

# **KERALA HIGHER JUDICIAL SERVICE EXAMINATION 2011**

*(NCA Vacancies)*

Duration : 3 Hours

Marks : 100

## **PAPER – III**

### **Part –I**

**(Answer all the questions in one or two sentences. Each carries one mark)**

1. For the offence under Sec. 326 IPC a Magistrate sentenced the accused to undergo imprisonment for 3 years and to pay a fine of Rs. 5,000/- and in default of payment of fine to undergo imprisonment for a further period of 3 months. Is it legal? Give reason.
2. What is the purpose for which a police officer is empowered to arrest a person who, in his presence, commits a non cognizable offence?
3. The owner of a house saw a thief in his house. While the latter was attempting to escape with the stolen article, the owner arrested him. Was it legal? Why?
4. What is the order a Magistrate shall pass when an officer in charge of a police station makes a request for identification of an arrested accused?
5. What is the procedure to be followed when a party dispenses with the examination of witnesses in a criminal court?
6. Which is the court having territorial jurisdiction to try the offence of abduction?
7. A complaint alleging commission of the offence u/s. 497 IPC is filed. On a reading of it, the Magistrate finds that it is barred u/s. 198 Cr.P.C. What is the procedure to be followed by him?
8. What is the procedure prescribed when an application for copy of a document or proceedings is filed by a stranger to the proceedings in a criminal court?
9. How should a sessions judge record the examination of an accused?
10. What is the purpose of tendering pardon?
11. What direction a civil court should issue to the parties in the final judgment for partition?
12. What should an executing court do when the decree holder fails to take steps in respect of one of the cumulative reliefs prayed in the E.P?
13. What is the time for commencement and closing of sale by a civil court?

14. Who is the officer empowered to sign the various processes issued by a civil court?
15. What are the stages at which the question of court fees may be considered by a court in a suit?

### Part – II

**(Answer any 15 questions in not exceeding 120 words. Each carries three Marks)**

16. Write a note on the appellate jurisdiction of the District Judge and the Subordinate Judge under the Civil Courts Act?
17. (a) What is impounding of documents?
- (b) What is the procedure to be followed when a document is impounded?
- (c) What are the cases in which a document may be impounded by a criminal court?
18. (a) Who can record a confession u/s. 164 Cr.P.C.?
- (b) What is the mode of recording confession by a Magistrate?
- (c) A Magistrate fails to take the signature of the accused in his confession. Can the defect be cured by examining the Magistrate? Why?
19. (a) What is the procedure prescribed for granting remand of an accused to police custody?
- (b) An accused in a murder case was arrested and produced before a Magistrate. He was remanded to judicial custody for 15 days. On the way to the jail, he was taken ill and was admitted to a hospital. On the 12<sup>th</sup> day of his remand he was discharged and was lodged in the jail. On the 13<sup>th</sup> day of his remand an application was filed for his remand to police custody. On the same day, the Magistrate remanded him to police custody for 5 days. Was it legal? Why?
20. (a) What is the procedure prescribed when the sole accused has absconded and some of the accused have absconded before appearance in the court?
- (b) What is the procedure to be followed when the accused has absconded after committal of the case to the sessions court?
21. What is the provision regarding medical examination of the victim of rape?
22. (a) What is meant by indefeasible right of bail u/s. 167 Cr.P.C?
- (b) In a murder case the accused had been in judicial custody for 90 days during the investigation. On the 91<sup>st</sup> day, he filed an application for bail. The next day was a Sunday. On Monday (the 93<sup>rd</sup> day) the police filed

final report. On that day, when the bail application was taken up for hearing, the Public Prosecutor submitted that since the final report was filed the accused was not entitled to bail. Discuss the merit of the argument.

- 23.(a) What is case diary and what is its use?
- (b) What are the options before the Magistrate when a final report is filed?
- (c) In the course of the trial of a case the evidence revealed that the investigation was not honest and the real offender was not before the court. The Magistrate suo motu ordered further investigation. Examine the legality of the action.
24. (a) Write a brief note on enquiry by Judicial Magistrate in the case of death.
- (b) What are the differences between investigation by police u/s.156 (3) & u/s. 202 (1) Cr.P.C.?
25. (a) A complaint was filed alleging commission of the offences u/s. 326 IPC. After the accused appears pursuant to the summons issued to him u/s. 204 Cr.P.C. what is the procedure to be followed?
- (b) In a warrant case instituted on a complaint what are the options before the Magistrate if the complainant is absent on any day before the charge is framed?
26. (a) What is meant by rateable distribution?
- (b) How does the provision in the CPC relating to rateable distribution affect the rights of the government?
27. (a) When can a party to a proceedings file an appeal under CPC?
- (b) What is cross objection and when is it not necessary to file a cross objection by a respondent?
28. (a) Examine the powers of a civil court to order amendment of pleadings.
- (b) What does trial mean for the purpose of O.6 rule 17 CPC?
- (c) The Munsiff entered a finding that the plaintiff is entitled to a certain relief. But this does not find a place in the decree. What is the remedy?
29. (a) What are the materials on the basis of which issues may be framed?
- (b) When can the court hear an issue as a preliminary issue?
- (c) The plaintiff claimed permanent injunction on the basis of his title and paid court fees for that relief. In his written statement the defendant

denied the plaintiff's title. The court framed an issue regarding the controversy. What is the next step for the court to do?

30. (a) Distinguish between set off and counter claim.
- (b) In a written statement the defendant states that the plaintiff should be directed to prove his allegations. What is its effect?
31. (a) What are the endorsements to be made on the documents admitted in evidence?
- (b) A document was tendered in evidence. It was found inadmissible. What the court should do with the document?
- (c) What is the procedure for return of documents admitted in evidence?
32. (a) What is the satisfaction to be entered for the court to order coercive steps against a witness who fails to appear in obedience to the summons?
- (b) A witness was arrested and produced before the court. But the case was adjourned owing to the absence of one of the parties. What is the order the court may pass so far as the witness is concerned?
33. (a) What is the relief to be granted when a suit for delivery of movable property is decreed and how such decree is to be executed?
- (b) A borrowed a certain amount from a bank. He died before the debt was discharged. The bank filed a suit against his legal representatives. What is/are the relief/s to be granted if the suit is decreed?
- (c) A suit for recovery of money was decreed. Later the judgment debtor died. The decree holder filed an E.P. against the legal representatives of the J.D. What is the direction the court should issue at the initial stage?
34. (a) Who is a garnishee and what is the direction to be issued to him in the notice?
- (b) What is the order which should be passed if the garnishee does not comply with the direction?
- (c) What is the effect of garnishee's payment of the amount ordered by the court?
35. (a) Distinguish between upset price and reserve price?
- (b) 'Sec. 47 and Order 21 R.90 CPC are mutually exclusive'. Discuss.
- (c) In the auction held by the court in execution of a decree the decree holder purchased an immovable property belonging to J.D. The sale was confirmed. Thereafter, the D.H. and the J.D. jointly submitted an application in the executing court for setting aside the sale on the

allegation that they had settled the matter. Examine the merit in the application.

### Part – III

**(Answer any 5 questions in not exceeding 250 words.  
Questions 40 to 43 are compulsory. Each carries eight marks)**

- 36.(a) Discuss the powers of an appellate court to reject an appeal, and dismiss an appeal without sending notice to the lower court and remand an appeal.
- (b) What are the options before a court when a question arises as to whether any person is or is not the legal representative of a deceased appelland?
37. Discuss
- (a) the right of partners to sue in the name of the firm.
- (b) Service of summons when persons are sued in the name of their firm.
- (c) Right of suit on the death of a partner.
- (d) One Kochan was carrying on business in the name of Koch Kichen. One of his customers failed to discharge his liability. So Kochan filed a suit against the customer. In the plaint the plaintiff was shown as 'Koch Kichen'. Examine the maintainability of the suit.
38. How a decree for money may be executed by arrest and detention of J.D. in civil prison?
39. (a) The term anticipatory bail is a misnomer". Examine the correctness of the statement.
- (b) Under a Special Act, an offence is punishable with imprisonment upto 3 years. There is no provision in the Act regarding bail. Is the offence bailable?
40. (a) In an appeal filed by the accused the sessions court noticed that there was an error in the charge framed by the Magistrate. The appelland submitted that he was entitled to acquittal. Examine the merit in the argument.
- (b) Frame a charge on the basis of the final report attached to this question paper.
41. What are the powers of a police officer in investigating a case?
42. On the basis of the materials furnished below, write a judgment.

Plaint

Plaint schedule property having an extent of 10 cents, which is described in detail in the plaint schedule was part of the 50 cents which belonged to one Santan. He sold 20 cents to one Sankar Unni in 1979. Sankar Unni sold the plaint schedule property to the defendant in 1990. On 1-1-2004 the defendant agreed with the plaintiff for the sale of the plaint schedule property for Rs. 10,000/- per cent. On the same day the former put the latter in possession of the property on the latter's paying Rs. 20,000/- as part of the sale consideration. The plaintiff was and is ready and willing to pay the balance sale consideration. The defendant did not take steps to measure the property. On 1-11-2008 the plaintiff issued a notice demanding him to receive the balance sale consideration and execute the sale deed. The defendant issued a reply notice refusing to execute the sale deed. The plaintiff has a right to get a decree for specific performance and his costs. In the alternative he is entitled to get back the advance amount paid by him with interest at 12% per annum from 1-1-2005 and his costs.

Dated this 1<sup>st</sup> day of January 2009.

Written statement

The suit is hopelessly time barred. The defendant was ready to do his part of the contract. But the plaintiff was not ready. He had no money to pay the balance sale consideration. The defendant sent a reply notice stating only true facts. It is false that he put the plaintiff in possession of the property. The defendant is not liable to execute sale deed. He is not liable to pay back the amount paid as advance. He has no liability to pay interest or costs.

The court framed issues.

Plaintiff's witnesses	: PW1
Defendant's witness	: Nil
Exhibits for plaintiff	: A1 to A3
Exhibits for defendant	: Nil

PW1

Examination in chief

A1 is agreement, A2 is copy of notice. A3 is reply notice.

Defendant gave me possession on the date of agreement. I am still in possession. I was ready to pay the balance sale consideration. I have bank balance of Rs. 4-5 lakhs from 2007. Defendant postponed execution of deed for one reason or another. At last I sent Ext. A2 notice. What is stated in Ext. A3 is false. I am entitled to all the reliefs.

Cross examination

I was put in possession before Ext. A1 was written and signed. There is no reason for not stating in Ext. A1 that I was given possession. I have not paid basic tax.

Within 1 year of Ext. A1 agreement I wanted the defendant to execute the sale deed. That was Gandhi Jayanti day in 2004.

Re-examination : Nil

43. On the basis of the materials furnished below, write a judgment.

Prosecution case

The accused and the first informant Azad were friends and members of the same political party. Towards the end of 2010 Azad joined another political party. This caused estrangement. On 2-1-2011 Azad ridiculed the accused on a public road. This caused enmity. On 2-2-2011 at 3.30 p.m. while Azad was going to Kaloor market along the Mahakavi road at Palarivattom the accused armed with a Malappuram knife came from behind him and stabbed him with the knife twice causing him injuries. He sustained injuries on the right upper arm. There was fracture of the right ulna. The accused thus committed the offence u/s. 326 IPC. The accused was arrested on 3-1-2011 and was in remand till 18-1-2011 granted bail by Magistrate.

PW1- PW4 examined. Exts. P1 to P4 and MO1 marked.

Ext. P1 - FIS

Ext. P2 - FIR

Ext. P3 - wound certificate

Ext. P4 - scene mahazar

MO 1 - knife

Defence evidence - Nil

PW1 : Informant/victim

Examination in chief

He repeated the prosecution version. Ext. P1 FIS was given at hospital. MO1 is the knife with which he was attacked.

Cross examination

When he turned back he saw the accused with the knife. He attempted to ward off the attack. There was no identification mark for the knife, but he had seen it when they were friends. Some passers by saw the incident. He did not know why they were not cited as witnesses.

PW2 : Head Constable

Examination in chief

Head Constable recorded Ext. P1 FIS. He prepared Ext. P2 FIR.

Cross examination

He went to hospital at 5.30 p.m. Completed FIS at 6.15 p.m. Came back to the station at 7.00 p.m. That was why Exts. P1 and P2 were sent to Magistrate only on the next day.

PW3 : Doctor



Examination in chief

Examined PW1 at 4.15 p.m. on 2-2-11. Noticed an incised wounds on right upper arm muscle and right forearm. Fracture of right ulna. MO1 could cause the injuries. Ext. P3 is the wound certificate.

Cross-examination

The police did not question me. I was not shown MO1 knife.

PW4 : C.I. of police

Examination in chief

Prepared Ext. P4 scene mahazar. M.O. 1 knife was recovered from the place of occurrence. He filed the final report.

Cross-examination

M.O. 1 was not sent for chemical analysis. There is no reason for it. As there was no eye witness none was interrogated.

ഇതിലെ പ്രതിക്ക് തന്റെ അയൽക്കാരനായിരുന്ന ബിനു തന്റെ (പ്രതിയുടെ) സഹോദരിയെ പരസ്യമായി കളിയാക്കിയതിലുള്ള മനോവിഷമത്തിൽനിന്നുണ്ടായ മുൻ വിരോധം നിമിത്തം ടിയാനെ മന:പൂർവ്വം കൊലചെയ്യണമെന്ന ഉദ്ദേശ്യത്തോടും കരുതലോടും കൂടി 2011 ഫെബ്രുവരി മാസം 2-ാം തീയതി പകൽ 3 മണിക്ക് ടി ബിനു കുടുംബമായി താമസിച്ചിരുന്ന കണയന്നൂർ താലൂക്ക്, എറണാകുളം വില്ലേജിൽ കോമ്പാറ കരയിൽ എറണാകുളം നോർത്ത് റെയിൽവേ സ്റ്റേഷനിലേക്ക് പോകുന്നതും കിഴക്കു-പടിഞ്ഞാറായി സ്ഥിതിചെയ്യുന്നതുമായ ടാറിട്ട റെയിൽവേ സ്റ്റേഷൻ റോഡിന്റെ വടക്കുതിരു ചേർന്ന് തെക്കുദർശനമായി പുറമ്പോക്കിൽ സ്ഥിതിചെയ്യുന്ന നമ്പറിടാത്ത വീടിന്റെ തെക്കുവശം വരാന്തയിൽനിന്ന് ഒരു മീറ്റർ തെക്കുമാറിയും ടി ടാറിട്ട റോഡിന്റെ വടക്കുതിരിൽ നിന്നും 1/2 മീറ്റർ വടക്കു മാറിയും ഉള്ള റോഡ് മാർജിനിൽ വെച്ച് ഇരുവശവും മുർചയുള്ള ഒരു കത്തികൊണ്ട് പ്രതി ടി ബിനുവിന്റെ നെഞ്ചിൽ ഇടതുവശം 5 പ്രാവശ്യം കുത്തി പരിക്കേല്പിച്ചും പരിക്കിന്റെ കാഠിന്യത്താൽ ബിനുവിനെ തൊട്ടടുത്തുള്ള ആശുപത്രിയിൽ കൊണ്ടുപോവുന്ന വഴി ടിയാൻ മരിക്കുന്നതിനിടയാവുകയും ചെയ്ത് പ്രതി ഇന്ത്യൻ ശിക്ഷാനിയമം 302-ാം വകുപ്പുപ്രകാരം കുറ്റം ചെയ്തിട്ടുള്ളതാണ്. പ്രതിയെ വിചാരണ ചെയ്യുന്നതിനായി എറണാകുളം സെഷൻസ് കോടതിയിലേക്ക് അയക്കണമെന്ന് അപേക്ഷ.. പ്രതിക്കുള്ള രേഖകളുടെ കോപ്പി ഇതുസഹിതം ഹാജരാക്കുന്നു.