

# THE HIGH COURT OF KERALA

KERALA STATE HIGHER JUDICIAL SERVICE MAIN (WRITTEN) EXAMINATION, 2023

## PAPER - I

Date of Examination: 19.08.2023

Roll Number:

Maximum Marks: 150

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

### INSTRUCTIONS TO THE CANDIDATES

1. Candidates should write their Roll Number in their Question Booklets at the space provided for the purpose.
2. Candidates should not open their Question Booklets before 10 a.m.
3. **This Question Booklet has three parts:- Part-A, Part-B and Part-C.** In **Part-A**, there are 30 Objective Multiple Choice Type questions carrying 2 marks each. **These shall also include questions having multiple correct answers and in such questions all the correct answers are to be marked.** If the candidate darkens any of the wrong answer options or darkens only a part of the correct answer options, it will be treated as incorrect answer. All the questions are to be attempted. In **Part-B**, there are 12 descriptive type questions (to be answered in not exceeding 75 words) carrying 6 marks each. Of these 12 questions, 10 questions are to be attempted (the first 10 answers alone will be evaluated if more than 10 questions are answered). The only one question in **Part-C** (Judgment Writing) carrying 30 marks is compulsory.
4. After opening the Question Booklet at 10 a.m., ensure that it has three parts-**Part-A, Part-B and Part-C**, that there are **30** Objective Multiple Choice Type questions in Part-A, **12** descriptive type questions in Part-B and **one** question in Part-C. If there are any missing or illegibly printed questions, the matter should be brought to the notice of the Invigilator immediately and the Question Booklet should be got replaced.
5. Answers to the questions in **Part-A** of the Question Booklet should be marked in the OMR Answer Sheet bearing Serial **(A)** which will be evaluated using OMR software.
6. Answers to the questions in **Part-B** of the Question Booklet should be written in the Answer Book bearing Serial **(B)**. It should be tied separately using the piece of twine provided.
7. Answer to the question in **Part-C** of the Question Booklet should be written in the Answer Book bearing Serial **(C)**. It should be tied separately using the piece of twine provided.
8. The candidate may choose the Part to be answered first. But, the answers to the questions in each Part of the Question Booklet should be written only in the OMR Answer Sheet/Answer Book meant for the respective Part. If the candidates write answers to the questions in a particular Part of the Question Booklet in the Answer Book meant for a different Part, those answers will not be evaluated.
9. The candidates should use only **BLACK/BLUE INK** ballpoint pen for filling the various entries and marking answers in the Serial **(A)** OMR Answer Sheet. But, the candidates may use **BLACK/BLUE INK** fountain pen/Ballpoint pen for filling the various entries and writing answers in the Serial **(B)** and Serial **(C)** Answer Books. Use of pencil, Gel pen or sketch pen and use of any colour ink other than black/blue is not permitted.
10. No candidate will be allowed to leave the examination hall without handing over the OMR Answer Sheet bearing Serial **(A)** and the separately tied answer books bearing Serial **(B)** and Serial **(C)** to the Invigilator. Candidates can take the Question Booklet with them.
11. Answer Key to the questions in **Part-A** of the Question Booklet will be published in the website [www.hckrecruitment.nic.in](http://www.hckrecruitment.nic.in) after the examination.
12. Strict compliance of instructions is **essential**. Any malpractice or attempt to commit any kind of malpractice in the examination will result in summary disqualification of the candidate.

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**Part - A**

[In this part, there are 30 Objective Multiple Choice Type questions carrying 2 marks each. These shall also include questions having multiple correct answers and in such questions, all the correct answers are to be marked. If the candidate darkens any of the wrong answer options or darkens only a part of the correct answer options, it will be treated as incorrect answer. All the questions are to be attempted. There will not be negative mark for incorrect answer. Answers to the questions in this part should be marked in the O.M.R. answer sheet bearing serial No. (A). Answers marked elsewhere will not be evaluated.]

1. The buyer is put in possession of the property in pursuance of an agreement for sale. The buyer put up a building on that property with the knowledge of the seller. The seller files a suit for recovery of possession. The defendant sets out a counter claim for return of advance sale consideration and value of the building he has put up in the property. If so, which among the following is the correct statement?
  - A. Both suit and counter claim shall fail if the agreement is not registered
  - B. The defendant is not entitled to get value of the building
  - C. The defendant is entitled to claim value of the building only if the seller consented in the agreement itself to construct the building
  - D. The defendant is entitled to get value of the building
  
2. In a suit for specific performance of an agreement for sale, a decree for return of advance sale consideration was passed holding that breach was on the part of the seller. The court ordered attachment in the execution proceedings, but the property in question was sold just before passing the decree. The answer and the reason thereof to the question whether that property can be brought on sale in the execution proceedings is.....
  - A. No, since the attachment was ordered only after the sale
  - B. No, since no sale is possible without an effective attachment
  - C. Yes, since there is a statutory charge on the property
  - D. Yes, since in every suit for specific performance sale of the property pendente lite is void ab initio

3. Notice under Section 106 of the Transfer of Property Act terminating lease of a residential building was issued on 1.1.2023 asking the tenant to surrender possession on 5.2.2023. The tenant received notice on 1.2.2023 and the suit was filed on 1.3.2023. The tenant contended in the suit for eviction that the suit is bad for want of a valid notice. Which of the following statement is correct?
- A. Suit is maintainable since the suit was filed after the statutory notice period
  - B. Suit is not maintainable since there is no statutory minimum period between the date of receipt of the notice and date for the surrender
  - C. There is no statutory minimum period for such a notice
  - D. Termination notice is not a mandatory requirement for filing a suit after the amendment of Section 106 of the Transfer of Property Act in 2003.
4. Mandatory requirements for a valid Mohammedan gift are.....
- A. declaration of the gift by the donor and acceptance of the gift by the donee
  - B. declaration of the gift by the donor, acceptance of the gift by the donee and execution of a registered document
  - C. declaration of the gift by the donor and delivery of possession to the donee.
  - D. declaration of the gift by the donor, acceptance of the gift by the donee and delivery of possession
5. A suit is filed claiming compensation of Rs. 10 lakhs on the allegation that the defendant breached the contract. At the trial, the plaintiff proved that he was put to serious inconveniences by the breach of the contract by the defendant, but failed to prove the actual loss he had sustained. Which among the following statements is correct in that context?
- A. The court shall quantify the actual loss based on the available evidence and can award that amount alone as compensation
  - B. The court is competent to award reasonable compensation
  - C. The court is bound to award reasonable compensation
  - D. Unless the actual loss is proved, no compensation can be awarded.

6. A work contractor after progressing a considerable part of the work finds that the employer suppressed material facts amounting to fraud. What are the option/s available to the contractor?
- A. Only option of the contractor is to rescind the contract and claim compensation
  - B. Contractor has to complete the work since he already commenced the work
  - C. Contractor can either complete the work or claim compensation after rescinding the contract
  - D. Contractor has to complete the work and then claim compensation for the fraud committed by the employer
7. 'A' and 'B' entered into a contract at Kozhikode relating to works at Ernakulam and Alappuzha. Following disputes out of the contract, a suit was filed by 'A' at Alappuzha. 'B' entered appearance, and produced the agreement and contended that since both parties agreed in it to confine the jurisdiction to courts at Kozhikode, the suit should be dismissed. What shall the court do?
- A. The agreement regulating legal proceedings is void and hence the court shall proceed with the suit
  - B. The agreement regulating legal proceedings is not void and hence the court shall return the plaint to present before the proper court
  - C. The agreement regulating legal proceedings is not void and hence the court shall dismiss the suit
  - D. The agreement regulating legal proceedings is void and hence the court shall dismiss the suit
8. Section 25 of the Contract Act says that a contract which defeats the provisions of a law is void. Whether a circular issued by a Government Department can be treated as law for the purpose of Section 25 of the Contract Act?
- A. Yes
  - B. No
  - C. If the circular is mandatory in nature, it is deemed to be law
  - D. If the circular is directory in nature also, it is deemed to be law

9. The three elements, Reputation, Misrepresentation and Damage to goodwill, known as classical trinity, are the requirements for an action for .....
- A. infringement of trade mark
  - B. passing off a trade mark
  - C. damages in a case where the registered trade mark is infringed
  - D. infringement of a copyright
10. 'A' obtained a trademark registration in 1990. For a product of the same class 'B' obtained trademark registration in 2020. 'A' filed a suit against 'B' for prohibitory injunction alleging infringement of his trademark. Which among the following statements suit to that situation?
- A. 'A' will succeed since he obtained trademark registration first
  - B. 'B' will succeed, if he files a counter claim, since trademark registration was given to 'B' after giving public notice
  - C. 'A' and 'B' cannot sue for infringement
  - D. 'A' cannot sue for injunction, but he can sue 'B' for accounts and damages
11. What is the declaration of negative nature grantable under the Copyright Act, 1957?
- A. That the infringement alleged by the defendant is in fact not an infringement
  - B. That the defendant is not the first owner of the copyright
  - C. That the defendant is not entitled to sue for infringement
  - D. That the defendant is not entitled to demand for accounts and damages
12. The contract entered into between the plaintiff and the defendant is for writing a story for a feature film. The plaintiff filed a suit for a decree and an application for temporary injunction mandating the defendant to write the story within the stipulated time. What is the possible statutory defence available to the defendant?
- A. There is no prima facie case
  - B. The plaintiff would not suffer any irreparable injury
  - C. The contract is not specifically enforceable
  - D. No injunction shall be granted if it relates to artistic creations

13. In relation to a suit under Section 6 of the Specific Relief Act, 1963 which among the following statements is incorrect?
- A. Suit has to be filed within 6 months from the date of dispossession
  - B. No appeal shall lie from the decree in such a suit
  - C. A revision will lie against the decree in such a suit
  - D. Such a suit cannot succeed if the defendant proved his title to the property in question
14. In a suit that arose prior to 2018, the trial court granted a decree for return of advance sale consideration by declining the relief of specific performance. In the appeal, the decree was reversed and a decree for specific performance was granted for the reason that the defendant failed to refund the advance sale consideration and its interest in terms of the trial court decree. Which among the following is the most appropriate remark?
- A. Appellate judgment is correct inasmuch as ordering specific performance is not a discretion
  - B. Nonpayment of the advance sale consideration and its interest is not a reason for reversing the decree
  - C. Appellate judgment is correct since the defendant forfeited his right to defend the relief of specific performance on account of his default in making the payment
  - D. Nonpayment of the advance sale consideration and its interest is a sufficient reason for reversing the decree
15. A petition for dissolution of a Hindu Marriage cannot be filed within one year of the marriage and if it is petition by mutual consent, a decree shall not be granted before six months of its presentation. Can those periods be waived and if so, how?
- A. Six months period can be waived by virtue of judicial precedents and one year period can be waived by virtue of statutory provisions
  - B. One year period can be waived by virtue of judicial precedents and six months period can be waived by virtue of statutory provisions
  - C. Both can be waived by virtue of statutory provisions
  - D. Both can be waived by virtue of judicial precedents.

16. Which is the situation where the property of a female Hindu devolves upon the heirs of the husband?
- A. If a Hindu widow dies intestate and does not leave behind children and grandchildren
  - B. If a Hindu widow dies intestate and does not leave behind her mother, children, and grandchildren
  - C. A Hindu widow who inherited property from her husband dies intestate and does not leave behind children and grandchildren
  - D. A Hindu widow who inherited property from her husband dies intestate and does not leave behind her mother, father, children, and grandchildren
17. Anand claims a right to use a way through the property of Balu. The pleading in the suit is of an easement right by necessity and easement by grant. The documents of title of Anand and Balu do not contain any mention regarding a grant of a right of way. Anand has no other way to reach his property. The evidence would show the user of the way. If Anand is entitled to relief, what should be the legal principle to be applied ?
- A. Court can hold that Anand is entitled to relief on the basis of an implied grant
  - B. Court can give relief on the basis of easement by necessity
  - C. Both 'A' and 'B'
  - D. None of the above
18. In a partition suit regarding the properties of an Ezhava family of Calicut, after the death of Komu who was the Karanavar, who had left behind two sons and a son and daughter of a predeceased son, the Court granted one share each to two male children and one share to the son and daughter of a predeceased son jointly. In a subsequent suit for partition of the properties given to the share of one of the sons, it is contended that the parties are governed by the Mitakshara law which is their customary law. A claim of right by birth is put forward by the grand children of Komu, who were born before the death of Komu and had attained majority at the time of death of Komu. The predeceased son of Komu had died before 1956 and Komu died after 1956. What should be the conclusion ?

- A. The Customary law pleaded is not proved.
  - B. The grandchildren who were alive at the time of the earlier suit are estopped from contending that the parties are governed by Mitakshara law
  - C. Accepting the contention of right of birth will result in reopening the earlier partition and reworking the shares.
  - D. All of the above.
19. Mohammed became the owner of 20 cents of land by way of a release deed executed in his favour. Two years later, he instituted a suit for injunction against Chandran alleging that Chandran has attempted to trespass into the property. The suit was decreed exparte. Chandran did not challenge the decree. Five months later, alleging that Chandran had trespassed into the property after the decree of injunction, Mohammed files a subsequent suit for declaration of title and recovery of possession. Chandran puts forth a claim of kudikidappu right. The trial court referred the matter to the Land Tribunal and the Tribunal found that there was no kudikidappu in the property and that Chandran was not a tenant. However, Mohammed failed to give oral evidence in the suit and his title deed was not marked. The trial Court dismissed the suit since the plaintiff did not produce and mark the title deed and prove his title. An appeal is filed against the judgment and decree. How will you decide the appeal ?
- A. Since the suit is one on title and the title deed is not produced and marked before the Court, the judgment of the trial court has to be affirmed and the appeal be dismissed with costs.
  - B. The appeal should be allowed and the matter be remanded to the trial court for a fresh decision after permitting the plaintiff to produce the title deed and give further evidence.
  - C. Since possession had been found in the earlier suit and contention of Chandran that he is a kudikidappukaran has been found against, the appeal should be allowed and a decree of recovery of possession alone should be granted based on previous undisputed possession
  - D. The appeal should be allowed and title should be declared on the ground that Chandran did not prove his title and recovery of possession should also be decreed consequently

20. Sreedharan and Savithri were husband and wife. They were living in their family house along with Sreedharan's two brothers and their wives. Sreedharan died issueless. Sreedharan's brothers refused to perform the funeral rites of Sreedharan, unless Savithri consented to adopt a son of one of Sreedharan's brothers. Savithri accepted the adoption. Which of the following statements are legally correct ?
- A. The adoption is void
  - B. The adoption is voidable at the instance of Savithri
  - C. Savithri is estopped from contending that she has not accepted the adoption since she derived benefit from the transaction
  - D. None of the above.
21. Read the following assertions and choose the correct option/s
- 1. In a passing off action, the plaintiff should establish fraud or the defendant's state of mind for satisfying the test of misrepresentation to the public.
  - 2. Passing off action is an action based on deceit.
  - 3. The triple tests namely, establish reputation, misrepresentation and likelihood of injury should be satisfied before granting an order in favour of the plaintiff in a passing off action.
- A. All the statements are correct
  - B. Statements 1 and 2 are correct
  - C. Statements 2 and 3 are correct
  - D. None of the statement is correct
22. In a suit for partition with respect to the property of a deceased muslim, the court passed a preliminary decree declaring the shares of the co-sharers. The preliminary decree was not challenged in appeal and became final. Pending final decree proceedings, one of the co-sharers sold the property. The purchaser got impleaded in the final decree proceedings and raised a challenge against the preliminary decree. Which of the following statements are legally correct ?
- A. The contention of the purchaser should be rejected since the transfer is hit by the principles of lis pendens and the transfer in his favour should be held to be void.

- B. The contention of the purchaser should be accepted and the case should be remanded to the trial court for passing a fresh preliminary decree, leaving liberty to the plaintiff to challenge the transfer effected by the co-sharer.
  - C. Since all sharers are mutually bound by each other's actions, they should be held to be bound by the transfer effected by a co-sharer
  - D. None of the above
23. A suit is filed for framing a scheme for the administration of a private temple before the Subordinate Court. The defendants contested that the suit was not maintainable in the Subordinate Court and should have been filed under Section 92 of the Code of Civil procedure before the principal civil court of original jurisdiction. The Sub Court dismissed the suit and an appeal is filed before the District Court. What should be the order passed by the District Court?
- A. The appeal should be dismissed affirming the judgment of the trial court
  - B. The Court should find that the prayer in the suit is in the nature of a relief under Section 92 of the Code and hence the District Court only has jurisdiction.
  - C. The appeal should be allowed and the District Court should proceed with the suit as if it was filed before the District Court in its original jurisdiction, under Section 92.
  - D. The appeal should be allowed and the case be remanded back to the trial court finding that a suit for framing a scheme for a private trust is maintainable before the Subordinate Court and recourse for action under Section 92 of the Civil Procedure Code is not necessary
24. Under Section 60 of the Transfer of Property Act, 1882, a mortgage can be redeemed by the mortgagor by a valid tender of the dues of the mortgagee. Which of the following can be stated to be a valid tender?
- A. The deposit of the entire amount due to the mortgagee bank in the account of the father of the mortgagor maintained with the same bank





- D. Mathew should produce the Will along with a letter from Jacob acknowledging the Will and a no objection letter from Annamma regarding the withdrawal of the amounts and a letter of indemnity from Mathew as against any other claims regarding the amounts.
29. Which of the following statements are legally correct ?
- A. The Family Court has jurisdiction to appoint a guardian regarding the property of a minor, while deciding on the guardianship and custody of the minor in a matrimonial dispute.
  - B. Regarding the appointment of a guardian for the property of the minor, the Family Court and the District Court have concurrent jurisdiction and the applicant can opt the forum.
  - C. If in a case initiated before the District Court for the guardianship over the property of the minor, an amendment is sought by adding a prayer for guardianship over the person of the minor, the District Court can allow the amendment and decide both the issues in order to avoid multiplicity of proceedings.
  - D. None of the above.
30. The time fixed in an agreement for sale of immovable property was six months from the date of the agreement. The vendee demanded execution just before the expiry of the said six months but the vendor did not respond. The vendee instead of suing the vendor, waited for more than two years and filed a suit for specific performance of the agreement to sell, after 40 months of the date of the agreement. What should be the judgment in the case if the agreement is proved and the vendee has proved that he had necessary funds.
- A. The suit should be dismissed as barred by limitation since it is filed after 3 years of the date of the agreement.
  - B. The plaintiff should be granted a decree for return of money alone, without interest for the period from the date of payment till the date of institution of the suit.
  - C. The plaintiff should be granted a decree for return of money with interest and reasonable compensation.
  - D. The suit should be held to be filed within time and the delay should not be a reason to deny the relief of specific performance

**Part – B**

[In this part, there are 12 descriptive type questions carrying 6 marks each. Of these 12 questions, 10 questions are to be attempted (the first 10 answers alone will be evaluated even if more than 10 questions are answered.) Answers to these questions shall not exceed 75 words. Answers to the questions in this part should be written in the answer booklet bearing serial No. (B). Answers written elsewhere will not be evaluated.]

31. Explain the interplay between a "defeasance clause" and a "repugnant clause".
32. On setting aside an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 on the ground that it is vitiated by patent illegality appearing on the face of the award, the party who initiated the arbitral proceedings has set in motion a fresh arbitral proceeding on the very same cause of action. Could the subsequent proceedings be said to be hit by the principles of *res judicata*? Explain.
33. 'A' governed by the Hindu Mitakshara Law died prior to the enactment of Hindu Succession Act, 1956 leaving behind his wife, son and a daughter. The widow of 'A' who was in possession of the property died after the coming into force of the Hindu Succession Act. The daughter of 'A' died thereafter during 1972. The only offspring of the daughter namely, her son instituted a suit seeking partition of his rights over the property of 'A'. Explain the right which the son of the daughter of 'A' could claim over the property of 'A'.
34. 'A' trespassed into the property of 'B' and held the same to the exclusion of all others. After a few years, 'A' died leaving behind his minor son. Taking advantage of the situation, 'B' took possession of the property by force. The minor seeks to recover possession of the property from 'B'. Sub-section (1) of Section 6 of the Specific Relief Act, 1963 enables the minor to recover possession of the property from 'B', but sub-section (2) of Section 6 restricts the said right by imposing a condition that no such suit shall be brought after six months from the date of dispossession. The

minor instituted the suit within one month on attaining majority. Is the suit barred by sub-section (2) of Section 6 of the Specific Relief Act? Explain.

35. 'A', a charitable organisation is running a coaching centre under a particular name as part of its activities. According to them, over a period of time, their name acquired a good will. While so, 'B', another charitable organisation established a coaching centre under a name which is deceptively similar to the name of the coaching centre of 'A'. 'A' instituted a suit under Section 134 (1) (c) of the Trade Marks Act 1999, for injunction restraining 'B' from passing off the services of 'B' in the name of the institution run by 'A'. The suit was dismissed as not maintainable holding that a passing off action could be invoked only in respect of activities undertaken on commercial basis. Reference was made in the decision to the definition of "service" as contained in Section 2(z) of the said statute. Is the decision correct? Discuss.
36. A suit for partition was instituted by two out of the sixty-six sharers of an item of immovable property. The parties are Muslims and their shares vary. One of the defendants also sought a decree for partition of his share in the property. A preliminary decree was passed declaring the  $\frac{1}{66}$  share each of the plaintiffs and  $\frac{1}{132}$  share of the defendant who sought for partition of his share. One among the defendants though challenged the preliminary decree in appeal, there was no stay. The court, in the circumstances, on the application of plaintiffs passed a final decree in respect of the portions of the property allotted to them. As the defendant who obtained the preliminary decree did not apply for passing of the final decree, his share was not allotted in the final decree proceedings. Later, on a direction by the court, the plaintiffs furnished stamp paper and the final decree passed was engrossed on the stamp paper. Subsequently, the appellate court modified the preliminary decree reducing the shares of

the plaintiffs to 1/132 share each. A revised final decree was accordingly passed after causing the advocate commissioner to prepare a revised plan. As the preliminary decree, on the basis of which the earlier final decree was passed, was set aside by the appellate court, the court directed the plaintiffs to furnish stamp paper afresh for engrossing the revised final decree, invoking Rule 236 of the Civil Rules of Practice. Is the decision correct? Explain. What is the remedy available to the defendants to get their shares in the property, if they choose to do so?

37. 'A' executed a Will bequeathing his only property to 'B'. Subsequently, 'A' entered into an agreement for sale of the property in favour of 'C' and handed over possession of the property to 'C' on that basis. Although 'A' died before executing the sale deed, on the death of 'A', his legal representative executed a sale deed in terms of the agreement for sale in favour of 'C'. 'B' filed a suit subsequently for declaration of title and recovery of possession on the strength of the Will. The case of 'B' is that the agreement for sale does not create any interest on the property and therefore, the property devolved on him absolutely, on the death of 'A'. The suit was dismissed. Is the decision correct? Analyse in the light of the provisions contained in the Indian Succession Act, 1925.
38. An appeal preferred by the defeated plaintiff in a suit for recovery of possession was dismissed by the Court at the admission stage itself, invoking Rule 11 of Order XLI of the Code of Civil Procedure, 1908. An application filed thereupon invoking Section 152 of the Code to correct a mistake in the schedule of the decree was dismissed by the trial court stating that the decree merged with the decree of the appellate court. Is the decision correct? Is the doctrine of merger a doctrine of rigid application? What would have been the position had the decision been after hearing both sides at the admission stage?

39. Explain the fiction of Lost Grant.
40. What is the policy of law behind recognition of a Hindu deity as a juristic person? Whether a deity consecrated in a private property could be regarded as a juristic person? Whether a decree for recovery of possession obtained in a representative suit in respect of a property where a deity is consecrated, without impleading the deity as a party, would bind the deity, if a party is arrayed in the suit to represent the deity and that party has defended the suit by filing a written statement ?
41. The diesel tank of a lorry parked in a workshop for repair exploded due to the fire caught from the welding machine which was in operation in the workshop, and as a result of the same, a mechanic who was working on the lorry suffered injuries. Although the lorry was covered by a policy of insurance at the relevant time, the validity of the driving licence of the person who brought the lorry to the workshop expired before the accident. In the claim petition preferred for compensation by the injured before the Motor Accidents Claims Tribunal, the insurer contended that the claim petition is not maintainable, as the lorry was not in use and that, if it is found that the claim petition is maintainable and the injured is entitled to compensation, in the light of Section 149 (2)(a)(ii) of the Motor Vehicles Act, 1988, the insurer is entitled to realise the compensation payable to the injured from the owner of the lorry, the insured. The Tribunal found that the accident occurred on account of the negligence of the driver, as he did not park the lorry safely away from the welding machine, and ordered compensation to the injured, rejecting both the contentions. Justify the rejection of the contentions.
42. In a suit instituted against the State for a declaration that the plaintiff belongs to a Scheduled Caste and for a mandatory injunction directing the State to issue a Community Certificate to the plaintiff to that effect, the defendant contended that the suit is not maintainable. The maintainability

of the suit was considered as a preliminary issue and the suit was dismissed as not maintainable. Is the decision correct?

**Part - C**

**[This part has only one question and it carries 30 marks. Answer to this question should be written in the answer booklet bearing serial No. (C). Answer written elsewhere will not be evaluated.]**

43. Write a judgment based on the following materials.

1. Pleadings of the plaintiff:- Plaintiff schedule property belonged to Divakaran, the deceased father of the plaintiff and defendants 1 to 3. Defendants 4 and 5 are the children of a sister of the plaintiff who predeceased Divakaran. The plaintiff schedule property devolved on the plaintiff and defendants on the death of Divakaran. The request made by the plaintiff for partition and separation of his share in the property for convenient enjoyment, has been turned down by the defendants.
2. Relief:- A decree for partition of  $1/5^{\text{th}}$  share of the plaintiff in the plaintiff schedule property.
3. Written statement of defendants 1 to 3:- Defendants 1 to 3 admitted the plaintiff claim and prayed for a decree for partition in respect of their shares also.
4. Written statement of defendants 4 and 5:- The suit is not maintainable inasmuch as Divakaran had transferred the property by way of a gift in their favour on 25.01.2018.
5. Replication:- Divakaran was not having a sound state of mind all throughout his life and therefore, the alienation is void and not binding on the property.
6. Evidence of plaintiff:- The plaintiff gave evidence as PW1 pointing out that Divakaran was not having a sound state of mind throughout his life, especially during the period when the gift deed was executed

in favour of defendants 4 and 5. Ext.X1, a case sheet maintained at a Government Mental Hospital was called for and proved through PW2, the Superintendent of the Hospital who is also a doctor. On the basis of Ext.X1, PW2 gave evidence that Divakaran was suffering from a type of psychosis and he was admitted and treated in the Hospital on several occasions before and after 25.01.2018.

7. Evidence of defendants 4 and 5:- The fourth defendant gave evidence as DW1 and proved the execution of the gift deed stated to have been executed by Divakaran as Ext.B1.

(the candidates will be free to supplement further facts)

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## PAPER - II

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5. Answers to the questions in **Part-X** of the Question Booklet should be marked in the OMR Answer Sheet bearing Serial (X) which will be evaluated using OMR software.
6. Answers to the questions in **Part-Y** of the Question Booklet should be written in the Answer Book bearing Serial (Y). It should be tied separately using the piece of twine provided.
7. Answer to the question in **Part-Z** of the Question Booklet should be written in the Answer Book bearing Serial (Z). It should be tied separately using the piece of twine provided.
8. The candidate may choose the Part to be answered first. But, the answers to the questions in each Part of the Question Booklet should be written only in the OMR Answer Sheet/Answer Book meant for the respective Part. If the candidates write answers to the questions in a particular Part of the Question Booklet in the Answer Book meant for a different Part, those answers will not be evaluated.
9. The candidates should use only BLACK/BLUE INK ballpoint pen for filling the various entries and marking answers in the Serial (X) OMR Answer Sheet. But, the candidates may use BLACK/BLUE INK fountain pen/Ballpoint pen for filling the various entries and writing answers in the Serial (Y) and Serial (Z) Answer Books. Use of pencil, Gel pen or sketch pen and use of any colour ink other than black/blue is not permitted.
10. No candidate will be allowed to leave the examination hall without handing over the OMR Answer Sheet bearing Serial (X) and the separately tied answer books bearing Serial (Y) and Serial (Z) to the Invigilator. Candidates can take the Question Booklet with them.
11. Answer Key to the questions in **Part-X** of the Question Booklet will be published in the website [www.hckrecruitment.nic.in](http://www.hckrecruitment.nic.in) after the examination.
12. Strict compliance of instructions is essential. Any malpractice or attempt to commit any kind of malpractice in the examination will result in summary disqualification of the candidate.

\* \* \* \* \*

**Part- X**

[In this part, there are 30 Objective Multiple Choice Type questions carrying 2 marks each. These shall also include questions having multiple correct answers and in such questions, all the correct answers are to be marked. If the candidate darkens any of the wrong answer options or darkens only a part of the correct answer options, it will be treated as incorrect answer. All the questions are to be attempted. There will not be negative mark for incorrect answer. Answers to the questions in this part should be marked in the O.M.R. answer sheet bearing serial No.(X). Answers marked elsewhere will not be evaluated.]

1. A Magistrate receiving information about the commission of cognizable offence under section 190 Cr.P.C has.....
  - A. to refer it to police for investigation mandatorily.
  - B. the discretion to refer it to the police or not.
  - C. to issue summons to the accused named therein.
  - D. to direct the police to conduct a preliminary inquiry.
2. An accused remained in custody for more than 60 days for alleged commission of an offence punishable with imprisonment for five years. On the 60<sup>th</sup> day, the police filed a report under section 173 Cr.P.C stating that the investigation is being continued. In such circumstances:
  - A. Magistrate has to direct the investigation to be completed immediately.
  - B. Magistrate has the discretion to grant bail.
  - C. The accused should be released on bail immediately.
  - D. Magistrate should monitor the investigation till the completion of investigation.
3. In a trial for the offence under section 304A IPC, the knowledge of a witness regarding the drunkenness of an accused immediately before driving a motor vehicle is.....
  - A. Admissible as a relevant fact.
  - B. Inadmissible as it is an irrelevant fact.
  - C. Admissible if it is corroborated by other facts.
  - D. None of the above.
4. If there is any error in stating the offence or the particulars in a charge, the effect would be.....
  - A. The trial gets vitiated
  - B. Fresh charges will have to be framed
  - C. Unless the omission misled the accused and occasioned failure of justice, the charge is not affected.
  - D. It will be presumed that the accused was misled by the omission rendering a failure of justice, and the charge is affected
5. How can the contents of a document be proved?
  - A. It can be proved only by the document in its original.
  - B. It can be proved by oral evidence of persons who have seen the document.

- C. It can be proved by the original document or by secondary evidence of the document.
  - D. It can be proved by the original document and even by oral evidence of persons who have seen the document.
6. Evidence of previous good character is relevant.....
- A. In a civil proceeding
  - B. In criminal cases
  - C. In criminal cases and in cases for damages.
  - D. In both civil and criminal cases.
7. The meaning of the term double jeopardy is...
- A. Trying the same person for two offences at two different times
  - B. Putting the same person on trial twice for the same offence
  - C. Trying a person for two offences committed by him in one incident
  - D. Trying two persons jointly for the same offence
8. Under section 357A(2) of the Cr.P.C, who can decide the quantum of compensation?
- A. The Principal Sessions Judge
  - B. Chief Judicial Magistrate
  - C. Judicial Magistrate of First Class
  - D. The State or District Legal Services Authority
9. A doctor communicates in good faith to his patient that the patient is suffering from a terminal illness and he will not live for more than six months. The patient dies out of shock on hearing the same. In such a case.....
- A. The doctor has committed no offence
  - B. The doctor has committed the offence of causing death termed as culpable homicide not amounting to murder
  - C. The doctor has committed offence due to a rash and negligent act
  - D. The doctor has committed murder
10. The statements written or verbal of a person apprehending imminent death is a relevant fact.....
- A. If the statement was made in the ordinary course of business
  - B. If it relates to the cause of his death
  - C. If it is against the interest of the maker
  - D. All of the above
11. When an accused in custody was taken to a Magistrate, and while under the custody of the police, he confessed the crime to the Magistrate. The confession is:
- A. Admissible.
  - B. Admissible in evidence if it is exculpatory.

- C. Totally inadmissible in evidence
  - D. None of the above.
12. If a proclaimed person appears within the time specified in the proclamation, the court shall make an order.....
- A. refusing to release the property from the attachment
  - B. releasing the property from the attachment
  - C. forfeiting the property
  - D. for sale of the property.
13. During the first death anniversary of a person, an article was published containing statements referring to the dead person as a thief and a burglar. A private complaint was filed by the son of the deceased, alleging defamation.
- A. The complaint is maintainable as it is defamatory to allege anything against a dead person.
  - B. The complaint is not maintainable as the person allegedly defamed is not alive.
  - C. The complaint is to be referred for investigation to the police.
  - D. None of the above.
14. By a wrong assumption, the judicial first class magistrate committed a case to the sessions court under Section 209 Cr.P.C. After framing the charge by the sessions court, it was realised that the case ought not to have been committed. Which of the following remedies are available to the Sessions Judge?
- A. The Sessions Judge can proceed with the trial since the charge has already been framed.
  - B. The Sessions Judge has to send back the case to the Magistrate Court without the Charge.
  - C. The Sessions Judge has to send back the case to the Magistrate Court along with the charge framed.
  - D. The Sessions Judge must refer the case to the High Court under section 395 Cr.P.C.
15. An accused was convicted for the offence under Section 420 IPC, and the Trial Court sentenced him to 2 years imprisonment. But in appeal, the Appellate Court though confirmed the conviction released the accused on probation. What is the effect of the order of conviction on such release?
- A. The conviction will remain as a disqualification but he need not undergo imprisonment.
  - B. The conviction will not remain as a disqualification, and he need not undergo imprisonment.
  - C. The conviction and imprisonment will remain dormant and will revive if he commits another crime.
  - D. The conviction and sentence will remain in a state of suspended animation for six years during which period he will be under observation for good conduct.

16. In which of the following cases, the evidence given by the witness will not be relevant under Section 33 of the Indian Evidence Act, 1872?
- A. When the witness is staying abroad
  - B. When the witness is dead
  - C. When the witness cannot be found
  - D. When the witness is in coma
17. Which of the following is correct?
- A. The burden of proof that the accused was not insane at the time of the commission of the offence is on the prosecution.
  - B. The burden of proving that the accused was insane at the time of the commission of the offence is on the accused.
  - C. There is a rebuttable presumption of fact that the accused was insane at the time of the commission of the offence.
  - D. It is a matter of inference to be drawn by the court on the facts proved by the prosecution.
18. According to the POCSO Act, "Sexual harassment" does not include.....
- A. Touching or making the child to touch the vagina, penis, or breast with sexual intent.
  - B. Showing any object to a child in any form or media for pornographic purpose with sexual intent.
  - C. Repeatedly or constantly follows or watches or contacts a child either directly or through electronic means with sexual intent.
  - D. With sexual intent, uttering any word or making any sound/gesture or exhibiting any object or part of body with intention that such word or sound shall be heard or such gesture or object or part of body shall be seen by the child.
19. Which of the following statements hold true for dying declarations?
- A. Dying declaration cannot be used as a sole basis of conviction.
  - B. Dying declaration unless corroborated cannot be used as a sole basis of conviction.
  - C. Dying declaration which is brief must be discarded.
  - D. When eye witnesses affirm that deceased was not in a fit stage to make the declaration, medical opinion cannot prevail.
20. An accused wants to submit carbon copy of the suicide note as secondary evidence. The original is with the opposite party and he has failed to produce the same. The suicide was not within the knowledge of the accused prior to the receipt of the carbon copy. Which of the following statement is true for the case?
- A. The evidence cannot be admitted due to applicability of Section 30 of the Indian Evidence Act.
  - B. The evidence cannot be admitted because it fails to satisfy the requirements of Section 64 of the Indian Evidence Act.

- C. The evidence cannot be admitted because it fails to satisfy the requirement of Section 65 of the Indian Evidence Act.
- D. The evidence can be admitted as it satisfies the requirements of both Sections 64 and 65 of the Indian Evidence Act.
21. Several persons assembled at the door of the house of one 'K', and the accused No.1 struck a blow with a stick which fell on the left thigh of a workman working in the house of 'K' whom the accused No.1 and others wanted to attack. As the accused No.1 struck at the very first person who opened the door, the workman came to receive the injury.
- A. Every person is guilty of vicarious liability, excluding the accused No.1.
- B. Only the accused No.1 is to be convicted for the said injury.
- C. None is guilty of vicarious liability.
- D. None of the above.
22. 'A' gives 'Z' fifty strokes with a stick. Here 'A' may have committed the offence of voluntarily causing hurt to 'Z' by the whole beating and by each of the blows which make up the whole beating. As per Section 71 of IPC, which of the following should be the punishment?
- A. 'A' is liable for every blow and should be imprisoned for fifty years, one for each blow.
- B. 'A' is only liable for blows he delivered on the victim.
- C. 'A' is liable to one punishment for the whole beating.
- D. 'A' should be separately punished for beating and delivering blows.
23. The power and jurisdiction of the court considering the application for grant of bail under the provisions of the NDPS Act is circumscribed by the provisions of Section 37(1)(b) of the NDPS Act in the case of a person accused of an offence.....
- A. Involving commercial quantity.
- B. Under section 24 of the NDPS Act.
- C. Under section 27A of the NDPS Act.
- D. All the above.
24. Is a Court of Session empowered to cancel the bail granted by the High court to an accused and commit him to custody consequent on his violating the bail conditions invoking the power under section 439(2) of Cr.P.C.
- A. Court of Session can cancel a bail granted by the High court
- B. Court of Session under no circumstance can cancel the bail granted by the High Court.
- C. The Court of Session can forfeit the bond amount alone.
- D. The High Court alone can cancel the bail.
25. 'A', a surgeon, knowing that a particular operation is likely to cause the death of 'Z', who suffers under painful complaint, but not intending to cause 'Z's death, and intending, in good faith, for 'Z's benefit, performs the operation with 'Z's consent.

- A. 'A' is guilty of culpable homicide  
 B. 'A' deliberately caused the 'Z's death  
 C. 'A' is not guilty of any offence  
 D. None of them
26. Which of the following statement is incorrect?
- A. The bar under section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to entertain an application under section 438 of Cr.P.C is not absolute.  
 B. In cases alleging offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, an application for anticipatory bail can only be filed before the special court.  
 C. In cases alleging offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, an application for anticipatory bail can be filed before the special court as well as before the High Court.  
 D. The High Court neither has concurrent jurisdiction under section 438 of Cr.P.C nor original jurisdiction under section 482 of Cr.P.C to grant anticipatory bail in cases alleging offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
27. A muslim male aged 20 years married a muslim girl aged 17 years. However, she has attained puberty at the time of marriage. A crime under section 5(l) and (6) of the POCSO Act was registered against the husband alleging that he committed repeated penetrative sexual assault on his wife. The accused took the defence that since his marriage with the wife is a valid one under Muslim Personal Law, no offence would be attracted. Choose the correct option/s.
- A. If existence of such a custom is proved, no offence will be attracted  
 B. POCSO Act is a secular statute and offence will be attracted  
 C. If the marriage was with consent of the parents of the girl, no offence will be attracted  
 D. Crime should not have been registered under the POCSO Act, but under Section 376 of the IPC
28. 'A' commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with 'B's wife. Applying Section 220 Cr. P.C.:
- A. 'A' may be separately charged with and convicted of offences u/ss. 451 and 494 of the Indian Penal Code.  
 B. 'A' may be separately charged with and convicted of offences u/ss. 452 and 495 of the Indian Penal Code.  
 C. 'A' may be separately charged with and convicted of offences u/ss. 453 and 496 of the Indian Penal Code.  
 D. 'A' may be separately charged with and convicted of offences u/ss. 454 and 497 of the Indian Penal Code.

29. In a murder case, before the identification of the culprit, 'B' wrote a letter of confession to the police officer. At the time of writing the letter, no suspicion was cast on 'B'. Choose the most relevant answer from the following choices.
- Inadmissible as it was made to a police officer.
  - Admissible as it was made voluntarily; the fact it was made before the police officer is irrelevant.
  - Admissible as it was neither made in police custody nor in the presence of the police officer.
  - Inadmissible as it was not made before the Magistrate.
30. Which among the following statements is not correct with regard to the Protection of Women from Domestic Violence Act, 2005?
- Economic abuse is considered a form of domestic violence under the Act.
  - Sexual abuse is considered a form of domestic violence under the Act.
  - The Act protects women from both physical and verbal abuse.
  - The Act does not extend to live-in relationships and only covers marital relationships.

### PART- Y

**[In this part, there are 12 descriptive type questions carrying 6 marks each. Of these 12 questions, 10 questions are to be attempted (the first 10 answers alone will be evaluated even if more than 10 questions are answered.) Answers to these questions shall not exceed 75 words. Answers to the questions in this part should be written in the answer booklet bearing serial No. (Y). Answers written elsewhere will not be evaluated.]**

31. Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and 9 of the Protection of Children from Sexual Offences Act, 2012, the Special Court is to presume that such person has committed or abetted or attempted to commit the offence as the case may be, unless the contrary is proved. When and how will the presumption start to operate and how can the accused rebut the same?
32. Elaborate upon the offence of "Giving false evidence" under section 191 of the Indian Penal Code, 1860. Discuss whether a person who is being prosecuted for giving false evidence can avail of the protection granted under Section 132 of the Indian Evidence Act, 1872?
33. A case was investigated by the police and a charge sheet was laid finding that the offence under Section 326 of the IPC was committed by the accused. Later, a further investigation under section 173(8) of the Code of Criminal Procedure, 1973 was carried out and the Investigating Officer concluded that the prosecution allegations were false and a refer report was submitted before the Court. The learned Magistrate accepts the refer report and closes the matter by passing a reasoned order. Is the action taken by the learned Magistrate legal? Explain by referring to the relevant statutory provisions and case law.

34. The CCTV placed in a shop recorded the scenes of the accused congregating near a petrol pump before commission of the offense of murder. The hard disk was seized and the same was sent to the Forensic Science Lab for analysis. Later the seized hard disk was produced before the Court as a material object. One of the accused files an application seeking to furnish a copy of the information contained in the hard disk as the same was not supplied to him under Section 207 of the Code of Criminal Procedure? Is the accused entitled to a copy? Give reasons with reference to the relevant statutes and Case law.
35. In the course of investigation into a case involving Section 326 of the Indian Penal Code, 1860 certain voice clippings of the accused are obtained by the Investigating Officer. The application filed by the accused seeking pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 is pending before the learned Sessions Judge. If the voice samples of the accused is required for comparing with the suspected samples for the purpose of investigation, what is the procedure to be followed by the Investigating Officer? Is the accused entitled to contend that Article 20(3) protects a person accused of an offence from being compelled to be a witness against himself? Elucidate with reference to the statutory provisions and precedents.
36. A final report has been laid by the police against an accused for the offenses under Section 406 IPC and Section 420 of the IPC. You are asked to frame a charge against the accused. At the time of hearing on Charge, a contention is taken by the accused that on the very same allegations, both the offences will not lie together. Do you agree? Explain by referring to the ingredients of the offences.
37. An officer of the "Revenue Intelligence" empowered under Section 42 and Section 53 of the Narcotic Drugs and Psychotropic Substances Act, 1985 conducts investigation in connection with seizure of Narcotic Drugs under the relevant provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, and records the statement of the accused under Section 67 of the NDPS Act, 1985. Would the prohibition under Section 25 of the Indian Evidence Act, 1872 apply to such statement? Explain briefly by referring to the statutory provisions and case law.
38. Mr. Suraj is being prosecuted for having committed the offense under Section 7 of the Protection of Children from Sexual Offences Act, 2012. As per the prosecution case, the victim was aged 16 at the time of the commission of the offense. To prove the age of the victim, the Headmistress was summoned and a certificate issued by her was marked in evidence. Can the certificate be relied on to determine the age of the victim? State with reference to relevant statutory provisions and case laws.
39. A petition seeking reliefs under the Protection of Women from Domestic Violence Act, 2005 was filed by the wife. The said petition was dismissed by the Magistrate. Later, the wife approached the Family Court and filed a petition seeking the very same reliefs sought for in application under the Protection of Women from Domestic Violence Act, 2005. The respondents

contend that the very same issue has been raised and decided by a competent court and the subsequent proceeding is barred by the principles of Res Judicata. Do you agree?

40. Under Section 167(2)(a) of the Code of Criminal Procedure, 1973, the Magistrate is empowered to authorize the detention of the accused for a period of 90 days if the offence is punishable with death, imprisonment for life or imprisonment for a term of not less than ten years. What is the analogous provision under the Narcotic Drugs and Psychotropic Substances Act? Under what circumstances can the detention period be extended? While considering an application for extension, what are the aspects/safeguards that are to be borne in mind by the Court?
41. Anne is a friend of Susan. George is Susan's husband. Susan along with George approach Anne and borrow a sum of 2 lakhs and in discharge of the legally enforceable debt, a cheque is drawn by George on a joint account maintained by him and Susan with the State Bank of India. The cheque, when presented, is dishonored for insufficiency of funds in the account. A complaint is filed under Section 138 of the Negotiable Instruments Act, 1881 by arraying Susan and George as accused No 1 and 2. Would Susan be liable?
42. A person is accused of having committed an offence punishable under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Is he entitled to directly approach the High Court and seek regular bail? Explain with reference to the relevant provisions.

### PART- Z

**[This part has only one question and it carries 30 marks. Answer to this question should be written in the answer booklet bearing serial No. (Z). Answer written elsewhere will not be evaluated.]**

43. Write a judgment based on the following materials.

Sujatha, a 27-year-old teacher, tragically ended her life by self-immolation on 16/6/2018. Since her marriage to Jayan on 1.1.2015, she had resided with him and his parents, Sri.Ayyappan and Smt. Ponnamma. The statements from family and friends to the police suggested that she endured persistent marital cruelty at their hands, primarily stemming from dowry demands by her husband and in-laws. Based on the evidence collected, a report incorporating Section 306 r/w Section 34 of the IPC was submitted before the Court, leading to Jayan, his father, and mother being arrayed as accused No. 1 to 3.

To prove the case of the prosecution, the prosecution examined the following witnesses:

PW1	Ajay	Sujatha's brother	He deposed before court that it was at his instance the FIS was registered. At the time of lodging the FI Statement, he was in such a mental state that he was not in a position to state to the officer about the mental and physical harassment faced by his sister in the matrimonial home. He stated that his sister has, on numerous occasions, told him about the illegal demands made by her husband and his parents for dowry
PW2	Gopi	Sujatha's father	Stated that his daughter used to complain about the harassment from her husband and in-laws. He stated that his daughter used to maintain a diary wherein she detailed the trauma she faced from the accused and that the diary was handed over to the investigating officer. During cross examination, he stated that , while his daughter was alive, he did not approach the police complaining of harassment for dowry.
PW3	Ramani	Sujatha's mother	Corroborated the statement of Gopi. She added that Sujatha used to inform her that she constantly contemplated ending her life to escape from the trauma.
PW4	Anne	Neighbour	Though was examined to prove her awareness of the abuse to which Sujatha was subjected to, did not support the prosecution during testimony.
PW5	Indulekha	Neighbour	Examined to prove that she used to frequent the matrimonial home and was aware of the abuse. Did not support the prosecution

PW6	Sabeena	Sujatha's friend	Supported the prosecution case. Stated that she was told by the deceased about the abuse she was subjected to by her husband and in-laws. Denied that she was stating falsehood at the instance of the family members.
PW7	Santhosh	Doctor	Confirmed the cause of death of Sujatha
PW8	Jimmy		Examined to prove the Scene Mahazar
PW9	Prakash		Examined to prove the recovery of the Diary.
PW10	Suman	Handwriting expert	Stated before Court that the writings in the diary correspond to the admitted handwriting of the deceased
PW11	Ahmed	Police Sub Inspector	Recorded the FIS
PW12	Raghu	Deputy Superintendent of Police	Conducted the investigation and submitted the final report.

Exhibit P1 to P18 were marked on the side of the prosecution.

MOs 1 to 6 were marked and identified.

When the incriminating materials were put to the accused, they reiterated that they were innocent and did not commit any wrongdoing.

#### **Defense Witness**

DW1	Amina	Neighbour	Stated before Court that there has been no instance of mental or physical abuse at the matrimonial home.
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[Note: Additional details, witnesses, or evidence can be incorporated as necessary.]

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