was to issue summons to the scribe to examine him. The plaintiff sought to introduce the above additional evidence in order to prove the due execution of the Will by resorting to Section 71 of the Indian Evidence Act. However, it is a fact that DW2 did not either deny or recollect the execution of the Will.

Can the propounder/plaintiff be permitted to adduce the evidence mentioned above to prove the execution of the will? – Explain.

- 22) 'A' promises to obtain for 'B' employment in public service and 'B' promises to pay Rs. 1,000/- to 'A'. 'B' secures the employment but fails to pay Rs. 1,000/- to 'A'. Can 'A' recover Rs. 1,000/- from 'B'? If so, why?
- 23) 'A' during his minority takes a loan of Rs. 20,000/- from 'B' and executes a pronote in favour of 'B'. When 'A' becomes major, he writes another pronote in favour of 'B' in the place of old pronote, but fails to pay the debt. 'B' files suit against 'A' for recovery of said amount on the basis of new pronote. Will 'B' succeed?
- 24) 'A' makes a gift to 'X', 'Y' and 'Z'. 'X' and 'Y' accept while 'Z' refuses. What happens to the gift?
- 25) The only point in dispute before the court is whether the premises in dispute had been let out to the defendant for residential purposes as contended by the plaintiff or the same had been taken by him for commercial purposes as contended by the defendant. The parties

had admittedly executed an agreement in writing in which the purpose of letting is mentioned. The agreement, though it required registration, has not been registered. The plaintiff has produced the agreement in court for proving his case about the purpose of letting. The defendant has contended that the agreement cannot be admitted into evidence for determining the controversy. How will you decide? Give reasons.

- 26) 'A' gives a promissory note to 'B' on 1-1-1993. 'A' was out of India from 1-1-1994 to 1-1-1996. 'B' sued 'A' on 2-1-1996. Is the suit within the period of limitation? Decide.
- 27) A right to sue accrues to 'Z' during his minority. After the accrual but while 'Z' is still a minor, he becomes insane. When will the period begin to run?
- 28) A Muslim girl is given in marriage by her father. When she attained the age of 17 years, she repudiated the marriage and brought a suit for dissolution of her marriage. What facts she is required to prove in order to succeed? Can the husband successfully resist the suit on any ground?
- 29) Discuss the law relating to refund of court-fees.
- 30) How the amount of Court-fee, in the following suits will be computed:
 - i) Suits for a declaratory decree with consequential relief.
 - ii) Suits to obtain an injunction
- 31) What are the criteria for giving legal services under the Legal Services Authorities Act, 1987? Who are the persons entitled to legal services under this Act?
- 32) 'A' sends a price list of goods to 'B' on the latter's request. 'B' places an order on dealer 'A' for goods specified in the price list on prices quoted in the said list. 'A' did not execute the order for supply. What is 'B's remedy, if any ?

- 33) The plaintiff filed suit for a decree for permanent prohibitory injunction restraining the defendant/Panchayath from trespassing into his property shown in plaint schedule and cutting and making a concrete pathway through it. The defendant raised a preliminary objection challenging the maintainability of the suit on the ground that the plaintiff has not issued a statutory notice under S.249(1) of the Kerala Panchayat Raj Act, 1994, against the Secretary before instituting the said suit.

Per contra, the plaintiff contended that the cause of action had arisen on an apprehension that the defendant will do some unlawful activity, by way of trespassing into the property and cutting trees, without his consent.

Is statutory notice under Section 249(1) required? Explain.

- 34) What are the presumptions as to negotiable instruments?
- 35) Is there any time limit prescribed under the Registration Act to get the document registered from the date of its execution?

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) The larger property comprising the Plaintiff A and B schedule properties belonged to the father of the plaintiff and the defendant. On the death of the father, the plaintiff and the defendant partitioned the larger property in the year 1995. The Plaintiff A schedule property was allotted to the plaintiff and the Plaintiff B schedule property was allotted to the defendant. The Plaintiff C schedule way is the only way to the Plaintiff A schedule property. It forms part of Plaintiff B schedule property and runs through it. A suit for declaration of easement right and injunction was instituted in 2020 when the defendant obstructed the way. According to the plaintiff, he has been using the C schedule way for access to A schedule property since 1995 openly, continuously, peacefully and as a matter of right and thereby

acquired prescriptive easement right over the same. The plaintiff claimed easement of necessity, as well, as originally A and B schedule property, belonged to a common owner and by severance, it devolved upon the plaintiff and the defendant.

Can the plea of prescriptive right of easement and easement of necessity co-exist in a suit?

Can one of the pleas be claimed as an alternative relief?

Examine-in the light of the inherent characteristics of both easements.

- 37) The plaint schedule property originally belonged to late Balakrishnan. The plaintiff and the defendant are his legal heirs. The plaintiff filed a suit for declaration and possessory right over the plaint schedule property on the basis of adverse possession and limitation. According to the plaintiff, even during the lifetime of late Balakrishnan, the plaint schedule property was entrusted to him orally and since the death of late Balakrishnan on 2.2.1980, he has been in continuous, uninterrupted, open, peaceful and hostile possession and enjoyment of the plaint schedule property and he has perfected title over the property by adverse possession and limitation. However, there is no pleading of ouster in the plaint.

The defendant disputed the said case set up by the plaintiff and contended that on the death of Balakrishnan, the plaint schedule property devolved upon the plaintiff and the defendant and the plaintiff is only a co-owner.

The plaintiff produced land revenue payment receipts from 1980 to prove that he paid land revenue in his name. He also gave oral evidence. The defendant gave rebuttal evidence.

Is the claim of the plaintiff based on adverse possession and limitation sustainable? – Explain referring to the principle governing the law of adverse possession, limitation and ouster.

- 38) The plaint schedule house belongs to the plaintiff. The defendant was permitted to use the plaint schedule house by the former owner as per Ext.A1 license deed with a stipulation to pay the license fee of Rs.200/- per month. After the plaintiff obtained right over the house, the defendant continued his occupation in the plaint schedule

house. The period of license stipulated in Ext. A1 is over. Therefore, the plaintiff terminated the license by issuing a lawyer notice. Since there was no compliance, the plaintiff instituted a suit for a mandatory injunction directing the defendant to surrender possession of the plaint schedule house and to realize the arrears of the license fee.

The defendant admitted that the plaint schedule house belongs to the plaintiff. But, contended his status is that of a lessee, not a licensee. According to him, he was the tenant of the house under the former landlord and after his death, he continued the occupation. He further contended that while he was in occupation of the house as a tenant, merely 3 years after the original oral entrustment, the former landlord brought a written document and required him to sign the same. He was made to understand that the written document was one evidencing the terms and conditions in the original oral rental arrangement that came into existence way back in 1988. He also contended that Ext.A1 licence agreement was never acted upon and it is only a sham document. According to the defendant, since he is a tenant in respect of the plaint schedule house, he is entitled to get the benefit under the provisions of the Kerala Building (Lease and Rent Control) Act and the suit for eviction is not maintainable.

The plaintiff was examined as PW1. The licence deed was marked as Ext.A1. One of the witnesses to Ext A1 was examined as PW2. The defendant did not mount the box, on his behalf, his wife was examined as DW1.

What is the nature of the jural relationship between the plaintiff and the defendant?

What are the factors that distinguish a lease from a licence?

- 39)(a) Abdulla married Asma in the year 1990 in accordance with the customary Muslim religious rites. Four children have been begotten in the marriage. During the subsistence of the said marriage, Abdulla contracted another marriage with one Aysha and started residing with her. Can Asma seek dissolution of marriage under the Dissolution of Muslim Marriage Act, 1939 on the plea that her husband contracted second marriage? – Explain with reference to clause 2(viii)(f) of the Dissolution of Muslim Marriage Act, 1939?

(4 marks)

- (b) Can a Muslim wife repudiate the marriage with her husband *dehors* the provisions of the Dissolution of Muslim Marriage Act, 1939? – Explain with reference to the latest case law. (4 marks)
- 40)(a) The landlord sought eviction under Section 11(3) of the Kerala Building (Lease and Rent Control), Act, 1965 for his own occupation to start a business. The eviction was granted and the order has become final. At the execution stage, the landlord died and his legal heirs were impleaded.
- The tenant raised a contention that on the death of the landlord, the order of eviction on the ground of his personal need became nullity and not executable.
- Is the contention sustainable? Are the legal representatives of the landlord entitled to execute the order? (3 marks)
- (b) What is the distinction between grounds for eviction under Section 11(3) and 11(8) of the Kerala Building (Lease and Rent Control), Act, 1965? (5 marks)
- 41) What are the powers and functions of Lok Adalat and Permanent Lok Adalat?
- 42) What are the documents of which registration is compulsory? What are the effects of the non-registration of documents required to be registered?
- 43) How the market value of the property/building is determined for the purpose of court fee and jurisdiction?

KERALA JUDICIAL SERVICE MAIN (WRITTEN) EXAMINATION, 2022

Marks:100

Duration: 3 Hours

PAPER - III

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 person in charge of a Private Hospital contravenes the provisions of Section 357C of the Cr.P.C., which provides for providing first aid/medical treatment free of cost to the victims of certain offences. Under which provision of law, can the accused be prosecuted?
 - (A) Section 159 of the IPC
 - (B) Section 166 of the IPC
 - (C) Section 166B of the IPC
 - (D) Section 171E of the IPC

- 2) Raju strikes George. George, by this provocation, is excited to violent rage. Sasi, a bystander, intending to take advantage of George's rage and to cause him to kill Raju, puts a knife into George's hand. George kills Raju with the knife. What offence is committed by Sasi?
 - (A) Culpable homicide
 - (B) Culpable homicide not amounting to murder.
 - (C) Murder
 - (D) None of the above.

- 3) Can a woman who causes herself to miscarry be punished for the offence under Section 312 of the IPC?
 - (A) No.
 - (B) Yes
 - (C) Does not apply
 - (D) None of the above.

- 4) Mr. Ramesh, the owner of a vicious dog, incites the dog to spring upon Mr. Gopi, without his consent with intent to cause annoyance to Mr. Gopi. Is any offence attracted?
- (A) Simple hurt (B) Assault
(C) Criminal force (D) Act causing slight harm
- 5) M/s. X., a carrier company, is entrusted by Mr. Arun with property to be carried by land. M/s. X, misappropriates the property. Which offence is attracted?
- (A) Criminal misappropriation (B) Criminal breach of trust
(C) Cheating (D) Theft
- 6) The fact in issue before the Court of Session is whether Mr. X murdered Mrs. Y. Under which provision of the Indian Evidence Act, 1872 the marks on the ground, produced by a struggle near the place where the murder was committed would be relevant?
- (A) Section 6 of the Indian Evidence Act
(B) Section 7 of the Indian Evidence Act
(C) Section 8 of the Indian Evidence Act
(D) Section 9 of the Indian Evidence Act
- 7) In which judgment did the Hon'ble Supreme Court conclude that the special provisions of Section 65A and Section 65B of the Indian Evidence Act are a complete code in themselves when it comes to the admissibility of evidence of information contained in an electronic record?
- (A) State (NCT of Delhi) v. Navjot Sandhu Alias Afsan Guru [(2005) 11 SCC 600]
(B) Shafiq Mohammad v. State of HP [(2018) 5 SCC 311]

- (C) Tomaso Bruno and Another v. State of U.P.
[(2015) 7 SCC 178]
- (D) None of the above
- 8) Mr. X. was brutally assaulted by deadly weapons by Mr. Y., and he suffered serious injuries. In anticipation of Mr. X's death, the treating doctor recorded his dying declaration. Mr. X survives. His statement is admissible under which provision?
- (A) Section 32 of the Indian Evidence Act
- (B) Section 155 of the Indian Evidence Act
- (C) Section 157 of the Indian Evidence Act
- (D) None of the above
- 9) Mr. M is a person who is unable to speak. He is called as a witness in a Court of law. To the questions put to him, he responds by writing down the answers. The evidence so given shall be deemed to be
- (A) Oral evidence (B) Documentary evidence
- (C) Real evidence (D) None of the above
- 10) Which among the following offences under the NDPS Act, 1985 is triable by the Magistrate?
- (A) Section 20(b)(ii)(A) (B) Section 20(b)(ii)(B)
- (C) Section 20(b)(ii)(C) (D) None of the above.
- 11) Mr.X is a person of unsound mind. Under the influence of madness, Mr.X attempts to kill Mrs. Y. Is Mrs. Y entitled to plead the right of private defence which she would have if Mr. X were sane?
- (A) Yes. (B) No.
- (C) will not fall within the (D) None of the above
General Exceptions

- 12) Sri. Gopalan institutes a civil suit for declaration of easement right and injunction. The defendant files an affidavit containing defamatory allegations against the plaintiff. Will it amount to publication under Section 499 of the IPC?
- (A) Yes (B) No
(C) Will not be as it is a document filed in court. (D) None of the above.
- 13) Under which enactment is the Traffic Regulatory Committee constituted within the limits of the local authority.
- (A) Kerala Road Safety Act, 2007
(B) Motor Vehicles Act, 1988
(C) Kerala Motor Vehicles Taxation Act, 1976
(D) The Kerala Police Act, 2011
- 14) Penalty for breach of which among the following orders issued under the Protection of Women from Domestic Violence Act, 2005 is punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to rupees twenty thousand or with both.
- (A) Residence Order (B) Monetary relief
(C) Custody orders (D) Protection order
- 15) Possession of forged or counterfeit currency notes punishable under Section 489C IPC carries punishment of imprisonment of either description for a term which may extend to 7 years or with fine or with both. The offence is:
- (A) Cognizable and Non-bailable. (B) Cognizable and Bailable
(C) Non-cognizable and Bailable (D) None of the above.

PART- II

Answer any 15 questions. Answers 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 marks = 45 marks)

- 16) What is the imprisonment that a court can impose for non-payment of fine, when offence is punishable with fine only?
- 17) A surgeon in good faith communicates to a patient his opinion that he cannot live. The patient dies as a consequence of the shock. Has the surgeon committed any offence? Can he plead the benefit of any of the exceptions in the Indian Penal Code? Explain.?
- 18) Mr. Smith knowing that he is likely to cause the death of Mrs. Anne, a pregnant woman, inflicts a stab injury on her abdomen, which, if it caused the death of the woman, would have amounted to culpable homicide. Though Mrs. Anne suffered serious injuries, she does not die, but it causes the death of the unborn quick child with which she is pregnant. Is Mr. Smith guilty of any offence under the IPC? Explain.
- 19) The relative of a woman subjects the woman to mental cruelty, which is of such a nature as is likely to drive the woman to commit suicide. However, the woman has no case that there was any sort of harassment with a view to coercing her or any person related to her to meet any unlawful demand for property or valuable security. Will the offence under Section 498A IPC be attracted? Explain.
- 20) A person is charged for the offence punishable under Sections 304B and 498A of the IPC. One of the pieces of evidence relied on by the prosecution is the dying declaration of the deceased. The trial court proceeds to acquit the accused for the offence under Section 304B of the IPC. Can the statement of the deceased taken on record with the aid of Section 32 of the Evidence Act be used against the accused to convict him under Section 498A of the IPC?
- 21) What is 'Real Evidence'?

- 22) If in any proceeding, the Court has to form an opinion on any matter relating to information transmitted or stored in any computer resource or any other electronic or digital form, whose opinion can be sought? Explain.
- 23) Mr. X. was charged for transporting illicit liquor in a vehicle. The vehicle was seized and confiscation proceedings were initiated. Independently, he was tried by the criminal court and was acquitted of all charges. Would this prevent the Abkari Officer in making an order of confiscation under Section 67B(2) of the Abkari Act? Explain.
- 24) Under Section 138 of the Negotiable Instruments Act, an accused can be punished for a term which may extend to 2 years or with fine which may extend to twice the amount of the cheque. Which is the Court empowered to try the offence and what is the procedure to be followed?
- 25) In the year 2018, a chit company having branches all over the State of Kerala filed a complaint in the Court of the Judicial Magistrate of the First Class, Ernakulam, under Section 138 of the NI Act, against Mr. Suresh, alleging dishonour of a cheque drawn by the said person. Thereafter, separate complaints are filed against the same person before the respective jurisdictional Magistrates at Kottayam, Alappuzha, Kollam and Thiruvananthapuram. Can the accused seek transfer or whether the cases are to be tried separately. Elucidate.
- 26) Mr. X was found in unlawful possession of 21 kgs. of Ganja and he was arrested and remanded. What are the considerations that are to be borne in mind by the jurisdictional court while considering the application for regular bail. Explain?
- 27) If information is given by a woman to the police that her photograph is being propagated in a manner affecting her reasonable privacy through social media, can any action be taken against the service provider or any person in charge of a public place to prevent such occurrence. Explain?
- 28) Offences under Sections 116, 117, 118 and 119 of the Kerala Police Act are cognizable and bailable. Notwithstanding the same, are there

any limitations on the power of the police officer to arrest the offender? Explain?

- 29) What are the circumstances which enable the court that convicts the accused to release certain offenders after admonition?
- 30) A complaint was lodged against Mr. Stephen by his wife invoking the provisions of the Protection of Women from Domestic Violence Act, 2005. An interim protection order was passed by the Magistrate. Alleging that Mr. Stephen committed breach of the protection order, a complaint is lodged before the Magistrate who passed the protection order. Facts narrated in the complaint disclosed that Mr. Stephen had subjected his wife to cruelty as defined under Section 498A of the IPC and demanded dowry in violation of the Dowry Prohibition Act, 1961. What is the action, if any, to be taken by the Magistrate?
- 31) How is the process of age determination undertaken when a person is brought before the Committee or the Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2015? Explain with reference to case laws.
- 32) Against an order of confiscation passed by a Forest Officer under Section 61A of the Kerala Forest Act, 1961, what is the remedy available to a person aggrieved?
- 33) A person trespasses into land proposed to be constituted a reserve forest and allegedly damages an embankment fence. Would this act constitute an offence under the Kerala Forest Act, 1961. Explain.
- 34) What are the circumstances under which a notice to produce as contemplated under Section 66 of the Indian Evidence Act can be dispensed with by the court?
- 35) Does the Indian Evidence Act confer powers on the court to forbid any questions that it regards as indecent or scandalous? Are there any exceptions? Explain.

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 marks = 40 marks)

- 36) What are the five golden principles which constitute the panchsheel of the proof of a case based on circumstantial evidence? Discuss by relying on the case law.
- 37) Explain the principles with regard to admissibility of electronic record by referring to case laws.
- 38) Section 114 of the Indian Evidence Act, 1872 says that the Court may presume existence of certain facts. Explain
- 39) When will the right of private defence of the body extend to causing death?
- 40) Explain "Trafficking of a person"?
- 41) Mr.Sasi is a prime witness in a case of murder. He has furnished a detailed statement to the police revealing certain aspects of the prosecution version. Can Mr.Sasi be cross-examined without his statement being shown to him? What is the procedure to be followed if it is intended to contradict him? Explain.
- 42) While carrying out the seizure and sampling of contraband liquor, the Abkari Officer failed to comply with the provisions of the Kerala Excise Manual. Is the same a ground for acquittal of the accused? Explain.
- 43) Explain the powers of the Court trying an offence under Section 138 of the Negotiable Instruments Act, 1881 to direct the grant of interim compensation.

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KERALA JUDICIAL SERVICE MAIN (WRITTEN) EXAMINATION, 2022

Marks:100

Duration: 3 Hours

PAPER – IV

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) Which among the following statements relating to framing of issues in terms of Rule 1(5) of Order XIV of the Code of Civil Procedure, 1908 is incorrect?
 - (A) Every issue of fact shall be so framed as to indicate on whom the burden of proof lies.
 - (B) Every issue of law shall be framed only by reference to the pleadings or documents mentioned in the pleadings.
 - (C) No proposition of fact which is not by itself is a material proposition, but is relevant only as tending to prove a material proposition, shall be made the subject of an issue.
 - (D) No question regarding admissibility of evidence shall be made the subject of an issue.

- 2) Which among the following is the course of action to be adopted by a Munsiff when a suit in which he is personally interested comes before him?
 - (A) He shall transmit forthwith the record of such suit to the Court of the Subordinate Judge having territorial jurisdiction over the subject matter with the report of the circumstances attending the reference.
 - (B) He shall transmit forthwith the record of such suit to the District Court with the report of the circumstances attending the reference.
 - (C) He shall transmit forthwith the record of such suit to the High Court with the report of the circumstances attending the reference.
 - (D) None of the above.

- 3) Which among the following statements relating to a suit under Section 92 of the Code of Civil Procedure, 1908 dealing with public charities is incorrect?
- (A) A suit under Section 92 could be instituted only by the Advocate General or two or more persons having an interest in the Trust
 - (B) A suit under Section 92 is to be instituted in the Principal Civil Court of original jurisdiction or in any other court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject matter is situate.
 - (C) A suit under Section 92 would lie only in the case of any alleged breach of any express or constructive Trust created for the purposes of a charitable or religious nature.
 - (D) A court dealing with a suit under Section 92 is empowered to grant only the reliefs provided for in the Section.
- 4) Which among the following statements relating to death of parties to a suit is incorrect?
- (A) Where a question arises before the appellate court as to whether any person is or is not the legal representative of a deceased party, the appellate court shall decide the question.
 - (B) Where death occurs between the conclusion of the hearing and the pronouncement of the judgment, the judgment can be pronounced notwithstanding the death, irrespective of the fact as to whether the cause of action survives or not.
 - (C) Where the legal representatives of a party are already on record, the death does not result in abatement of the suit, whatever may be the capacity in which the legal representatives are arrayed in the suit.
 - (D) Where a party against whom no relief is sought in the suit dies, the death does not result in abatement of the suit.
- 5) Which among the following statements relating to compelling of attendance of a person to whom summons has been issued under Section 30 of the Code of Civil Procedure, 1908 is incorrect?
- (A) The court may compel attendance by issuing a warrant of arrest.

- (B) The court may compel attendance by attaching and selling the properties of the person concerned.
 - (C) The court may compel attendance by ordering the person concerned to furnish security for his appearance and in default commit him to civil prison.
 - (D) The court may compel attendance by imposing fine upon the person concerned not exceeding ten thousand rupees.
- 6) Which among the following statements relating to pleadings in a suit is incorrect?
- (A) The court may, at any stage of the proceedings, direct any party to a suit to amend any matter in any pleading which may tend to prejudice the fair trial of the suit.
 - (B) Wherever it is material to allege a condition of mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.
 - (C) Where a contract is alleged in any pleading a bare denial of the same by the opposite party shall be construed as a denial of legality or sufficiency in law of such contract as well.
 - (D) Wherever it is material to allege notice to any person of any fact, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.
- 7) Which among the following statements relating to execution of decree against a partnership firm is incorrect?
- (A) Where a decree has been passed, execution may be granted against any property the partnership was holding at the time of the decree.
 - (B) Where a decree has been passed, execution may be granted against any person who has been individually served as a partner with a summons and has failed to appear.
 - (C) Where a decree has been passed, execution may be granted against any person who has appeared in his own name under Rule 6 or Rule 7 of Order XXX of the Code of Civil Procedure, 1908 or who has admitted on the pleadings that he is or who has been adjusted to be a partner.

- (D) Where a decree has been passed, the same can be executed against persons other than those mentioned in options (B) and (C) above also.
- 8) Which of the following statements relating to foreign judgments is incorrect?
- (A) A foreign judgment shall not be conclusive as to any matter thereby adjudicated upon between the parties where it has been obtained by fraud.
 - (B) A foreign judgment shall not be conclusive as to any matter thereby adjudicated upon between the parties where it sustains a claim founded on a breach of any law in force in India.
 - (C) A foreign judgment shall not be conclusive as to any matter thereby adjudicated upon between the parties where the proceedings in which the judgment was obtained are opposed to natural justice.
 - (D) A court shall not presume, upon mere production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a court of competent jurisdiction, unless the contrary is established.
- 9) A trial in a criminal case can be stated to commence when,
- (A) the final report is laid under Section 173 of the Cr.P.C.
 - (B) when the court takes cognizance of the offence
 - (C) when the charge is framed and the plea is taken
 - (D) when examination of witnesses commences.
- 10) In the course of trial, the Sessions Judge finds that some of the provisions of Section 164 of the Cr.P.C. have not been complied with by the Magistrate who recorded the confession statement. Which provision in the Code of Criminal Procedure, 1973 enables the Sessions Judge to take evidence in regard to such non-compliance and admit the said statement if the court is satisfied that such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded?
- (A) Section 374 of the Cr.P.C.
 - (B) Section 446 of the Cr.P.C
 - (C) Section 463 of the Cr.P.C
 - (D) Section 473 of the Cr.P.C

- 11) An order of acquittal is passed by the learned Magistrate on a complaint lodged by the complainant under Section 138 of the Negotiable Instruments Act, 1881. Under which provision of the Code of Criminal Procedure, 1973 will an appeal lie?
- (A) Section 372 of the Cr.P.C. (B) Section 374(1) of the Cr.P.C.
(C) Section 378(4) of the Cr.P.C. (D) Section 397 (1) of the Cr.P.C.
- 12) Besides Section 209 of the Code of Criminal Procedure, 1973, which provision in the Code enables the Magistrate to commit the case to the Court of Session if the conditions mentioned in the section are satisfied?
- (A) Section 193 of the Cr.P.C (B) Section 213 of the Cr.P.C
(C) Section 323 of the Cr.P.C (D) None of the above
- 13) An offence punishable with imprisonment for a term of 4 years is committed by a person. What is the period of limitation prescribed under the Cr.P.C. for filing the complaint to prosecute the accused?
- (A) 6 months. (B) 1 year
(C) 3 years (D) None of the above.
- 14) In a summons case instituted otherwise than upon a complaint, after the evidence of the principal witnesses was recorded, the learned Magistrate, with the previous sanction of the Chief Judicial Magistrate, decides to stop the proceedings. Which among the following is to be passed by the learned Magistrate?
- (A) Order release of the accused (B) Order discharge
(C) Pronounce a judgment of acquittal. (D) None of the above.
- 15) Section 223 of the Cr.P.C. says that persons accused of certain offences may be charged and tried together. Which among the following is an incorrect statement.
- (A) persons accused of the same offence committed in the course of the same transaction
(B) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence
(C) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months
(D) persons accused of different offences committed in the course of different transactions

Part – II

Answer any eleven questions. Answers shall not exceed 160 words (1 ½ 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 5 marks = 55 marks)

- 16) When a deposition has been read over to the witness, he pointed out a mistake as well as an omission in the deposition. The court was convinced of the omission pointed out, but not of the mistake stated to have been committed. What is the course of action to be adopted by the court to tackle the situation?
- 17) 'A', 'B' and 'C' obtained money decrees against 'X' and filed execution petitions thereupon for enforcement of the said decrees on 17.1.2012, 23.5.2013 and 25.9.2013 respectively. In the meanwhile, in the execution petition filed by 'A', the court attached and sold the only item of property held by 'X' and pursuant to the sale, the purchaser deposited the sale proceeds in court on 20.8.2013. 'B' as well as 'C' thereupon claimed rateable distribution of the sale proceeds. The court declined rateable distribution to both 'B' and 'C'. Discuss the correctness or otherwise of the decision with relevant statutory provision concerning rateable distribution, its object and the conditions to be fulfilled for claiming rateable distribution.
- 18) 'A' entered into a contract with 'B' at Bangalore for distribution of the products of 'A' in Ernakulam. 'B' is a person residing in Ernakulam. The agreement contains a clause to the effect that "in case of any dispute between the parties as to their rights and liabilities, 'A' shall have to either approach the court of competent jurisdiction in Bangalore for relief or refer the dispute to arbitration." Later, when a dispute arose, 'A' did not exercise the options available to him and instead, chose to approach the court of competent jurisdiction in Ernakulam for relief. 'B' raised an objection as to the jurisdiction of the court to entertain the suit in the light of the clause in the agreement. The court repelled the objection. Is that decision right? Discuss the correctness or otherwise of the decision with relevant statutory provisions.
- 19) 'A' instituted a suit for recovery of Rs.2,00,000/- against 'X' on a promissory note. 'X' admitted the liability under the promissory note. 'X', however, contended that on a day after the amount under

the promissory note became due, 'A' and his henchmen trespassed into his residential property and caused damage to the various movables therein, infuriated by his conduct in not honouring the payment under the promissory note on time; that the loss caused to him in this regard is Rs.2,00,000/- and claimed set-off of the liability under the promissory note on that basis. Discuss the sustainability or otherwise of the said claim of set-off with relevant statutory provision.

- 20) In the event of a supervening event or death of one of the parties to a suit for partition after the passing of the preliminary decree resulting in change in the quantum of shares to which the parties are entitled to, what shall be the course open to the court for adjustment of the shares of the parties at the time of passing of the final decree? Discuss with reference to the statutory provision in the Code of Civil Procedure, 1908 dealing with the decree to be passed in a suit for partition.
- 21) When a suit for damages instituted by a party to a works contract against the other for the loss caused to him on account of the breach of the terms of the agreement was taken up for preliminary hearing, it appeared to the court that the dispute is one fit to be resolved by recourse to arbitration in terms of Section 89 of the Code of Civil Procedure, 1908, and ascertained from the parties as to whether they are willing to resolve the dispute by recourse to arbitration. The parties pointed out to the court that there is no pre-existing agreement between them to resolve the dispute by recourse to Arbitration and Conciliation Act, 1996. What are the courses open to the court to discharge its function under Section 89 of the Code of Civil Procedure, 1908? Discuss.
- 22) Why does the leave of the court which appoints the Receiver is insisted upon for initiation of proceedings against the Receiver? When does the appointment of the Receiver and the responsibility of the Receiver to the Court come to an end? Discuss with reference to statutory provisions, if any.
- 23) 'A' sued 'B' in a representative capacity for prohibitory injunction. Notice was given of the institution of the suit to all persons interested by public advertisement under sub-rule (2) of Rule 8 of the Code of Civil Procedure, 1908. In the course of the suit, a compromise was arrived at between 'A' and 'B' and the suit was decreed based on the compromise. What are the statutory provisions which were not complied with in the matter of passing such a decree? Give particulars of such provisions and discuss as

to whether such a decree would bind the defendant and persons interested in the suit.

- 24). Can the provisions of the Code of Criminal Procedure, 1973 be invoked for the investigation, inquiry, or trial of a person prosecuted under the Army Act, 1950. Explain with reference to the relevant provisions in the Code of Criminal Procedure.
- 25) What is the procedure to be followed by a Judicial Magistrate who on receipt of a complaint of which he is competent to take cognizance, finds that the accused is residing in the adjacent District? Explain with reference to the relevant statutory provision and case law.
- 26) Discuss the concept of 'Issue Estoppel' in criminal proceedings.
- 27) What are the circumstances under which the police can conduct further investigation after laying the final report? Is the investigating officer required to take formal permission from any authority?
- 28) Mr. Rajan is accused of committing the offence of robbery. He absconded and there were materials before the court suggesting that there is no immediate prospect of securing his presence or arresting him. In his absence, can the court competent to try the offence, examine the witnesses and if the evidence is recorded, can the same be used against the accused and if so, under what circumstances?
- 29) In a case instituted otherwise than on a police report, it is made to appear to the Magistrate, in the course of inquiry held by him, that an investigation by the police is in progress in relation to the offence which is the subject matter of the enquiry or trial held by him. What is the procedure to be followed by the Magistrate?
- 30) Mr. X has several previous convictions to his credit. The prosecution intends to prove those previous convictions against Mr. X for the purpose of effecting his punishment under Sections 236 and 248 (3) of the Cr.P.C. What are the aspects that are to be borne in mind while framing the charge? Explain.

Part - III

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

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

- 31) Prepare a Judgment on the following materials, after framing the issues.

The case of the plaintiff in the plaint is that the property on the western side of the property of the plaintiff scheduled in the plaint belongs to the defendant; that on 03.07.2015, a tree which stood in the property of the defendant fell into the property of the plaintiff causing damage to the compound wall, pipeline and roof of the building in the property of the plaintiff; that the tree that fell into the property of the plaintiff was in a dangerous condition; that since damage was caused to the structures in the property of the plaintiff on account of the fall of the tree, the plaintiff called upon the defendant to compensate him to the tune of Rs.50,000/- by issuing a lawyer's notice and that the defendant has sent a reply to the lawyer's notice denying the liability. The prayer in the suit was for a decree permitting the plaintiff to recover a sum of Rs.50,000/- from the defendant with future interest at the rate of 18% per annum charged on the property of the defendant.

The defendant contested the suit contending, among others, that the tree which fell down was not in a dangerous condition; that the tree had not fallen down on account of any act of the defendant, but on account of the rain and strong winds; that the defendant is, therefore, not liable to the plaintiff for any loss caused to him as the cause for the fall of the tree was a *vis major*; that the alleged damage was exaggerated and that the amount claimed by way of damages is exorbitant.

In the course of the suit, an Advocate Commissioner was appointed to ascertain and report as to the extent of the damage and the loss caused to the plaintiff on account of the fall of the tree. The Advocate Commissioner reported that the loss caused to the plaintiff on account of the fall of the tree is Rs.30,000/-. Neither the plaintiff nor the defendant filed objection to the Commissioner's report.

When the case came up for trial, the plaintiff gave evidence as PW1 in tune with the plaintiff averments. In addition, it was specifically deposed by the plaintiff that the roots of the tree which fell down had in fact crossed over to the property of the plaintiff.

The lawyer's notice and the reply to the lawyer's notice were marked as Ext.A1 and Ext.A2 respectively on the side of the plaintiff.

Although the evidence tendered by the plaintiff in his deposition that the tree was in a dangerous condition was seriously challenged in cross examination, the defendant did not cross examine the plaintiff on his testimony that the roots of the tree had crossed over to the property of the plaintiff.

Despite the fact that the evidence tendered by the plaintiff that the tree was in a dangerous condition was seriously challenged in cross examination, the plaintiff did not give any independent evidence to prove his case that the tree was in a dangerous condition.

The defendant gave evidence as DW1 in tune with the averments in the written statement filed by him admitting the fall of the tree. In the evidence given by the defendant, he did not dispute the fact that the roots of the tree had in fact crossed over to the property of the plaintiff. No other witness was examined on the side of the defendant.

- 32) On 13.12.1997, at about 7.30 pm, the accused Nos. 1 and 2, in furtherance of their common intention voluntarily caused hurt to PWs 1 to 3 and grievous hurt to PW4 by beating them with sticks and thereby committed the offences punishable under Sections 324 and 326 r/w. Section 34 of the IPC. The alleged incident took place in a road in front of the shop of PW5. On appearance, the accused pleaded not guilty to the charge and claimed that they be tried.

On the side of the prosecution, PWs 1 to 9 were examined and Exts.P1 to P9 were marked.

PW1 is the injured who lodged Ext.P1 FI Statement. He deposed before court that on the relevant day, he heard a hue and cry and rushed to the place in front of the shop of PW5. On reaching there, he saw PWs 2 to 4 being attacked by the accused with wooden sticks. PWs 2 and 3 sustained injuries on their head

and PW4 sustained a fracture on his left hand. When he attempted to interfere and dissuade the accused, he was also attacked and injuries were inflicted. He identified the sticks which were used by the accused to attack him and the other injured. In cross-examination, he added that the accused had taken the wooden sticks from behind the shop of PW5.

PW2 is another injured witness, who stated before court that he was attacked with a stick by the 1st accused consequent to which he suffered an injury on the left elbow. He stated that the 2nd accused also attacked him with a stick causing a lacerated wound on his eyebrow. During cross-examination, he deposed that he had occasion to witness the infliction of injuries with sticks by the accused on PWs 1, 3 and 4. He also identified the wooden sticks.

PW3 stated that he sustained injuries at the hands of the accused. He stated that accused Nos. 1 and 2 inflicted injuries on his body with the sticks in their possession. He also stated that he had suffered a fracture on the right metacarpal.

PW4 is another injured witness who stated that on 13.12.1997 at about 7.30 pm, he was attacked by accused Nos. 1 and 2. He stated that he has lost sight of the left eye as a result of the injuries inflicted. In cross-examination, he denied the assertion that the injuries were sustained consequent to a fall. He also identified the weapons used by the accused.

PW5 is a person who was running a tea shop near to the place of occurrence. He stated that on the relevant date, he had no occasion to witness the incident in which the accused had attacked PWs 1 to 4 with wooden sticks and caused injuries. He was declared hostile to the prosecution, and the Public Prosecutor was permitted to cross-examine the said witness. He, however, stated that no such incident had taken place.

PW6 is the Head Constable, who recorded Ext.P1 FI Statement and prepared Ext.P1(a) series body notes of PWs 1 to 4.

PW7 is the doctor who treated the injured and issued Ext.P2, P3, P4 and P5 wound certificates in respect of PWs 1 to 4. She stated that the alleged cause of injury mentioned in the wound certificates is "attacked with sticks". She also opined that the injuries found on the bodies of the injured can be caused as alleged.

PW8 is the attester to Ext.P7 scene mahazar.

PW9 is the Sub Inspector of Police who conducted the investigation. He prepared Ext.P7 scene mahazar and recovered MOs 1 to 4 wooden sticks. He submitted Ext.P8 report before the court giving details of the name and address of the accused.

When the accused were questioned under Section 313 of the Cr.P.C., they stated that they are innocent of the allegations and the allegations are false.

On the side of the defence, DW1 was examined to prove that there was a property dispute between the family of 1st accused and PW2. In cross examination, he stated that he had come to know that PWs 1 to 4 had sustained injuries in connection with an incident and they were admitted in the hospital.

Write a judgment based on the above facts.

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