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## JUDICIARY EXAMS QUESTION PAPER

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**Kerala Higher Judicial Service**

**Mains Examination, 2012**

**Question Paper**

HIGH COURT OF KERALA  
KERALA STATE HIGHER JUDICIAL SERVICE EXAMINATION-2012  
(WRITTEN EXAMINATION)

**PAPER - I**

Date of Examination: 11-05-2013

Roll Number:

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Maximum Marks: 150

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

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**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 18 Objective Type Multiple Choice questions carrying 2 marks each. All the questions are to be attempted. In **Part-B**, there are 18 descriptive type questions (answers not to exceed 100 words) carrying 7 marks each. Of these 18 questions, 12 questions are to be attempted (the first 12 answers alone will be evaluated if more than 12 questions are answered). The only question in **Part-C** (Judgement 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 18 Objective Type Multiple Choice questions in Part -A, that there are 18 descriptive type questions in Part -B and that there is 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). Candidates should not separate the 'ROLL NUMBER' portion and 'ANSWERS' portion of the Answer Sheet along the thin perforation in between.
  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 18 Objective Type Multiple Choice questions carrying 2 marks each. All the questions are to be attempted. Answers to the questions in this Part should be marked in the OMR Answer Sheet bearing Serial (A). Answers marked elsewhere will not be valued.]**

1. The mortgagee is not entitled to sue for sale of the mortgaged property if it is -
  - a) a simple mortgage
  - b) a mortgage by conditional sale
  - c) an English mortgage
  - d) a mortgage by deposit of title deeds
  
2. 'A', a Muslim, died leaving behind 'X' (daughter's son's daughter) and 'Y' (daughter's daughter's son). To what share 'X' is entitled?
  - a) 2/3 shares
  - b) 1/3 share
  - c) 1/2 share
  - d) no share
  
3. A counsel appearing for a party may be liable for the costs of the opposite party when -
  - a) false or vexatious claim is made in the pleading without the knowledge of the party concerned
  - b) false or vexatious defence is raised in the pleading despite the objection of the party concerned
  - c) the counsel is guilty of misconduct
  - d) a suit is instituted by or on behalf of a minor without a next friend
  
4. Under section 6 of the Specific Relief Act -
  - a) no suit can be filed against the government
  - b) no suit can be filed against the true owner
  - c) no suit can be filed against the government without notice u/s 80 of the C.P.C.
  - d) no suit can be filed against the government without the leave of the court.
  
5. A promissory note was executed on 11.5.2010. Today is 11.5.2013. The person who executed the promissory note is now residing outside India
  - a) suit if not filed today itself will be barred by limitation.
  - b) period of limitation will start to run only after his return to India.
  - c) suit can be filed after his return with the leave of the court
  - d) the time during which he has been absent from India shall be excluded in computing the period of limitation.

6. A ward is removed from the custody of a guardian of his person. The court makes an order to return the ward to the custody of the guardian. For the purpose of enforcing the order, the court may u/s.25 of the Guardians and Wards Act -
- cause the arrest of the person who removed the ward from the custody of the guardian and detain such person in civil jail for a period not exceeding two months.
  - cause the attachment of the property of the said person and sell it if he does not return the ward within two months.
  - cause the ward to be arrested and to be delivered into the custody of the guardian
  - refer the matter to the decision of the High Court
7. Which statement is wrong
- International commercial arbitration means an arbitration relating to disputes arising out of legal relationships which shall be strictly contractual and commercial
  - An arbitration agreement shall be in writing, and it is in writing if it is contained in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement
  - The Arbitral Tribunal may apply to the court for assistance in taking evidence
  - The arbitral award shall be enforced in the same manner as if it were a decree of the court
8. An agreement made without consideration is void unless-
- it is expressed in writing and registered
  - it is made on account of natural love and affection
  - the parties stand in a near relationship to each other
  - it is a promise to compensate a person who has already voluntarily done something for the promisor
9. What shall the Judge do in an application for succession certificate if he finds that he cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding.
- He may dismiss the application and refer the parties to a regular civil suit
  - He may grant a certificate to the applicant if the applicant appears to be the person having prima facie the best title thereto
  - He may convert the original application into a suit and try the suit
  - He may in the same proceeding decide the complicated questions subject to confirmation by the High Court

10. If any person is disqualified from inheriting any property under the Hindu Succession Act,
- it shall devolve as if such person was not born
  - it shall devolve as if such person had died before the intestate
  - it shall escheat to the government
  - none of the above is a correct statement
11. Which one is not correct among the following four statements?
- Appellate court may allow documents to be produced in appeal if the trial court has refused to admit evidence which ought to have been admitted.
  - A respondent in an appeal shall not be allowed to challenge a finding against him unless he files cross-objection
  - The appellate court shall not make an order for the stay of execution of the impugned decree unless the application for condoning the delay in filing the appeal is decided and the appeal is admitted.
  - Where the appellant does not appear when the appeal is called on for hearing, the appellate court may dismiss the appeal for default but not on the merits.
12. Ordinarily what happens if anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind?
- The legacy is void
  - The legacy is voidable at the option of the beneficiary under the Will
  - The legacy is adeemed
  - The legacy takes effect if it is converted into a property of a different kind at the time of the death of the testator, but it does not take effect if it does not belong to him at the time of his death.
13. The subject-matter of a suit was transferred pending suit. The question is whether the transfer is hit by *lis pendens*. The transferee is safe if he proves that -
- he had no notice of the suit and he was a bonafide purchaser for valuable consideration
  - he (the transferee) had entered into an agreement for sale of the property before the decree, although after the suit
  - he spent a huge amount and considerably improved the property.
  - the suit between the plaintiff and the defendant was collusive

14. Choose the correct statement
- a) When a plaint is returned for curing defects, the court shall require the plaintiff to cure the defects and re-present the plaint within a period not exceeding one month.
  - b) No court shall issue summons for production of records in the custody of a public officer other than a court unless it is satisfied that the application for a certified copy has been duly made and has not been granted
  - c) Every application for the production of the records in the custody of a court shall be made by a verified petition setting out the relevancy of the documents
  - d) All the above three statements are incorrect
15. You find a mistake in one of the following provisions. Which is that provision?
- a) Sec.39 (4) CPC
  - b) Clause (ka) of the proviso to Sec.60 CPC
  - c) Rule 15 (4) of Order VI CPC
  - d) Rule 14 (4) of Order VII CPC
16. A registered trade union has filed a suit for realisation of one thousand rupees. But no court fees is paid on the plaint. The court shall -
- a) require the District Collector to pay the court fees
  - b) exempt the plaintiff from paying the court fees
  - c) direct the plaintiff to pay the court fees and if the same is not paid, reject the plaint
  - d) straightaway dismiss the suit
17. A buyer is not entitled to the statutory charge u/s.55 (6) (b) of the Transfer of Property Act if -
- a) he has delayed any of the payments
  - b) he fails to sue for specific performance also
  - c) he has improperly declined to accept delivery of the property
  - d) the agreement is silent about the charge
18. The judgment-debtor is about to receive arrears of salary. The decree-holder, in execution of a decree for money, moves an application for attachment of the arrears of salary. The court which executes the decree -
- a) may attach the entire arrears
  - b) shall not attach any portion of the arrears
  - c) may attach an amount which is arrived at after deducting one thousand rupees and two-thirds of the remainder from each month's salary
  - d) may attach one-third of the arrears

## PART - B

**[In this Part, there are 18 descriptive type questions (answers not to exceed 100 words) carrying 7 marks each. Of these 18 questions, 12 questions are to be attempted (the first 12 answers alone will be evaluated if more than 12 questions are answered). Answers to the questions in this Part should be written in the Answer Book bearing Serial (B). Answers written elsewhere will not be valued.]**

1. What is solicitor's lien? What is the effect of set off and does it affect pleader's lien?
2. In Salem Advocate Bar Association, Tamil Nadu vs. Union of India (AIR 2005 SC 3353) the Supreme Court considered various provisions in the Code of Civil Procedure as amended in 2002. What did the Supreme Court say in the above decision on Order VI rule 17, Order VIII rule 1 and Order XVII rule 1 of the Code?
3.
  - a) Who are sharers, residuaries and distant kindred and how they inherit the estate of a deceased Mohammedan?
  - b) What is 'Radd' (Return) in Muslim Law? Is there any exception to this rule?
4.
  - a) What is the general rule on partial redemption of mortgage? Is there any exception to the general rule?
  - b) The Code of Civil Procedure was amended by Act 104 of 1976 w.e.f 1.2.1977. After the said amendment, so far as the State of Kerala is concerned, whether the provisions in the Central Act would prevail or the local amendment?. Discuss with reference to important case law on the subject.
5.
  - a) Limitation merely extinguishes the remedy and not the debt or right. Is this statement always correct? Comment with reference to relevant statutory provisions?
  - b) Discuss briefly the scope and application of Sec.29 (2) of the Limitation Act?
6. Write a brief note on 'damages as a remedy for breach of contract'.
7.
  - a) What are the major changes brought to the Hindu Succession Act by the Hindu Succession(Amendment) Act, 2005?
  - b) Write a note on 'blending'.
8. What are the matters to be considered by a Court before it directs production of records in the custody of a court and records in the custody of a public officer other than a court?

9.
  - a) What are post-sale irregularities and pre-sale irregularities?
  - b) Where an immovable property has been sold in execution of a decree, under which provisions of law and on what grounds a court may set aside the sale?
  
10.
  - a) How an unprivileged Will may be executed?
  - b) How an unprivileged Will may be revoked?
  - c) Whether an unprivileged Will which has been revoked can be revived? If possible, how? If not possible, why?
  - d) In what case legacy lapses?
  
11.
  - a) How a charge is different from mortgage?
  - b) Write a brief note on 'marshalling securities'
  
12.
  - a) How plaintiff shall be chargeable with court fees in multifarious suits?
  - b) When can the court refund the court fees fully or partly?
  
13.
  - a) How a decree for the payment of money may be enforced against the legal representatives of a deceased person?
  - b) How a decree may be executed where a judgment-debtor dies before the decree has been fully satisfied?
  
14.
  - a) Whether a suit to have a written instrument adjudged void or voidable could be instituted by a person who is not the executant of the impugned deed or one who is claiming under the executant?
  - b) If a suit as aforementioned is decreed, what is the nature of the decree to be passed and the procedure to be followed after passing the decree?
  
15.
  - a) What are the situations under which the court may grant a decree for mandatory injunction?
  - b) Enumerate the circumstances in which an order of temporary mandatory injunction may be granted?
  
16. What are the conditions in which court may direct specific performance of part of a contract?
  
17. Write a note on appropriation of payments?
  
18.
  - a) Write a note on agent's duty to principal?
  - b) Under what circumstances an agent is personally liable to third parties ?

### **PART - C**

***[The only question (Judgement Writing) carrying 30 marks in this Part is compulsory. Answer to the question in this Part should be written in the Answer Book bearing Serial (C). Answer written elsewhere will not be valued.]***

1. Munsiff's Court decreed a suit. Defendant preferred appeal. Materials are given below. Write a Judgment?

#### **Parties**

Plaintiff : Malathi  
Defendant : Chandran

#### **Plaint**

The Plaintiff is the owner of the building shown in the schedule to the plaint. The building bears door No.10/1043, Corporation of Cochin. The building was purchased by the plaintiff under a sale deed registered as document No.423/1997, SRO, Fortkochi. The sale deed was executed on 1.6.1997 by the plaintiff's husband Sri.Madhavan. The plaintiff is in possession of the plaint schedule building since its purchase by her in 1997 and before that, her husband was in possession. The plaintiff permitted the defendant to occupy the building as a licensee. He resides in the building. The period of licence was 11 months. A licence agreement was executed on 22.9.2000 by and between the plaintiff and the defendant. The defendant deposited Rs.30,000/-with the plaintiff as security. Agreed licence fee is Rs.10,000/- per month. The licence ended on 21.8.2001. But the defendant did not vacate the building. The plaintiff repeatedly requested the defendant to vacate the building, but in vain. A notice was also issued to him. He sent a reply notice containing a false claim that he is the tenant. The plaintiff prays for a decree of mandatory injunction directing the defendant to vacate the premises. Besides costs, the defendant shall be liable for damages for use and occupation at the rate of Rs.12,000/- per month.

#### **Written statement**

The suit as framed is not maintainable in law or facts. The plaintiff is not entitled to a decree as sought for. The defendant had executed the agreement dated 22.9.2000 and had paid Rs.30,000/- to the plaintiff as security. But the

defendant was in possession of the building even before the execution of the agreement dated 22.9.2000. Originally it was an oral lease and the agreed rent was Rs.6,000/- per month. The defendant executed the agreement dated 22.9.2000 since the plaintiff so insisted, and at that time the rent was enhanced to Rs.10,000/- per month. The plaintiff even had filed a rent control petition against the defendant for eviction on the ground that the building needed re-construction. The defendant is the tenant and not merely a licensee. The suit therefore deserves dismissal.

### Evidence

PW1 - Plaintiff

Ext.A1 – Agreement dated 22.9.2000

Ext. A2 – Notice dated 22.9.2010 issued  
to the defendant by the plaintiff

DW1- Defendant

Exts.B1 to B5 – Rent receipts dated  
5.12.98, 5.1.99, 5.3.99,  
2.6.99 & 5.7.99 respectively

Ext. B6 – Reply notice

### Ext.A1 agreement

Titled and styled as 'licence agreement'.

Date of execution – 22.9.2000

**Important recitals** - The building shown in the margin of the agreement is owned and possessed by the first party, viz Malathi. The first party permits the second party, viz Chandran, to use the building for his residence as a licensee for 11 months. Rs.30,000/- is paid by the second party and received by the first party as security. The licence fee shall be Rs.10,000/- per month, payable on or before the 22<sup>nd</sup> day of every month. If the licence fee is not paid in any month before the 22<sup>nd</sup> day, the first party shall have a right of entry into the building and the second party shall not have the right to prevent such entry. The second party shall not permit any other person to reside in the building or use it for any purpose. The second party shall have no tenancy right in the building. The second party shall not use the building, and he shall not have the right to use it, after the expiry of the period of licence.

**PW1**

Filed affidavit in lieu of examination-in-chief reproducing the allegations in the plaint and denying the allegations in the written statement.

**Cross-examination**

I deny that the defendant is my tenant. He is only a licensee. The licence was granted when Ext.A1 was executed on 22.9.2000. There was no transaction between us before 22.9.2000. I deny that there was oral tenancy. I further deny that Ext.A1 was executed only because the rent was enhanced to Rs.10,000/- from Rs.6,000/-. The receipts now shown to me bear my signatures. Those receipts are issued by me to the defendant. The receipts bear the dates 5.12.98,5.1.99,5.3.99,2.6.99 and 5.7.99 (marked as Exts.B1 to B5 respectively). Those receipts were issued before the execution of Ext. A1. The defendant was not regular in paying the licence fee. Several times he delayed the payment. But I never tried to enter the building. I am aware of the clause in Ext.A1 that I have such a right if the licence fee is not paid on the 22<sup>nd</sup> day of any month. I am aware that the period of 11 months stipulated in Ext.A1 expired on 21.8.2001. It expired 10 years ago. Still the defendant continues to occupy the building. Ext.A2 notice was issued more than eight years after the expiry of the period of licence. I have filed a rent control petition to evict the defendant on the ground that the building needed re-construction. I withdrew the said petition.

**Re-examination**

I am unable to remember the circumstances under which Exts.B1 to B5 receipts happened to be issued by me. I withdrew the rent control petition since the Corporation of Cochin refused to grant permission to re-construct the building. I did not try to enter the building since the defendant was a good friend of mine. I did not issue notice soon after the expiry of the period of licence since I was under a bonafide belief that the defendant would vacate the building within a reasonable time.

**DW1**

Proof affidavit filed. The contentions in the written statement are reiterated and the allegations in the plaint are denied in the proof affidavit.

**Cross-examination**

I do not know the distinction between lease and licence. I was aware of the terms of Ext.A1 when I executed the same. I did read it before I signed it. The oral lease set up in the written statement is true. Exts. B1 to B5 are not documents fabricated by me. I deny that I had taken blank receipts from the plaintiff and filled them later. I was aware while executing Ext.A1 that what was intended was not a temporary transaction to last only 11 months. But I did not insist that the said clause in Ext.A1 should be deleted. I do not have any document with me to prove the filing of the rent control petition by the plaintiff and its withdrawal by her.

**Findings and decree of the trial court**

The learned Munsiff found the transaction between the parties to be licence and not lease. According to the learned Munsiff, the terms in Ext.A1 unambiguously evidence licence and not lease. The learned Munsiff said that the filing of the rent control petition by the plaintiff would not create a tenancy in favour of the defendant. The suit was decreed and the defendant was directed to quit and surrender vacant possession of the plaint schedule building to the plaintiff. The defendant was directed to pay damages for use and occupation to the plaintiff at the rate of Rs.10,000/- per month. The parties were directed to bear their own costs.

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**HIGH COURT OF KERALA**  
**KERALA STATE HIGHER JUDICIAL SERVICE EXAMINATION-2012**  
**(WRITTEN EXAMINATION)**

**PAPER - II**

Date of Examination: 12-05-2013

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.
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3. **This Question Booklet has three parts:- Part -X, Part-Y and Part-Z.** In **Part -X**, there are 18 Objective Type Multiple Choice questions carrying 2 marks each. All the questions are to be attempted. In **Part-Y**, there are 18 descriptive type questions (answers not to exceed 100 words) carrying 7 marks each. Of these 18 questions, 12 questions are to be attempted (the first 12 answers alone will be evaluated if more than 12 questions are answered). The only question in **Part-Z** (Judgement Writing) carrying 30 marks is compulsory.
4. After opening the Question Booklet at 10 a.m., ensure that it has three parts - **Part -X, Part -Y and Part -Z**, that there are 18 Objective Multiple Choice Type questions in Part -X, that there are 18 descriptive type questions in Part -Y and that there is One question in Part -Z. 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.
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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.
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**PART - X**

**[In this Part there are 18 Objective Type Multiple Choice questions carrying 2 marks each. All the questions are to be attempted. Answers to the questions in this Part should be marked in the OMR Answer Sheet bearing Serial (X). Answers marked elsewhere will not be valued.]**

1. A case instituted otherwise than on police report was committed to the Court of Session. The Court framed charge u/s.228 (1) (a) of the Code of Criminal Procedure and transferred the case for trial to a Judicial Magistrate of the First Class. How the Magistrate shall try the offence?
  - a) He shall try the offence in accordance with the procedure for trial of cases instituted otherwise than on a police report.
  - b) He shall try the offence in accordance with the procedure contained in Chapter XVIII of the Code of Criminal Procedure.
  - c) He shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report.
  - d) He shall try the offence in accordance with the procedure contained in Chapter XX of the Code of Criminal Procedure.
  
2. In the Indian Evidence Act two sections start with 'provided that'. One is Sec.27. Which is the other one?
  - a) Sec.105
  - b) Sec.107
  - c) Sec.108
  - d) Sec.109
  
3. In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to
  - a) twelve years
  - b) fourteen years
  - c) sixteen years
  - d) twenty years
  
4. Whether a person who is not a qualified legal practitioner may be permitted to act as a pleader in any proceedings before a court?
  - a) He shall never be permitted
  - b) He may be permitted if all the qualified legal practitioners at a particular station for any reason refuse to appear for a particular accused
  - c) He shall not be permitted except to prevent a possible miscarriage of justice
  - d) He may be permitted with the concurrence of the Bar Council of India.

5. When does the trial begin in sessions cases and warrant cases ?
- when the court decides not to discharge the accused
  - when the plea of the accused is recorded
  - when the court takes cognizance of the offence
  - when the first witness is examined
6. Which one among the following Sections of the Indian Penal Code is not introduced by the Criminal Law (Amendment) Act, 2013?
- Sec.124 A
  - Sec.166 A
  - Sec.326 A
  - Sec.354 A
7. Material evidence obtained as a result of illegal search/seizure is -
- not at all admissible
  - reliable as any other evidence
  - admissible but wholly unreliable
  - admissible, but its probative value depends on the facts and circumstances of the case
8. In appeal a Court of Session modifies a sentence of imprisonment. Then,
- the court shall forthwith transmit the entire records along with its judgment to the trial court and thereupon the trial court shall prepare a fresh warrant and shall send it to the superintendent or the officer-in-charge of the jail.
  - while transmitting the records to the trial court the Court of Session shall direct the trial court to prepare a fresh warrant in accordance with the order passed by the Court of Session and to send it to the superintendent or the officer-in-charge of the Jail.
  - the Court of Session shall prepare a fresh warrant in accordance with the terms of the order passed by it and shall send it to the trial court for onward transmission to the superintendent or the officer-in-charge of the jail.
  - the Court of Session shall prepare a fresh warrant in accordance with the terms of the order passed by it and shall send the same along with a copy of the order direct to the superintendent or the officer-in-charge of the jail and shall recall and cancel the original warrant of commitment which shall be attached to the record of the trial court and returned to it therewith.

9. In a sessions trial the prosecution did not examine a witness cited by it. He was examined as a defence witness. His statement recorded u/s.161 of the Code of Criminal Procedure
- a) cannot be used for any purpose
  - b) may be used by the accused to contradict the witness
  - c) may be used by the accused for contradiction or corroboration
  - d) may be used by the prosecutor to contradict the witness but only with the permission of the court.
10. Which statement is wrong?
- a) A person abets the doing of a thing if he intentionally aids, by illegal omission, the doing of that thing.
  - b) To constitute the offence of abetment it is necessary that the act abetted should be committed.
  - c) The abetment of an offence being an offence, the abetment of such an abetment is also an offence.
  - d) When A instigates B to murder C and in pursuance of the instigation B stabs C but he recovers from the wound, A is guilty of instigating B to commit murder .
11. Whenever it is directed by the Indian Evidence Act that the Court shall presume a fact
- a) the court shall regard such fact as proved and no evidence shall be allowed to be given to disprove it
  - b) the court shall ordinarily regard such fact as proved, but the court may, in its discretion, in appropriate cases, call for proof of it
  - c) the court shall regard such fact as proved, unless and until it is disproved
  - d) the court shall, on proof of one fact, regard the other as proved.
12. The Court of Session convicts and sentences a woman for the murder of her infant child. The Sessions Judge
- a) may make a reference to the Government with his opinion as to the propriety or otherwise of reducing the sentence
  - b) shall make a reference to the Government with his opinion as to the propriety or otherwise of reducing the sentence
  - c) may make a reference to the Government through the High Court with his opinion as to the propriety or otherwise of reducing the sentence
  - d) shall make a reference to the Government through the High Court with his opinion as to the propriety or otherwise of reducing the sentence.

13. The Sessions Judge directed the accused to execute bond u/s.437A of the Code of Criminal Procedure, but the accused failed to comply with it. What consequence does the Code provide?
- a) No consequence is provided.
  - b) The bail bond already executed by the accused shall be treated as forfeited to the government and proceedings u/s.446 Cr.P.C shall be taken.
  - c) The Sessions Judge shall make an order that the bond already executed by the accused shall be in force for six months more.
  - d) The accused shall be taken into custody even if he is acquitted and he shall be retained in custody for six months or till he executes a bond, whichever is earlier.
14. A convict undergoing a sentence of imprisonment for life committed murder and he is convicted. What substantive sentence shall be imposed on him if the case does not fall under the category of rarest of rare cases, and why?
- a) He shall be punished with death u/s.303 of the Indian Penal Code.
  - b) He shall be sentenced to imprisonment for life since in Mithu vs. State of Punjab (AIR 1983 SC 473) the Supreme Court directed all the courts in the country to read the word 'shall' in Sec.303 IPC as 'may'.
  - c) He shall be sentenced to imprisonment for life since in Mithu's case the Supreme Court has struck down Sec.303 IPC as unconstitutional.
  - d) He shall be sentenced to imprisonment for life since he is already undergoing the sentence of imprisonment for life.
15. Choose the correct statement?
- a) The fact that the accused person has a bad character is always relevant in criminal proceedings
  - b) A previous conviction is relevant as evidence of bad character
  - c) The fact that the person accused is of a good character is irrelevant in criminal proceedings
  - d) When the question of consent is in issue in a prosecution for an offence punishable u/s.376 IPC, the previous sexual experience of the victim with any person is relevant.

16. Which among the following is the correct statement?
- a) The convicted accused is sentenced to rigorous imprisonment for three years and a fine of fifteen thousand rupees. He shall also pay ten thousand rupees to the victim (PW1) as compensation.
  - b) The convicted accused is sentenced to rigorous imprisonment for three years. He shall pay ten thousand rupees to the victim (PW1) as compensation and shall not be entitled to set off u/s.428 of Cr.P.C in the event of his failure to pay the compensation.
  - c) The convicted accused is sentenced to rigorous imprisonment for three years. He shall deposit in court fifteen thousand rupees as fine, and ten thousand rupees as compensation for payment to the victim (PW1).
  - d) The convicted accused is sentenced to rigorous imprisonment for three years and a fine of fifteen thousand rupees. Ten thousand rupees out of the fine amount shall be paid to the victim (PW1) as compensation.
17. Identify the wrong statement?
- a) The court may presume that a man who is in possession of stolen goods is either the thief or has received the goods knowing them to be stolen
  - b) The court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars.
  - c) The court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.
  - d) The court may presume that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him.
18. Choose the odd one?
- a) Sec.489 A IPC
  - b) Sec.489 B IPC
  - c) Sec.489 D IPC
  - d) Sec.489 E IPC

**PART - Y**

***[In this Part, there are 18 descriptive type questions (answers not to exceed 100 words) carrying 7 marks each. Of these 18 questions, 12 questions are to be attempted (the first 12 answers alone will be evaluated if more than 12 questions are answered). Answers to the questions in this Part should be written in the Answer Book bearing Serial (Y). Answers written elsewhere will not be valued.]***

1.
  - a) In what situation a person in custody shall be released by a court on his executing a bond without sureties?
  - b) What are the special powers of a Court of Session under section 439 of the Code of Criminal Procedure?
2. Explain voyeurism? What is the punishment for it?
3. Apprehending that he may be charged with conspiracy if he answers a question, a witness requests the court not to compel him to answer that question. The Court directed him to answer the question and he did so. Thereafter the Court added him as an accused based on his own incriminating testimony. State with reasons whether the Court had gone wrong?
4.
  - a) Sec.33 (1) of the Protection of Children from Sexual Offences Act permits the Special Court to take cognizance of any offence punishable under that Act, without the accused being committed to it for trial, upon a complaint or a police report. A person was arrested alleging that he committed an offence punishable u/s.8 of the Act. After the arrest he was produced before a Judicial Magistrate within 24 hours. The Magistrate refused to attend, and directed the police to produce him before the Special Court. Comment.
  - b) An investigating Officer sought the custody of an accused for interrogation. The Magistrate refused to grant remand to police custody on the ground that such custody was not sought within 15 days from the date of first production before the Magistrate. Comment.
5. Are there anything common in Sec.34 and Sec.149 of the Indian Penal Code? Do they differ in their operation?
6.
  - a) Explain the principle embodied in Sec.6 of the Indian Evidence Act?
  - b) What are the differences between the provisions in Sections 6 and 157 of the Indian Evidence Act?
7.
  - a) When can a Sessions Judge issue commission for the examination of witnesses? To whom may be issued a commission?
  - b) What are the powers of a criminal court in conducting local inspection?
8. Is the act of a person of unsound mind an offence? On whom lies the burden of proving that the case of the accused comes within any of the General Exceptions in the Indian Penal Code?

9. Evidence given by a witness in a judicial proceedings may or may not be relevant in a subsequent judicial proceedings. Discuss the law on the subject.
10. Is it possible to include sessions cases in the Register for Long Pending Cases? If possible, under which provision(s) and on what condition(s) ?
11.
  - a) Whether an appeal will lie in a Court of Session from an order of acquittal?
  - b) What are the powers of an appellate court u/s.386 Cr.P.C?
12.
  - a) A man made a request to a woman whether she could spend one night with him. What is the offence, if any, committed by him, and why?
  - b) A private detective who is entrusted with the detection of a crime follows a woman who is suspected of the commission of the crime, in the course of which he attempts to contact her to foster personal interaction with her repeatedly, though she rebuffed him. What is the offence, if any, committed by him? State reasons.
13.
  - a) Proof of document is not proof of genuineness of its contents. Comment.
  - b) What are the purposes for which previous statements may be used under the Indian Evidence Act?
14. What are the provisions in the Code of Criminal Procedure governing detention of an accused during investigation and during inquiry and trial?
15. All admissions are statements but all statements are not admissions. Explain?
16.
  - a) In the course of an investigation the police seized a vehicle from the custody of the accused. A stranger filed an application for custody. The application is dismissed by the Court. What is his remedy? State reasons.
  - b) Under a Special Act an offence is punishable with imprisonment for three years. Is it bailable? State reasons.
17. What are the purposes of examination of an accused under section 313 Cr.P.C? What are the purposes for which the answers given in such examination may be used? What is the effect of an omission to put an incriminating circumstance to the accused in his examination?
18. Comment on confession of a co-accused and evidence of an approver?

**PART - Z**

**[The only question (Judgement Writing) carrying 30 marks in this Part is compulsory. Answer to the question in this Part should be written in the Answer Book bearing Serial (Z). Answer written elsewhere will not be valued.]**

1. On the basis of the materials given below, write a judgment.

S.C No.212 of 2000

Accused - Joseph

Crime No.312 of 2000, Fortkochi Police Station

C.P No.102 of 2000 on the file of the Judicial Magistrate of the First Class, Kochi

**Prosecution case**

The incident was at or about 4.30 a.m on 22.11.2000. The accused and his wife, Stella, were not on good terms. He suspected her chastity. He used to ill-treat and harass her. She was therefore residing in a convent at Irinjalakkuda. Her daughter, Stefy, was also residing in the convent along with her. Stella and Stefy came to Fortkochi on 21.11.2000 in order to obtain the transfer certificate of Stefy from the school. The accused also had gone to the school in order to apply for the transfer certificate. From the school the accused, Stella and Stefy went to the house of the accused at Fortkochi. The house bears door No.22/400, Cochin Corporation. Stella and Stefy stayed in the house of the accused on that day as wanted by him. The accused and Stella slept in one room and Stefy in the adjacent room. At or about 4.30 a.m the accused stabbed his wife with a knife on her left chest. Stefy saw this incident. She rushed to the house of Sukumarn and informed him. Neighbours gathered. Stella was taken to Queen's Hospital, Kochi. But she succumbed to the injury at 6.30 a.m on the same day.

**Prosecution evidence**

PW1 to PW13 were examined.

Exts.P1 to P11 and MOs 1 and 2 were marked

**Defence evidence**

Nil

PW1	-	Stefy
PW2	-	Sukumaran
PW3	-	Sarojini
PW4	-	Madhusoodanan
PW5	-	Dr.Antony (conducted autopsy)
PW6	-	Dr.Saritha (examined Stella at Hospital)
PW7	-	Dr.Prakash (examined the accused)
PW8	-	Mohanam (attested the inquest report)
PW9	-	Mathew (cousin of Stella)

- PW10 - Kabeer (attested the scene mahazar)  
PW11 - Sankaran (Village Officer who prepared the sketch of the scene of occurrence)  
PW12 - Harshan (S.I of Fortkochi Police station – recorded the F.I statement and registered the FIR)  
PW13- Venu (Circle Inspector , Fortkochi – prepared the inquest report, scene mahazar and seizure mahazar- conducted investigation and filed the final report)

**Exhibits**

- P1 - F.I Statement  
P2 - Seizure mahazar (MO1 knife)  
P3 - postmortem certificate prepared by PW5  
P4 - wound certificate prepared by PW6  
P5 - wound certificate prepared by PW7  
P6 - inquest report  
P7 - scene mahazar  
P8 - seizure mahazar (MO2)  
P9 - Sketch of the scene of occurrence  
P10 - FIR  
P11 - Report of the Chemical Examiner
- MO1 - Knife  
MO2 - night gown (blood stained) of the deceased

**PW1**

**Examination-in-chief**

The accused is my father. My mother Stella died on 22.11.2000. Myself and my mother were residing in an orphanage run by a convent at Irinjalakkuda. On 21.11.2000 we came to Fortkochi to obtain transfer certificate from the school since it was decided that I should continue my education. My father also came to the school. From there all of us went to our house at Fortkochi and stayed there. At about 4.30 in the morning I heard my mother crying. I rushed to her bedroom and saw her lying in a pool of blood. She was stabbed. I do not know who stabbed her. I did not see my father inside the room or anywhere in the house at that time. I assert that I did not see my father stab my mother. I deny that my parents were not on good terms.

**Prosecution takes permission of the Court u/s.154 of the Indian Evidence Act**

I put it to you that you saw the incident (Q). I deny (A). My mother was stabbed but I do not know and I did not see who stabbed her. I gave a statement to the police and signed it. The statement now shown to me is the one given by me and it bears my signature (marked as Ext.P1). On that day my father and mother had slept in one room and I slept in the adjacent room. Nobody slept in the bedroom of my parents other than my parents on that day. There were only three persons including me in our house during the night. I do not know where was my father when I saw my mother with a stabbed wound. I saw her lying in a pool of

blood in her bedroom. My father is a person without any job. To my knowledge he was never employed. I am now residing in the house of my father's brother. My father is also residing there at present. Today I came to the court with my father's brother.

**Cross-examination**

My father never harassed or ill-treated my mother. My father was employed somewhere in Tamil Nadu and that was why my mother along with me happened to reside in a convent. I did not read Ext.P1 before I signed it. It was not read over to me either. I gave a statement since I was compelled to do so by the neighbours, particularly Sukumaran.

**PW2**

**Examination-in-chief**

I know the accused. We are neighbours. At or about 4.30 a.m on 22.11.2000 I heard a hue and cry. Somebody knocked at my door. I opened the door and saw Stefy (PW1). She told me that her father stabbed her mother with a knife and ran away. I rushed to the house of the accused. PW1 followed me. She was saying to herself that her father stabbed her mother and ran away. I saw Stella in the house of the accused with an injury on the left chest. Soon thereafter the people in the locality reached there. We made arrangements to take Stella to Queen's Hospital, Kochi. I gave a statement to the police.

**Cross-examination**

I did not see the accused in his house when I went there. I did not see the incident. I have no grudge against the accused. There was of course a property dispute between the accused and my father 15 years ago. I deny that I have a grudge against the accused. I deny that I was in my wife's house at Kozhikode at the relevant time. I was in my house only. I put it to you that PW1 did not come to you or tell you anything(Q) I deny (A)

**Re-examination**

The dispute between my father and the accused was settled 14 years ago.

**PW3**

**Examination-in-chief**

I know the accused as he is my neighbour. On 22.11.2000 at or about 4.30 a.m I woke up hearing a hue and cry. I saw the neighbours moving to the house of the accused. I too went there. I saw PW1 there. She was telling everybody that her father stabbed her mother and ran away. I saw Stella inside her bedroom lying in a pool of blood. Stella and the accused were not on good terms. It seems he believed that she was unchaste. They used to quarrel with each other. Stella used to quit her matrimonial home and come back after a few days. Stella was not seen in the house of the accused for a few months before the incident. He was always residing there. The police questioned me and recorded my statement.

**Cross-examination**

I do not know the place where Stella stayed when the accused alone stayed in his house. I do not know whether she was staying in a convent or orphanage. I do not know much about the quarrel between the accused and his wife. I do not know why he suspected her to be unchaste. I did go to the house of the accused immediately after the incident. I did not see him there at that time. I deny that I did not go there on that day at that time. I deny that at that time I was in my father's house at Alappuzha. I heard Stefy saying that her father stabbed her mother and ran away. Stefy was saying so not to a particular person. She was telling everybody who had gathered there. I deny that I am speaking falsehood. I deny that I have not given any statement to the police.

**PW4**

**Examination-in-chief**

The accused is my neighbour. I know the incident in this case. I did not see it. It was on 22.11.2000 at about 4.30 a.m. I woke up when I heard a hue and cry. I came out of my house. I saw the accused. He was running towards the northern direction by the western side of the railway track. I stopped him. I saw a knife with him. The same is the one shown to me now (marked as MO1 since identified) I saw the knife in the hands of the accused. I asked the accused where was he going with the knife. He told me that he had stabbed and killed his wife and tried to commit suicide. He said that he would soon commit suicide. By that time more people came there and we prevented the movement of the accused. He remained there with the knife. Police came and arrested him and seized MO1 from him. I attested the seizure mahazar which is shown to me now (marked as Ext.P2). I was questioned by the police.

**Cross-examination**

To my knowledge there is no dispute between the accused and my brother-in-law. I deny that I saw MO1 for the first time in my life today. I put it to you that you did not see blood on the knife (Q). It was blood stained (A). We did not permit the accused to move till the police came and arrested him. You spoke falsehood in court (Q) Why should I (A) I put it to you that the accused was chasing somebody (Q). I did not see anybody (A). I put it to you that Stella was stabbed by somebody else and the accused was chasing him to catch him(Q). I did not see the incident. But I was told by the accused himself that he himself had stabbed his wife (A)

**Gist of the remaining evidence**

**PW5**

I am working as police surgeon. I conducted post mortem examination of Stella on 22.11.2000 at 2.30.p.m. I saw one ante mortem injury. It was an incised wound on the left chest penetrating into peritoneal cavity. There was blood in the chest cavity. The said injury was the cause of death. This document shown to me is the post mortem certificate prepared by me and it bears my signature (marked as Ext.P3). The injury on the body of the deceased could be caused with this weapon shown to me (MO1 )

**PW6**

On 22.11.2000 I was working in Queen's Hospital as the causality medical officer. On that day I examined one Stella. I found an incised wound on her left chest. The alleged cause of the injury was, "stabbed with a knife". This is the wound certificate prepared by me and it bears my signature. (marked as Ext.P4). It could be caused with MO1 knife.

**PW7**

On 22.11.2000 I examined one Joseph (the accused). I did not see any injury on him. I have issued a certificate stating so. This is that certificate (marked as Ext.P5).

**PW8**

Attested the inquest report (Ext.P6)

**PW9**

Cousin of Stella. The life of Stella in her matrimonial home was miserable. The accused used to physically assault Stella and hence she used to quit the house of the accused. Later she used to return to his house. Accused treated Stella with cruelty alleging that she was unchaste. Stella was unable to live in her matrimonial home owing to the cruel treatment suffered by her. I made arrangements for the stay of Stella and Stefy in the convent at Irinjalakkuda.

**Cross-examination**

I am not speaking falsehood. I had mediated the issues between the accused and Stella. In fact I wanted to take Stella and Stefy to my house. But I was unable to accommodate them in my house due to my poor financial condition.

**PW10**

Attested the scene mahazar (Ext.P7)

**PW11**

Village Officer who prepared the sketch of the scene of occurrence (Ext.P9)

**PW12**

Sub Inspector of Fortkochi police station – recorded the F.I statement and registered the case (Ext.P10 FIR). He arrested the accused and seized the MO1 from him and prepared Ext. P2.

**PW13**

Inspector of Fortkochi Circle. He prepared Ext.P6 inquest report and Ext.P7 scene mahazar. Also prepared Ext.P8 seizure mahazar at the time of seizure of MO2 night gown of the deceased. Conducted the whole investigation. Filed the charge sheet.

**Ext.P11**

Chemical Examiner's Report : MO1 was blood stained but the quantity was not sufficient for determining the origin of the blood.

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