

# **KERALA HIGHER JUDICIAL SERVICE EXAMINATION 2011**

Duration : 3 Hours

Marks : 100

## **PAPER – III**

### **Part – I**

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

1. What are the powers of a pleader instructed by a person to prosecute a person in any criminal court?
2. How is a Public Prosecutor appointed for a district?
3. When can a criminal court allow an advocate to take delivery of property on behalf of his client?
4. What is the purpose for which a police officer may request a medical practitioner to examine an arrested accused?
5. What is the procedure to be followed when an investigating officer in a criminal case wants production of a document in the custody of a civil court?
6. A entrusted B with a property at X. The direction was to return it at Y. B misappropriated it at X. There are courts at X and Y. Where can B be tried?
7. When can an offence be said to be a minor offence of the offence with which an accused was charged?
8. When can a Magistrate discharge an accused in a warrant case instituted on a complaint owing to the absence of the complainant?
9. What is the special rule of evidence in Cr.P.C. regarding the report of a government serologist?
10. A suit, the valuation of which was Rs. 1,75,000/-, is decreed by Subordinate Judge's Court. The amount due under the decree on the date of suit is Rs. 2,25,000/-. In which court appeal should be filed? Why?
11. There are 3 plaintiffs in a suit. But the plaint is verified by one of them only. Can it be received on file? Why?
12. When there are several appeals against the same decree, how many decrees shall be drawn up?
13. What the courts shall do if none of the parties in a final decree for partition produces the entire amount to purchase the stamp paper in spite of adjournment for that purpose?
14. Before whom a requisition for recording dying declaration should be made by a police officer?
15. What is the procedure to be followed by a Magistrate when he has to dispose of counterfeit coins u/s. 452 Cr.P.C.?

**Part – II**

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

16. (a) What are the purposes for which a statement recorded U/s. 161 CrPC may be used ?
- (b) What is the restriction regarding summoning a person U/s. 160 CrPC?
17. (a) What is the procedure to be followed by a Magistrate who records a confession U/s. 164 CrPC. ?
- (b) What is the procedure to be followed by a Magistrate who records the statement of a person u/s. 164 Cr.P.C. other than an accused?
- 18.(a) Who can tender pardon to an accused and what is the purpose of tendering pardon ?
- (b) After tendering pardon to an accused, the Magistrate examined him as a witness before the trial. The counsel for the other accused wanted to cross-examine him. The Court disallowed the request . Comment.
- 19.(a) Distinguish between summons trial and summary trial ?
- (b) An accused was charged with having committed the offences U/s. 323 and 342 I.P.C. The trial commenced as a summons trial. In the course of it the Magistrate converted it into a warrant trial. Was it legal? Why?
20. (a)Distinguish between withdrawal of complaint and withdrawal from Prosecution ?
- (b) An APP filed an application before the Magistrate to withdraw from prosecution of a case. The ground stated was that the Government was not interested in prosecuting the case. Examine the maintainability of the application.
- 21.(a) What are the circumstances in which the order for granting monthly allowance for maintenance may be altered, varied or cancelled under the Cr.P.C. ?
- (b) How can interim order for payment of allowance for maintenance be enforced u/s. 125 Cr.P.C.
- 22.(a) What are the purposes for which the statement given by an accused u/s. 313 Cr.P.C. may be used?
- b) In the course of the investigation, an investigating officer files an application before a Magistrate to direct an accused to give specimen signature. Is it maintainable ?
- 23.(a) What are the courses open to a sessions court if it is satisfied that the case committed to it is not exclusively triable by a court of session?

- (b) In the course of the trial of an offence which requires sanction for the court to take cognizance, it is satisfied that a person who is not already an accused also has committed the same offence. It directed to proceed against him also. Is the order legal? Give reasons.
- 24.(a) Who is a victim under Cr.P.C. and has he a right of appeal?
- (b) When an appeal against conviction was taken up, the appellant was absent. Examine the options before the court.
25. (a) When does an appeal in a criminal case abate?
- (b) An accused convicted of an offence under the Prevention of Corruption Act wants to contest an election. He files an application for suspension of his conviction which only will enable him to contest. Is it legal for the court to allow it?
- 26.(a) What are the circumstances in which a decree passed by one court may be transferred to another court?
- (b) What is the procedure to be followed when an application for transfer of a decree is filed?
- 27.(a) What is meant by rateable distribution?
- (b) Has the government any priority over other creditors?
- 28.(a) When can a party file a review petition?
- (b) Is it necessary to draft a new decree if a petition to review a decree is allowed?
- (c) What is the difference between orders allowing review application and rejecting review application so far as right of appeal is concerned?
- 29.(a) What is the procedure for drawing up proclamation of sale by public auction?
- (b) What is the mode of making proclamation?
- 30.(a) What are the circumstances in which the court may order attachment before judgment?
- (b) What is the order the court may pass on such application if it is allowed?
- 31.(a) What should be the contents of a decree for possession of immovable property with mesne profits?
- (b) In a decree the court omitted to mention a relief which it found in the judgment the plaintiff was entitled to. What is the remedy for the plaintiff?
- 32.(a) What are the materials on the basis of which the court shall frame issues?

- (b) What should be the manner in which an issue should be framed?
- (c) A court framed 5 issues. It heard issue No. 1 as a preliminary issue and dismissed the suit. It did not answer the other issues. Was it illegal? Why?
- 33.(a) A decree for money is passed against a government employee. The decree holder wants to file an EP with the prayer for arrest and detention in civil prison of the J.D. What is the special requirement in preparing the E.P.?
- (b) What shall the court do before and while issuing the arrest warrant in the above case?
- 34.(a) What is the procedure prescribed for production of records in the custody of a public officer other than a court?
- (b) What may the court do if such document belongs to a third party?
- 35.(a) What direction the court shall issue when an application for payment of the fine imposed by a criminal court is filed?
- (b) What are the cases in which the government will pay batta to complainants and witnesses?

### Part – III

**(Answer any 5 questions in not exceeding 250 words.  
Questions 41 to 43 are compulsory. Each carries eight marks)**

36. (a) Under the Cr.P.C. what are the situations in which an accused is entitled to default bail?
- (b) Distinguish between pre conviction bail and post conviction bail?
- 37.(a) Before he decides to issue process or to dismiss the complaint, what is the procedure to be followed by a Magistrate who has taken cognizance on a complaint?
- (b) What is the difference between rejection and dismissal of a complaint?
- 38.(a) When is it necessary for a respondent to file a cross-objection in an appeal?
- (b) What is the provision regarding production of additional evidence in appellate court?
- (c) What are the options before an appellate court when a question arises whether any person is or is not the legal representative of a deceased plaintiff or defendant?

- 39.(a) What are the grounds on which a civil court may permit withdrawal of a suit?
- (b) Can a suit be withdrawn in appeal?
- (c) A plaintiff filed a petition to withdraw his suit with liberty to file fresh suit on the same cause of action. The court disallowed the prayer to grant liberty to file fresh suit, but allowed the plaintiff to withdraw the suit. Is it legal? Give reasons.
- (d) When is it mandatory to register a compromise decree?
- 40.(a) What are the conditions to be satisfied for an appellate court to stay execution of the decree appealed from?
- (b) Is there any special provision regarding stay of execution of the decree if the judgment debtor is government?
41. Frame a charge on the basis of the final report attached to this question paper. (vide separate sheet in Malayalam)
42. On the basis of the materials furnished below, write a judgment.

### Plaint

The plaintiff and the defendant are neighbours. They are distant relatives. Plaintiff A & B scheduled properties were parts of a compact area. It originally belonged to one Shaji. His wife predeceased him. He had only two sons. On his death, his properties were inherited by his two sons, Ajayan and Vijayan. By partition deed No. 202 of 2005 they divided the properties. A schedule property in the partition deed was allotted to Ajayan and B schedule property to Vijayan. By sale deed No. 121/2008 Ajayan sold his share to the plaintiff. This is the plaintiff A schedule property. By sale deed No. 404 of 2008 Vijayan sold his property to the defendant. This property is the plaintiff B schedule property. There is no fence or wall separating the two properties. But there is a boundary stone separating the properties. To the south of the plaintiff schedule properties there is a panchayat road. From the panchayat road there is a pathway passing through the property of the

defendant. It reaches the plaintiff's A schedule property. This pathway is described in the plaintiff C schedule. Plaintiff's Vendor, Ajayan and thereafter the plaintiff have been using this pathway. This is the only way for the plaintiff to reach his plaintiff A schedule property from the panchayat road. On 5-8-2010 at 4.00 p.m., the defendant attempted to put up a fence obstructing the pathway. The timely intervention of the plaintiff foiled his attempt. But from the preparations which are being made by the defendant it is reliably learnt that in the absence of the plaintiff, the defendant may again attempt to put up a fence obstructing the pathway. He has no right to do so. The plaintiff has right of easement over the plaintiff C schedule pathway. He prays that the court may be pleased to declare that he has easement of necessity on the plaintiff C schedule property. The court may also be pleased to pass a decree prohibiting the defendant from causing any obstruction on the pathway and interfering with the plaintiff's right to enjoy the pathway.

### **Written statement**

It is admitted that plaintiff A & B schedule properties belong to the plaintiff and the defendant respectively. It is false that the plaintiff's predecessor and the plaintiff have been using plaintiff C schedule pathway for access to the plaintiff A schedule property from the panchayat road. There is no such pathway. He has no right of way through the plaintiff B schedule property. When he constructed a building in his property the defendant allowed him to take building materials through the plaintiff schedule property for his convenience. This will not confer any right on him. He has another way for his access to his property from the panchayat road. It passes through the properties of several owners and reaches the north-eastern corner of his property. He has suppressed it in the plaintiff. He is not entitled to any of the reliefs. The suit may be dismissed with costs.

Witnesses examined for plaintiff : PW1

Witnesses examined for defendant : Nil

Exhibits for plaintiff : A1 to A3

Exhibits for defendant : Nil

PW1

Examination in chief

Ext. A1 is the Copy of partition deed.

Ext. A2 is the Sale deed in favour of the plaintiff.

Ext. A3 is certified copy of the sale deed in favour of the defendant.

My vendor used plaint C schedule pathway to reach the plaint A schedule property from the Panchayat road on the south. After I purchased the property, I have been using it for my access. This is the only way to my property. The defendant attempted to put up a fence obstructing the pathway. I have easement of necessity.

Cross examination

After I purchased the plaint A schedule plot, I put up a house in it. It was through plaint B schedule property I brought building materials to my property. I deny that it was on the strength of the permission granted by the defendant I did so. There exists a way starting from the northern panchayat road and reaching near the property of my neighbour Kannan. It ends there. I deny that it continues upto my property. From Kannan's property it continues as a channel. There is no difficulty in walking along it during summer. In rainy season it is not possible to walk along it because there will be water. There will be ankle deep water. It is not convenient to walk through it.

Re-examination : Nil

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

Prosecution case

The accused, two in number, and Hassan were classmates. Hassan was handsome, but he was not bright in his studies. He had political activities also. Hassan fell in love with Ammini, sister of the first accused. The first accused did not like it. He warned Hassan to keep away from his sister. One day Hassan came across a love letter written by Hassan to Ammini. This enraged the first accused. He took counsel with the second accused. On 21-7-2010 at 10 p.m. they waited near Padma theatre on the M.G. Road in Ernakulam. Each of them was armed with a knife. When Hassan came out of the theatre, the accused came from behind and each of them stabbed Hassan with the knives. The incident took place on the M.G. Road. Hassan sustained injuries. He was taken to District Hospital, Ernakulam. He had died on his way to hospital. Accused committed the offence of murder punishable u/s. 302 IPC r/w. S. 34 IPC. Accused were arrested on 24-7-2010. Remanded. Released on bail on 24-9-2010.

Prosecution evidence

PW1 to PW4 examined. Exts. P1 to P4 marked.

MOs. : Nil

Defence evidence : Nil

PW1 : Thomas

Examination in Chief

On 21-7-2010 at about 10.15 p.m. I was going to my home near Kavitha theatre in Ernakulam, and then I heard a load from near the Padma theatre. I rushed to the spot. I saw two persons running away. One person was lying in a pool of blood. An autorickshaw came along the road. I took the injured in that vehicle to the District Hospital. The doctor told me that he was dead. I gave a statement to the police. This is the statement. I have signed it. (Marked Ext. P1)



Cross-examination

I did not know the name of the injured. There was no light. I could not identify the persons who ran away. They were young people. I could not notice their features.

Re-examination : Nil

PW2 : Ali

On 21-7-2010 I was returning from my work when the incident happened. I was going on a motorcycle. I saw one person going ahead of me. There were two persons behind him. These two persons were the accused. I did not know the person who was walking in front of him. I could identify the accused by the light of my vehicle. I had acquaintance with them. I went past these three persons. When I had gone 50 meters I heard a loud cry. I turned back and saw the accused assault the other man. I could see the incident by the light of a jeep which was coming from their behind. I went home. The next day I knew that the injured was one Hassan and he died.

Cross-examination

I had only a nodding acquaintance with the accused. I had a shop near the Shenoy's theatre. The accused had come to my shop 3-4 times to buy C.Ds. When I saw the incident I just stopped, but I did not go back to take the injured to hospital. I saw a person came running to the place of occurrence. I just sped away.

Re-examination

I sped away because I was frightened by the incident.

PW3 : Dr. John

Was Police Surgeon. I conducted autopsy on the body of Hassan.

He had two stab injuries on the left side of the chest and one stab injury on the back of the neck.

Ext. P2 is the certificate, which bears my signature.

The cause of death was the stab injuries.

Cross-examination

The injuries caused loss of blood. Moreover the heart was pierced.

PW4 : Karunakaran

Examination-in-Chief

I was C.I. of police, Central Police Station, Ernakulam. Ext. P1 FI statement was recorded by me. It bears my signature and the signature of PW1. Ext. P3 is the FIR prepared by me. I went to the place of occurrence and prepared Ext. P4 seen mahazar. I completed the investigation and filed Final Report.

Cross-examination

There was only 1 occurrence witness. He is PW2. I questioned him only after one week of the occurrence because he had gone to Coimbatore to visit his uncle. The weapons could not be recovered.

Re-examination : Nil

Q. 41. Final report.

കുറ്റപത്രം

ഈ കേസിലെ ഒന്നും രണ്ടും പ്രതികൾക്ക് അവരുടെ അയൽക്കാരനായിരുന്ന കാക്കകുളം വീട്ടിൽ കിരൺ മകൻ കരുണിനോടുള്ള മുൻ വിരോധം നിമിത്തം ടിയാനെ കൊലചെയ്യണമെന്നുള്ള പൊതുവായ ഉദ്ദേശത്തോടും കരുതലോടും കൂടി കണയന്നൂർ താലൂക്ക് എറണാകുളം വില്ലേജിൽ തെക്കുവടക്കായി സ്ഥിതി ചെയ്യുന്ന എം.ജി റോഡിൽ നിന്ന് കിഴക്കോട്ടു പോകുന്ന ടാറിട്ട രാജാജി റോഡിന്റെ വടക്കുതീരത്ത് നിന്നും രണ്ടു മീറ്റർ തെക്കുമാറിയും തെക്കുതീരത്ത് നിന്നും നാല് മീറ്റർ വടക്കുമാറിയും ഉള്ള ടാർ റോഡിൽ വച്ച് 1.5.2011ൽ ഉച്ചയ്ക്ക് 'ഒരു മണിക്ക് ഒന്നാംപ്രതി ആറ് ഇഞ്ച് നീളവും രണ്ട് ഇഞ്ച് വീതിയും ഉള്ള ഒരു മലപ്പുറം കത്തികൊണ്ട് ടി കരുണിന്റെ നെഞ്ചിൽ ഇടത് ഭാഗത്ത് രണ്ട് പ്രാവശ്യവും അടിവയറ്റിൽ ഒരു പ്രാവശ്യവും കുത്തി മുറിവേൽപ്പിച്ചും രണ്ടാംപ്രതി തന്റെ കൈവശം കരുതിയിരുന്ന ഉളികൊണ്ട് ടി കരുണിന്റെ കഴുത്തിൽ വലതു വശം ഒന്നു കുത്തി മുറിവേൽപ്പിച്ചും പരിക്കിന്റെ കഠിനൃത്താൽ ടി കരുൺ ആശുപത്രിയിലേക്ക് കൊണ്ട് പോകുന്നവഴിക്ക് മരിക്കാനിടയാക്കിയും ഇൻഡ്യൻ ശിക്ഷാനിയമം 302 ഉം 34ഉം വകുപ്പുകൾ പ്രകാരം കുറ്റം ചെയ്തിരിക്കുന്നു .