



HIGH COURT OF KERALA

KERALA JUDICIAL SERVICE MAIN (WRITTEN) EXAMINATION -2023

Paper I – General English

Duration: 3 hours

Total Marks:100

(Questions 1- 30 carry one mark each)

• **Fill in the blanks with suitable prepositions:**

1. Rumpled clothes have folds them.
2. He is always making comments her appearance.
3. She is interested Indian history.
4. The soldiers fought the honour of their country.
5. I have a good relationship my parents.

• **Fill in the blanks with suitable articles:**

6. The exact date of the wedding remains secret.
7. His was average performance.
8. witness who refused to testify, was arrested yesterday.
9. There is urgency for it.
10. The teacher compared her to angel.

• **Identify the misspelt word:**

11. (a) annulment (b) conclusion (c) feotus (d) gracious
12. (a) maximize (b) reiterate (c) vengeance (d) versetile
13. (a) verbatim (b) veteren (c) veto (d) chauvinist
14. (a) perenial (b) brochure (c) conciliation (d) fatal
15. (a) sacrilage (b) sagacious (c) salubrious (d) sanctimonious

• **Substitute one word for the following:**

16. A man who dislikes women very much.
17. A person who looks upon the bright side of things.
18. Having diverse ingredients.
19. A two hundredth anniversary or its celebration.
20. A person whose age is in the nineties.





- 2 -

- **Give antonyms of the following words:**

21. Commence
22. Persist
23. Revoke
24. Illiterate
25. Flourish

- **Pick out the phrasal verb which means the word underlined:**

26. That shirt doesn't match your trousers.
(a) go with (b) go along with (c) go around (d) go about
27. He tried to deceive me.
(a) pull off (b) pull ahead (c) pull a fast one (d) pull through
28. The tiger attacked the boy.
(a) set off (b) set forth (c) set aside (d) set upon
29. He supported his friend's plan.
(a) backed up (b) backed down (c) backed out (d) backed towards
30. He agreed to execute my orders.
(a) carry away (b) carry on (c) carry off (d) carry out

- **Write an essay on any two of the following:** (20x2 = 40 marks)

31. The Impact of Artificial Intelligence.
32. Yoga should be made available to all.
33. The need to reform the education system in India.
34. Wherever Law Ends, Tyranny Begins.
35. Waste management in India.
36. Human vs animal conflict in Kerala.





37. Make a precis of the following passage:

(15x1 = 15 marks)

The recessionary headwinds blowing worldwide may impact some of India's potential. Still according to the latest estimates put out by the Economic Survey, our economy has already exhibited a robust growth rate of 7% in FY 22-23. According to the IMF, it is expected to grow at nearly 6% in FY 24. On their own, the numbers paint a picture of slowing growth. However, if put in the right context, with global growth slowing to a crawl, the numbers underline the Indian economy's resilience.

India's economy has historically been good at weathering the worst of the world's financial crisis, such as the 2008 global financial crisis, the worst economic downturn since the Great Depression that decimated the world's economy. That is because there has always been a degree of decoupling that has acted as a cushion and protected our economy against the worst resultant fallout. But decoupling alone cannot explain our economy's current resilience. Our economic system is now more tightly interwoven with the world economic order than ever before.

Over the past ten years, besides a substantial boost to infrastructure spending, many reforms have paved the way for India's rise. Interventions like the Jan Dhan accounts, Skill India, the implementation of GST, the digital payments network, the launch of ONDC and so on have been game changers, significantly aiding India's capability. Key reforms like PLI, Make in India, and improvements to core infrastructure like ports and airports have also raised India's equity and capability. Take manufacturing, for example – a commitment to local sourcing of components has become an almost universal condition for foreign businesses to be given concessions to operate here, be they Tesla, Apple or other major equipment makers. Apple is expected to manufacture a large part of its global iPhone supply in India by 2027.

India's economy has three main levers: agriculture, manufacturing and services. These three have a share of roughly 18%, 16% and 55%. While agriculture does have immense potential, it is a longer-term play. The services sector in India has grown rapidly over the past two decades. However, it is the manufacturing sector that holds the greatest promise both in terms of GDP and also in terms of immediacy. Indian manufacturing has undergone several evolutionary steps since Independence, from laying down our industrial foundation to the License Raj era to the post-liberalization boom. Automotive, engineering, chemical, pharmaceuticals, and consumer durables have traditionally been the key drivers of the sector's growth. Going forward, India aims to





become a global powerhouse for manufacturing everything from electronics, batteries and semiconductors to defence equipment and aircraft.

The government is making significant efforts to lay down the foundations. For instance, defence contracts contain clauses that require bidding companies to manufacture equipment, from fighter jets to weapon systems, locally. Even major aircraft manufacturers like Boeing and Airbus are being called upon to build their jetliners locally in India. These steps and many more are being taken to steer us towards achieving the government's target to grow manufacturing from 16-17% of the GDP to 25% by 2025. But to get there India will have to bolster its infrastructure significantly, streamline the regulatory environment, embrace the power of Industry 4.0 and further the ease of doing business.

But most importantly, we must harness the power of our people. India has been blessed with a demographic dividend. We have a dynamic young population brimming with vigour, enthusiasm and ambition. That makes our people our biggest asset and the ticket to our economic ambitions. The median age of our population is 28 years, according to the United Nations' World Population Prospects, and this young population, if equipped with the right skills, can turbocharge our economic growth further.

India's entrepreneurial spirit is also being unleashed, giving the country's youth the skills to realize their new-age business ideas. This complements the government's focus on nurturing startups, empowering entrepreneurs living in our country's farthest flung corners and fuelling their ideas and dreams. India had 84,012 startup companies in 2022, up from just 452 in 2016, according to the Economic Survey 2022-23. These startups created over 9,00,000 direct jobs; nearly half were founded in our smaller towns.

But these are only the internal drivers of our economic resilience. Another reason for optimism is the evolving geopolitical scenario that has placed India at the centre of a new multipolar world. For much of our independent history, the world was run by a bipolar order dominated, on the one hand, by the American-led West against the Soviet bloc. China replaced the USSR as the second pole in this bipolar order. Having served as the factory to the world for the last few decades, China is now stepping up its political ambitions, fraying the already uneasy relations between China and the West further.





38. Translate the following Malayalam passage into English (15x1=15 marks)

പ്രകൃതി നൽകുന്ന അമൂല്യമായ വിഭവങ്ങളിൽ ഒന്നാണ് വനം. പ്രകൃതിദത്ത ആവാസവ്യവസ്ഥയുടെ പ്രധാന ഭാഗമായതിനാൽ മുഴുവൻ ആവാസവ്യവസ്ഥയും വനങ്ങളെ ആശ്രയിച്ചിരിക്കുന്നു. അതിനാൽ, അവയെ സംരക്ഷിക്കുകയും നമ്മുടെ പ്രകൃതിയുടെ ചക്രത്തിന് ഹാനികരമാകാതിരിക്കുകയും ചെയ്യുക എന്നതാണ് നമ്മുടെ പ്രധാന കടമ. എന്നാൽ നമ്മുടെ പ്രകൃതിയിലെ വനങ്ങൾ ഭയാനകമായ തോതിൽ വെട്ടിമുറിക്കുകയാണ്. ആളുകൾ അത്യാഗ്രഹികളായി മാറിയിരിക്കുന്നു, അവർ കാടുകൾ മുഴുവൻ വെട്ടിമാറ്റാൻ തുടങ്ങി. അതിനാൽ, ഈ ദുരഗതിയിലുള്ള വനനശീകരണം തടയാൻ കേന്ദ്ര സർക്കാർ വനസംരക്ഷണ നിയമം, 1980 നടപ്പാക്കി.

1865-ലെ ഇന്ത്യൻ ഫോറസ്റ്റ് ആക്റ്റ് ആയിരുന്നു ഈ വിഷയത്തിലെ ആദ്യത്തെ നിയമ കരട്. പിന്നീട്, കൊളോണിയൽ കാലഘട്ടത്തിൽ 1927-ലെ ഇന്ത്യൻ ഫോറസ്റ്റ് ആക്റ്റ് ഉപയോഗിച്ച് ഇത് മാറ്റിസ്ഥാപിച്ചു. ഏത് നിയമവും പാസാകുമ്പോൾ, അത് പാസാക്കിയ സാമൂഹിക പ്രശ്നത്തെ അത് അഭിസംബോധന ചെയ്യുമെന്ന പ്രതീക്ഷ വഹിക്കുന്നു. ഇന്ത്യൻ ഫോറസ്റ്റ് ആക്ട്, 1927 പാസാക്കിയപ്പോൾ, അത് അതേ പ്രതീക്ഷയാണ് പുലർത്തിയത്, പക്ഷേ അത് ബ്രിട്ടീഷ് താൽപ്പര്യങ്ങളിൽ മാത്രം ഒതുങ്ങി. 1927 ലെ നിയമത്തിന്റെ പ്രധാന ശ്രദ്ധ തടിയിലായിരുന്നു. 1927-ലെ നിയമം 13 അധ്യായങ്ങളായി വിഭജിക്കപ്പെടുകയും 86 വകുപ്പുകൾ ഉൾക്കൊള്ളുകയും ചെയ്തു. വനം ഉപയോഗിക്കാനുള്ള ഗോത്രവർഗക്കാരുടെ അവകാശങ്ങൾ നിയന്ത്രിക്കാൻ അത് സംസ്ഥാനത്തിന് അധികാരം നൽകി. ഈ നിയമപ്രകാരം, സംരക്ഷിത വനങ്ങൾ സൃഷ്ടിക്കാനും സർക്കാരിന് അധികാരമുണ്ട്. വനോൽപ്പന്നങ്ങളെ നിയന്ത്രിക്കാനും തടിക്കും മറ്റ് വന ഉൽപ്പന്നങ്ങൾക്കും നികുതി ചുമത്താനും ഇത് ലക്ഷ്യമിട്ടിരുന്നു, അത് പിന്നീട് സർക്കാരിന്റെ വരുമാന സ്രോതസ്സായി മാറി. അത് ഒരിക്കലും രാജ്യത്തെ വനങ്ങൾ സംരക്ഷിക്കാൻ ലക്ഷ്യമിട്ടിരുന്നില്ല, മാത്രമല്ല വ്യവസായങ്ങളിൽ ഉപയോഗിക്കുന്ന തടിയും മറ്റ് അസംസ്കൃത വസ്തുക്കളും വെട്ടിമാറ്റുന്നത് നിയന്ത്രിക്കാൻ ആഗ്രഹിച്ചു.

സ്വാതന്ത്ര്യാനന്തരം, വനങ്ങൾ സംരക്ഷിക്കേണ്ടതിന്റെ ആവശ്യകത കൂടുതൽ ശക്തമായി, അതിനാൽ, ഇന്ത്യൻ രാഷ്ട്രപതി വനം (സംരക്ഷണം) ഓർഡിനൻസ്, 1980 നടപ്പാക്കി. 1980-ലെ വന (സംരക്ഷണം) നിയമത്തിലെ സെക്ഷൻ





- 6 -

5 പ്രകാരം ഈ ഓർഡിനൻസ് പിന്നീട് റദ്ദാക്കപ്പെട്ടു. 1980 ഒക്ടോബർ 25-ന് പ്രാബല്യത്തിൽ വന്നു. രാജ്യത്തെ വനങ്ങളും അതുമായി ബന്ധപ്പെട്ട കാര്യങ്ങളും സംരക്ഷിക്കുന്നതിനാണ് ഇത് പാസാക്കിയത്. മുൻ നിയമത്തിൽ പരാമർശിക്കാത്ത പ്രശ്നങ്ങളും ഇതിൽ ഉൾക്കൊള്ളുന്നു. 1980 ലെ നിയമപ്രകാരം വനം വനേതര ആവശ്യങ്ങൾക്ക് ഉപയോഗിക്കുന്നതിന് നിയന്ത്രണം ഏർപ്പെടുത്തി.

1950-ൽ ഇന്ത്യൻ ഭരണഘടന അംഗീകരിച്ചപ്പോൾ, ഭാവിയിൽ വനസംരക്ഷണവുമായി ബന്ധപ്പെട്ട പ്രശ്നങ്ങൾ ഉടലെടുക്കുമെന്ന് രൂപകൽപ്പകർക്ക് അറിയില്ലായിരുന്നു. 1976-ലെ ഭരണഘടന (നാൽപ്പത്തിരണ്ടാം ഭേദഗതി) നിയമമായി ഇത് പിന്നീട് സാക്ഷാത്കരിക്കപ്പെട്ടു, കൂടാതെ ആർട്ടിക്കിൾ 48 എ സംസ്ഥാന നയത്തിന്റെ നിർദ്ദേശ തത്വങ്ങളുടെ ഭാഗത്തിലും ആർട്ടിക്കിൾ 51 എ ഇന്ത്യയിലെ ഓരോ പൗരന്റെയും അടിസ്ഥാന കടമയായും ചേർത്തു. ആർട്ടിക്കിൾ 48 എ പ്രകാരം, നമ്മുടെ രാജ്യത്തെ വനങ്ങൾ സംരക്ഷിക്കുന്നതിനായി പരിസ്ഥിതി രക്ഷിക്കുന്നതിനും മെച്ചപ്പെടുത്തുന്നതിനുമായി സംസ്ഥാനം നിയമങ്ങൾ ഉണ്ടാക്കും. ആർട്ടിക്കിൾ 51 എ (ജി) അനുസരിച്ച്, നമ്മുടെ രാജ്യത്തെ വനങ്ങൾ ഉൾപ്പെടെയുള്ള പ്രകൃതി പരിസ്ഥിതിയെ സംരക്ഷിക്കുകയും മെച്ചപ്പെടുത്തുകയും ചെയ്യുക എന്നത് ഇന്ത്യയിലെ ഓരോ പൗരന്റെയും കടമയാണ്.

കാട്ടിലെ മരങ്ങൾ ശ്വസിക്കാനുള്ള ഓക്സിജൻ മാത്രമല്ല, അതിനേക്കാളേറെ ചെയ്യുന്നു. മരവും ഭക്ഷണവും പോലെയുള്ള ചില ഉപയോഗപ്രദമായ ഉൽപ്പന്നങ്ങളും അവർ നമുക്ക് നൽകുന്നു. വനങ്ങൾ നമ്മുടെ പ്രകൃതിയുടെ ഒരു പ്രധാന ഭാഗമാണ്, അവ ഭൂമിയുടെ മുഴുവൻ ആവാസവ്യവസ്ഥയെയും ജലചക്രത്തെയും പരിപാലിക്കുന്നു. ഈ നിയമത്തിന്റെ ലക്ഷ്യം പരിസ്ഥിതിയെ നിലനിർത്തുകയും നമ്മുടെ രാജ്യത്തെ വനം സംരക്ഷിക്കുകയും ചെയ്യുക എന്നതാണ്. മരങ്ങൾ നട്ടുപിടിപ്പിച്ച് വനങ്ങളെ പുനരുജ്ജീവിപ്പിക്കുകയും നമ്മുടെ രാജ്യത്ത് വന വളർച്ച വർദ്ധിപ്പിക്കുകയും ചെയ്യുക എന്നതാണ് ഈ നിയമത്തിന്റെ ലക്ഷ്യം.

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Marks:100

Duration: 3 Hours

PAPER - II

Part - I

Answer all the questions. Each question carries one mark. (Answers to the questions in this Part should be marked only in the OMR Answer sheet. Answers marked/written elsewhere will not be valued.)

(15 x 1 mark = 15 marks)

1. Doctrine of lost grant is a
 - A. presumption of fact
 - B. rule of evidence
 - C. presumption of law
 - D. none of the above
2. What is Debutter property ?
 - A. Property dedicated to God
 - B. Property belonging to a debtor
 - C. Property belonging to Government
 - D. Ownerless property.
3. What is the effect of 2013 Amendment to Section 28 of the Indian Contract Act ?
 - A. A Bank can restrict the limitation period of enforcement of guarantee to a minimum of one year through a contract on a specified contingency.
 - B. A bank can restrict the limitation period of enforcement of guarantee to a maximum of one year through a contract on a specified contingency.
 - C. A bank can restrict the limitation period of enforcement of guarantee to a maximum of 2 years through a contract on a specified contingency.
 - D. A bank can restrict the limitation period of enforcement of a guarantee to any period through a contract without any contingency.
4. For the purpose of getting the benefit of S.19 of the Limitation Act,
 - A. There need not be any acknowledgment and part payment of debt is sufficient.
 - B. Payment and acknowledgment should be within the period of limitation.
 - C. Acknowledgment can be even after the period of limitation but payment should be within the period of limitation.
 - D. There should be acknowledgment contemporaneous with the payment.
5. Accord and satisfaction is a doctrine which is provided under which Section of the Contract Act ?
 - A. S.23
 - B. S.63
 - C. S.65
 - D. S.75
6. Which among the following document need not be attested by 2 witnesses?
 - A. Will
 - B. gift deed
 - C. Sale deed
 - D. simple mortgage





7. 'A' and 'B' agree that 'A' shall pay 'B' 1000 Rupees, for which 'B' shall afterwards deliver to 'A' either rice or smuggled Opium. Which among the following is true about the transaction ?
 - A. The agreement to deliver rice and the agreement to deliver smuggled opium are void.
 - B. The agreement to deliver rice is a valid contract whereas agreement to deliver smuggled opium is a voidable contract.
 - C. The agreement to deliver rice is a valid contract whereas agreement to deliver smuggled opium is a void agreement.
 - D. The agreement to deliver rice and agreement to deliver smuggled opium are invalid agreements.
8. Ex post facto Agency is

A. Substitution of Agency	B. Ratification of Agency
C. Termination of Agency	D. Agency coupled with interest
9. After the passing of a decree for eviction of a tenant by the Civil Court and before it is executed, the Building Lease and Rent Control Act is made applicable to the area. The decree is:

A. Executable.	B. Void.
C. Voidable.	D. Becomes deemed order of Rent Control Court.
10. A suit is filed for cancellation of a sale deed. The fair value of the property is Rs.2 Lakhs. The value shown in the sale deed sought to be cancelled is Rs.5 Lakhs. Its market value in terms of Section 7 of the Kerala Court-Fees and Suits Valuation Act, 1959 is Rs.4 Lakhs. What is the amount for which court fees to be paid on that suit ?

A. Rs. 2 Lakhs.	B. Rs. 5 Lakhs.
C. Rs. 4 Lakhs.	D. Fixed court fee of Rs.100.
11. In a suit for a decree of injunction against trespass upon an immovable property worth Rs.50,00,000/-, there is denial of title of the plaintiff. What is the mode for computation and under which provision of the Kerala Court-Fees and Suits Valuation Act, 1959 ?
 - A. Fixed court fees under Section 27(c).
 - B. On the market value of the property under Section 27(c).
 - C. On the half of the market value of the property under Section 27(a).
 - D. Fixed court fee under Section 27(b).
12. As per Section 22(1) of the Legal Services Authorities Act, 1987 a Lok Adalat shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of a few matters mentioned therein. Which among the following is a power not so invested ?
 - A. summoning and examination on oath of witnesses.
 - B. discovery and production of documents.
 - C. reception of evidence on affidavits.
 - D. impleading of legal representatives.
13. A Munsiff notices that an agreement produced by the plaintiff is insufficiently stamped. At what stage of the suit can the Munsiff impound it ?

A. At any stage of the suit.	B. At the time of disposal of the suit.
C. At the time of framing issues.	D. After commencement of trial.





- ## Part - II

(15 x 3 marks = 45 marks)

16. Can injunction be granted against the co owner of a property? What are the principles ?
17. What is the difference between Earnest Money Deposit and Advance Money, and the forfeiture of the same ?
18. Explain the concept of "tacking on" in relation to adverse possession.
19. What are repugnant clauses and defeasance clauses in a will ? Give examples of both under the Indian Succession Act or Transfer of Property Act.
20. What do you mean by redeem up, foreclose down ?
21. What is Banker's lien ?
22. What is the effect of mistake as to the character of a document and the contents of a document ? What is non est factum ?
23. What are the rights which cannot be acquired by prescription ?
24. A Will is attested by a legatee. What is its effect? Can he be called as a witness to prove the execution ?
25. 'A' filed a suit claiming adverse possession against 'B'. 'A' continued in the possession of property. 'B' filed a written statement denying the claim of 'A', but did not file any counter claim. The suit continued for 12 years. Is 'A' entitled for a decree of adverse possession ?
26. What do you mean by "integrity of a mortgage" ?
27. Briefly explain the rule against perpetuity under the Transfer of Property Act ?
28. A suit is decreed based on a compromise petition filed by the parties. Another suit is decreed based on a settlement agreement arrived at in mediation. Juxtapose the rules governing return of court fees in those cases.
29. Holder of a promissory note wrote his name and put his signature on the reverse of it. What legal consequences can follow that indorsement ? Discuss different kinds of indorsements with reference to the provisions in the Negotiable Instruments Act, 1881.





30. In a suit for realisation of money, the primary document relied on by the plaintiff is a promissory note. At the trial the plaintiff realised that the document does not amount to a promissory note. The plaintiff argues that the suit shall be decreed on the original cause of action. Explain the scope of that contention.
31. The plaintiff and the defendant are siblings. The suit is one for partition. Write an order referring the matter to Lok Adalat by adverting to the relevant provisions in the Code of Civil Procedure, 1908 and the Legal Services Authorities Act, 1987. (Cause title and names shall be avoided).
32. Which are the categories of persons, who want to file or defend a case, that are entitled to get legal services under the Legal Services Authorities Act, 1987 ?
33. Explain the differences between deeds of settlement and a gift with reference to the nature, stamp duty and relevant provisions.
34. Describe the procedure, and state the period of limitation along with exception, if any, for taking cognizance of offences under the Kerala Panchayat Raj Act, 1994.
35. There are three circumstances where use of religion or religious feelings amount to corrupt practice under the Kerala Panchayat Raj Act, 1994. Narrate.

Part – III

Answer any 5 questions. Answers shall not exceed 250 words (2 pages). If more than 5 questions are answered, the first 5 answers alone will be evaluated. Answers to the questions in this Part should be written in the Common Answer Book.

(5 x 8 marks = 40 marks)

36. Explain the statement 'Once a Mortgage, always a mortgage and nothing but a Mortgage'.
37. What are the rights of the licensee whose license has been revoked and what are the reliefs that can be claimed in a suit against him ?
38. When is time of essence of a contract ? Explain with examples. What are the effects of the same when there is a breach of the contract ?
39. What are the principles relating to calculation of damages in case of breach of contract ?
40. Does the Limitation Act apply to Courts and Tribunals in the same way ? What is the relevance of a Persona Designata for the application of Limitation Act ? Explain with the help of decisions.
41. Suit is one for partition of an agricultural property. The property is in joint ownership, but the defendant is excluded from possession. The plaintiff claims half right. Annual gross profits from the property is Rs.1,20,000/-. Annual tax due to the Government is Rs.5000/-. Value the suit, referring to the relevant provisions, for court fees and jurisdiction. To which court the suit shall lie ? What distinction shall it make if the plaintiff and the defendant are in joint possession ?
42. Describe the orders, instruments, etc. to be forwarded and explain the steps to be taken in that regard under Section 89 of the Registration Act, 1908 ? What are the exception/s thereof ?
43. Narrate the requirements of Section 28 of the Registration Act, 1908. If the executant of a registered sale deed committed fraud on the law of registration in relation to such a requirement, what is the proper course to challenge that sale deed ? Explain.

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KERALA JUDICIAL SERVICE MAIN (WRITTEN) EXAMINATION, 2023

Marks:100

Duration: 3 Hours

PAPER - III

Part - I

Answer all the questions. Each question carries one mark. (Answers to the questions in this Part should be marked only in the OMR Answer sheet. Answers marked/written elsewhere will not be valued). (15 x 1 mark = 15 marks)

1. Which of the following is correct?
 - A. the burden of proof that the accused was not insane at the time of commission of offence is on the prosecution.
 - B. the burden of proving that the accused was insane at the time of commission of offence is on the accused.
 - C. there is a rebuttable presumption of fact that accused was insane at the time of commission of the offence.
 - D. it is a matter of inference to be drawn by the court on the facts proved by the prosecution.
2. Which of the following is false of Section 34 of the Indian Penal Code ?
 - A. it is only a rule of evidence.
 - B. it does not create a distinct offence.
 - C. it lays down principle of liability.
 - D. it is a penal provision.
3. Two ladies of young age, 'A' & 'B' fight with each other. 'A' was having a blade with which 'A' inflicts injury on the face of 'B' leaving a scar on the cheek of 'B'. 'A' is guilty of offence of causing:
 - A. grievous hurt.
 - B. grievous hurt by rash or negligent act.
 - C. simple hurt.
 - D. simple hurt by rash or negligent act.
4. To invoke the doctrine of estoppel, which of the following condition must be satisfied ?
 - A. representation by a person to another.
 - B. the other shall have acted upon the said representation.
 - C. such representation shall have been detrimental to the interest of the person to whom the representation has been made.
 - D. all of them.
5. A 'Holder in due course' of a Negotiable Instrument:
 - A. Can sue on the instrument in his own name.
 - B. Can sue only if permitted by the competent court of law.
 - C. Can sue on the instrument if permitted by the payee.
 - D. Cannot sue on the instrument in his own name.





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6. Illicit traffic under NDPS Act 1985 include.
- | | |
|------------------------------------|-------------------------------|
| A. production of a narcotic drug. | B. import of a narcotic drug. |
| C. cultivation of a narcotic drug. | D. all of the above. |
7. Which kind of sentence cannot be passed against the child in conflict with law ?
- | | |
|---|---|
| A. imprisonment for a term exceeding 7 years. | B. life imprisonment without the possibility of release |
| C. death sentence. | D. C and B |
8. As per Juvenile Justice (Care and Protection of Children) Act, 2015 child in need of care and protection means-
- | |
|---|
| A. a child who is found without any home or settled place of abode and without any ostensible means of subsistence. |
| B. who is found working in contravention of labour laws. |
| C. who resides with the person and that person has injured, exploited, abused or neglected the child. |
| D. A, B and C. |
9. Section 326B of the Indian Penal Code, 1860 brought on by an amendment of 2013 prescribes punishment for:
- | |
|---|
| A. Voluntarily causing hurt by dangerous weapons. |
| B. Voluntary causing grievous hurt by use of acid. |
| C. Voluntarily causing grievous hurt by dangerous weapons or means. |
| D. Voluntarily throwing or attempting to throw acid. |
10. The sentence of imprisonment prescribed for the offence under Section 511 of the Indian Penal Code, 1860 for attempt to commit an offence or any act done towards such offence is:
- | |
|--|
| A. Half of the longest term of imprisonment provided for such offence. |
| B. One-third of the longest term of imprisonment provided for such offence. |
| C. One-fourth of the longest term of imprisonment provided for such offence. |
| D. same punishment as prescribed for such offence. |
11. The contents of a public document under Section 77 of the Indian Evidence Act can be proved:





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- A. Only by examining the author of the document.
 - B. By producing the certified copy of such a public document.
 - C. By producing the true copies of the document.
 - D. By examining the person acquainted with the handwriting of the scribe of the document.
12. Which of the following is correct?
- A. Admissions can be proved by the person who made the admission.
 - B. The confession of a co-accused is a substantive evidence.
 - C. All admissions are statements but all statements are not admissions.
 - D. A witness who is unable to speak cannot give evidence.
13. Under the Juvenile Justice (Care and Protection of Children) Act of 2015, the first mode of determination of the age of a child is by:
- A. Birth Certificate from the Local Authority.
 - B. By evidence of parents.
 - C. By medical test.
 - D. Birth Certificate issued by the school or the matriculation certificate.
14. As per Section 125 of the Kerala Police Act, 2011 an offence under Section 116 of the said Act shall be cognizable. But a police officer shall have power to arrest a person accused of that offence only if atleast one of the following conditions exists:
- A. The offence is non-bailable.
 - B. His arrest is necessary to prevent or not to continue with any offence.
 - C. The punishment which may invite the offence, considering its nature, is a minimum sentence of three years.
 - D. The act committed constitute an offence under Section 116 but also Section 117 of the Kerala Police Act.
15. Which among the following statements is incorrect in the context of Section 4 of the Probation of Offenders Act, 1958 ?
- A. The provision applies only if the offence is not punishable with imprisonment for life.
 - B. Section 4 can be invoked only if the offender has a fixed place of abode.
 - C. The court has considered the report of the probation officer before applying the provisions of Section 4.
 - D. Section 4 shall not be invoked if the offence is punishable with imprisonment for a term of 10 years or more.





-: 4 :-

Part - II

Answer any 15 questions. Answers shall not exceed 120 words (1 page). If more than 15 questions are answered, the first 15 answers alone will be evaluated. Answers to the questions in this Part should be written in the Common Answer Book.
(15 x 3 marks = 45 marks)

16. 'A', by putting 'B' in fear of grievous hurt, dishonestly induces 'B' to sign or affix his seal to a blank paper and deliver it to 'A'. 'B' signs and delivers the paper to 'A'. The paper so signed may be converted into valuable security. What offence, if any, has been committed by 'A' ? Support your answer with relevant provisions of law and reasons.
17. A cheque was dishonoured initially, and the payee did not initiate action. The cheque was presented for payment for the second time, and again it was dishonoured. State in this connection whether the payee can subsequently initiate prosecution for the dishonour of the cheque.
18. 'A' commits house-trespass by making a hole through the wall of 'Z's house and putting his hand through the aperture. Is there any offence committed by 'A' ? State the reasons for your answer.
19. 'A' attacks 'Z' under such circumstances of grave provocation that his killing of 'Z' would be only culpable homicide, not amounting to murder. 'B', having ill will towards 'Z', and intending to kill him and not having been subject to the provocation, assists 'A' in killing 'Z'. What is the offence committed by 'A' and 'B' ? Explain.
20. Which kinds of questions are barred in cross-examination ?
21. A prosecution was launched against 'A' under Section 55(a) of the Kerala Abkari Act on the allegation that he was found in possession of 40 bottles of IMFL, each containing 180 ml. of liquor. The sample was taken only from one of the bottles containing 180ml. of liquor, which comes within the permissible limit. All the bottles were carrying the label Old Port XXX Rum. 'A' took up a contention that since the samples were not drawn from each bottle, the prosecution would not lie. Is the contention sustainable ? Explain.
22. What does "heinous offences" mean under the Juvenile Justice (Care and Protection of Children) Act, 2015 ?





-: 5 :-

23. Describe the powers of the court to release certain offenders after admonition and to release certain other offenders on probation of good conduct under the Probation of Offenders Act.
24. In a prosecution under Section 119(1)(a) of the Kerala Police Act, 2011, the allegation is that the accused made obscene gestures having sexual flavour, degrading the dignity of the woman passing through the road. In the FIR, it is not stated what the obscene or sexual gesture or act performed by the petitioner was. The accused contended that in the absence of any allegation that the petitioner performed any specific act or gesture which was sexual in nature, degrading the dignity of women, the offence under S.119(1) (a) of the Act is not attracted. Is the contention sustainable? Explain.
25. Explain the presumption available against an accused of culpability in the NDPS Act.
26. What is the distinction between good faith in criminal law and that in civil law?
27. What is the distinction between legal presumptions and factual presumptions?
28. Can the result of a DNA test be used to prove access under Section 112 of the Indian Evidence Act, 1872? Explain.
29. What is meant by a "fact"? When is a fact said to be proved? Explain the terms "proved", "disproved", and "not proved".
30. A person is accused of an offence. He pleads that by reason of unsound mind, he was unaware of the nature of the act done by him. Explain the principles and the provisions of law which deals with the burden of proof in the above case.
31. Explain the distinction between Section 113A and Section 113B of the Indian Evidence Act, 1872.
32. Can a cheque issued as a security for a debt be the basis for a prosecution under Section 138 of the Negotiable Instruments Act, 1881?
33. Can a power of attorney holder file a complaint alleging offences under Section 138 of the Negotiable Instruments Act, 1881?
34. Can the proceedings under the Protection of Women from Domestic Violence Act, 2005 be referred for mediation?





-: 6 :-

35. Explain the presumptions under Section 139 and Section 146 of the Negotiable Instruments Act, 1881.

Part – III

Answer any 5 questions. Answers shall not exceed 250 words (2 pages). If more than 5 questions are answered, the first 5 answers alone will be evaluated. Answers to the questions in this Part should be written in the Common Answer Book.

(5 x 8 marks = 40 marks)

36. Are Section 498-A and Section 304-B mutually exclusive ? For the purpose of Section 498-A of the Indian Penal Code, what does cruelty mean ?
37. The wife filed a petition against the husband under Section 12 of the Protection of Women from Domestic Violence Act, 2005, seeking various reliefs, including maintenance. She has also moved an application for interim maintenance under Section 23(2). It was allowed, and interim monthly maintenance of Rs.15,000/- was awarded.

The husband failed to comply with the order. The wife/petitioner filed an application to strike off the respondent's defence.

The husband contended that as per S.28(1) of the Protection of Women from Domestic Violence Act, 2005, all proceedings under Ss.12, 18, 19, 20, 21, 22 and 23 and the offence under Section 31 shall be governed by the provisions of the Code of Criminal Procedure and there is no provision in the Code to strike off the defence.

The following questions emerge from these facts:

Does the Court/Magistrate dealing with the complaint filed under the provisions of the Protection of Women from Domestic Violence Act, 2005, have the power to strike off the defence for non-compliance with the order to pay *pendente lite* maintenance ?

What is the nature of proceedings under the Protection of Women from Domestic Violence Act, 2005 – civil or criminal ?

Answer with reference to the latest case law on the point.





- 7 -

- 38.(A) 'A' finds a purse with money lying on the road. 'A' did not know to whom did the purse belong. Subsequently, 'A' learns that the purse belonged to 'B', but 'A' retained the purse and appropriated the money. What offence, if any, has 'A' committed ? Give reasons for your answer.
- (B) 'A' makes an attempt to pick the pocket of 'Z' by thrusting his hand into 'Z's pocket. 'A' fails in the attempt in consequence of 'Z's having nothing in the pocket. State what offence, if any, 'A' has committed. Give reasons for your answer.
39. In a motor vehicle accident, the victim succumbed to the injuries. During the medical examination of the accused, it was revealed that there was a very large volume of alcohol in his blood at the time of accident. What offences can he be charged with ? Explain with reference to case laws.
40. What is secondary evidence ? Explain the circumstances when secondary evidence be adduced.
41. In a prosecution under Section 27 of the Kerala Forest Act 1961, can the court take judicial notice of a notification issued under Section 19 of the Forest Act, declaring a particular area as a reserve forest ? Explain.
42. Would the penalty provided under S.31 of the Protection of Women from Domestic Violence Act, 2005 be attracted when there is a violation of an order of maintenance issued under S.20 of the Act. Answer with reference to case laws.
43. A Police Officer who was not in uniform noticed a car parked under a No parking Board on the side of a road. He started pasting stickers on the car. The owner of the car came running towards the police officer who was in plain clothes pushed him aside with force, and shouted at him. Can the owner of the car be prosecuted and punished for any offence under Kerala Police Act 2011 ? Give reasons in support of your answer.

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KERALA JUDICIAL SERVICE MAIN (WRITTEN) EXAMINATION, 2023

Marks:100

Duration: 3 Hours

PAPER - IV

Part - I

Answer all the questions. Each question carries one mark. (Answers to the questions in this Part should be marked only in the OMR Answer sheet. Answers marked/written elsewhere will not be valued).

(15 x 1 mark = 15 marks)

1. A Clerk working in the office of a temple was terminated from service. He filed a suit before a Munsiff's Court challenging the order of termination. The defendant-manager of the temple raised a contention that the dispute is not maintainable. Which among the following statements is correct ?
 - A. The dispute is with respect to the right to an office and therefore it is maintainable.
 - B. The question involved in the suit relates to service conditions and hence it is not maintainable.
 - C. The questions relating to religious rites can be decided by a civil court.
 - D. None of the above.
2. Read the following assertions and choose the correct option:
 1. A decree of a Munsiff having no territorial jurisdiction is always void.
 2. A decree of a Munsiff having no pecuniary jurisdiction is always void.
 3. A decree of a Munsiff having no subject matter jurisdiction is always void.
 - A. Statement 1 is correct.
 - B. Statement 2 is correct.
 - C. Statement 3 is correct.
 - D. All statements are correct.
3. In the execution of a money decree, an immovable property belonging to the Judgment Debtor was sold in auction. There was no charge on the property, the property was not attached also. The Judgment Debtor filed a petition for setting aside the same on the ground that the sale is invalid for want of charge or attachment. Choose the correct remark from the following:
 - A. Sale is invalid since attachment is a condition precedent for sale.
 - B. If a charge is created only, sale without an attachment is valid.
 - C. If the property sold is a movable one only, sale without attachment is valid.
 - D. Sale will be valid even if there is no attachment.
4. A Munsiff while dismissing the suit, on holding that there was no reasonable probable ground for instituting the same, ordered the plaintiff to pay the defendant a compensation of Rs.30,000/-. The order is
 - A. Wrong since the power of the Munsiff is to order compensation of a maximum of Rs.25,000/-.





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- B. Wrong since there was no application by the defendant claiming compensation.
- C. Wrong since the Munsiff has jurisdiction to order cost only and not compensation.
- D. Wrong since there is no finding that the claim in the suit is vexatious.
5. A summons issued to the defendant in a suit was served by affixure. In the application for setting aside the ex-parte decree, the contention of the defendant is that the service of summons is invalid since court did not order to serve the summons by affixure. Choose the correct answer:
- A. Order of the Court allowing service of summons by affixure is mandatory.
- B. If it is a substituted service only order of the court to affix the summons is mandatory.
- C. It is for the officer serving summons to decide whether or not the summons shall be served by affixure.
- D. In a case where summons is to be served outside the jurisdiction of the court issuing the same, order of the court is mandatory for serving the summons by affixure.
6. Order XIII Rule 1 of the Code of Civil Procedure, 1908 insist on production of all documentary evidence before settlement of issues. In a money suit based on a dishonoured cheque, after the chief examination of the plaintiff, the defendant produced a promissory note purportedly issued by the plaintiff in favour of the defendant, contending that the sub rule 3 of Order XIII Rule 1 permits production of documents for the cross examination. What shall be the use of that promissory note ?
- A. If the plaintiff admits that promissory note, a decree for the reminder alone can be granted.
- B. Even if the plaintiff admits the promissory note, unless there is a plea for set off, decree for the whole claim has to be granted.
- C. If the plaintiff admits the promissory note, suit has to be dismissed for the reason of suppression of that document by the plaintiff.
- D. The Court is bound to discard the promissory note since it was issued before settlement of the issues.
7. A judgment debtor paid money payable under a decree to the decree holder out of court. What is the period within which the judgment debtor has to apply to the court to record that payment ?
- A. 30 days.
- B. 3 years.
- C. 90 days.
- D. 1 year.
8. Date of the decree shall be
- A. date on which the decree is signed by the Judge.
- B. date on which the decree is prepared by the officer concerned.





-: 3 :-

- C. date on which the judgment is pronounced.
D. date on which memo of costs is to be submitted.
9. Which among the following is not a requirement for obtaining a carbon copy of a judgment of a Munsiff ?
- A. an oral application to the court immediately after pronouncing the judgment.
B. an application for an urgent copy.
C. order of the court to issue a carbon copy
D. an application for leave to apply for getting a carbon copy.
10. On receipt of the complaint alleging an offence of criminal breach of trust punishable under Section 406 of the Indian Penal Code, the police registered a crime and conducted investigation. On completion of investigation, the police submitted a report under Section 173(2) of the Code of Criminal Procedure alleging an offence of dishonest misappropriation of property under Section 403 of the Indian Penal Code. What shall the Magistrate do ?
- A. Take cognizance treating it as a charge sheet.
B. Take cognizance treating it as a complaint.
C. Cannot take cognizance since the offence in the final report is a non-cognizable one.
D. Cannot take cognizance since no permission from the Magistrate was obtained.
11. When the injured is examined at the trial of an offence punishable under Section 326 of the Indian Penal Code, the Magistrate finds that an offence under section 307 of the Indian Penal Code is revealed. What is the appropriate procedure to be followed ?
- A. Commit the case under section 323 of the Cr.PC.
B. Sent a report to the Court of Sessions requesting to withdraw the case.
C. Sent a report to the CJM requesting to take steps as provided in section 323 of the Cr.PC.
D. Sent a report to the CJM requesting to take steps as provided in section 325 of the Cr.PC.
12. A complaint was filed by a Public Prosecutor before a Court of Session alleging that the accused has committed an offence of defamation against a Secretary to Government regarding an act in discharge of his duties. The accused raises the following contentions:
1. A Magistrate alone can take cognizance of that offence.
2. Since the complaint was filed after six months, cognizance is barred by limitation.
- Choose the correct option.
- A. contention No.1 is correct and contention No.2 is wrong.
B. contention No.1 is wrong and contention No.2 is correct.





-: 4 :-

- C. Both contentions are correct.
D. Both contentions are wrong.
13. A clerk in a Village Office was tried on a charge with single head that he dishonestly misappropriated various amounts from salaries of the employees in that office during the months from March, 2021 to February, 2022 and thereby committed an offence punishable under Section 409 of the Indian Penal Code, and convicted. Which among the following is a correct statement ?
- A. He is entitled for an acquittal since the period of offence falls in two calendar years.
B. He is entitled for an acquittal since more than three offences involved in the charge.
C. He is not entitled to claim an acquittal since single trial for alleged acts of offence is legal.
D. He is not entitled to raise a contention in appeal regarding irregularity in framing the charge.
14. On the application of one of the accused in a pending case, the Sessions Judge tendered pardon to the applicant. The contention of the other accused during the final hearing is that the trial is vitiated since the accomplice was not examined as a witness before the jurisdictional Magistrate. That contention is
- A. valid since his examination before the Magistrate is mandatory.
B. valid if the offence is punishable with death or imprisonment for life.
C. invalid if the offence is punishable with death or imprisonment for life.
D. invalid since Sessions Court also has jurisdiction to grant pardon.
15. A District Judge after conducting enquiry under Section 340 of the Code of Criminal Procedure filed a complaint alleging offence of giving false evidence before the Court. The Magistrate before whom the complaint was filed without conducting enquiry under section 244 of the Code of Criminal Procedure framed charge against the accused. Choose the correct statement from the following:
- A. a complaint filed after an enquiry under section 340 of the Code of Criminal Procedure is treated as a police report.
B. since the complaint is filed by a District Judge, the Magistrate is bound to hold a trial.
C. since the case arose on a complaint, charge can be framed only after recording evidence under Section 244 of the Code of Criminal Procedure.
D. evidence of the victim of offence, atleast, has to be recorded if to frame a charge.





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Part - II

Answer any eleven questions. Answers shall not exceed 160 words (1 ½ pages). If more than eleven questions are answered, the first eleven answers alone will be evaluated. Answers to the questions in this Part should be written in the Common Answer Book.

(11 x 5 marks = 55 marks)

16. Even if a person is not an eo-nominee party, certain kinds of decrees shall operate as res judicata to a subsequent suit where the same right is the matter in issue. Explain with reference to the statutory provisions.
17. Three execution petitions are pending against a common judgment debtor in three different courts. An immovable property belonging to the judgment debtor is sold in auction in one of the execution petitions and delivery of the property is effected. The sale proceeds is in deposit in the court. Discuss about the scope of rateable distribution. What are the conditions subject to which, rateable distribution can be made ?
18. The plaintiff in whose favour a temporary injunction before giving notice is granted failed to comply with the requirements under the provisos (a) and (b) to Rule 3 of Order XXXIX of the Code of Civil Procedure, 1908. What are the consequences ?
19. An amount at the hands of a creditor to the defendant in a suit was attached before judgment. The garnishee did not immediately raise any objection. The suit is decreed. Can the garnishee raise an objection subsequently? Explain the procedure to be followed by the Court to realise the amount from the garnishee.
20. In a suit against Government, one of the grounds for defence is that there were errors and defects in the notice issued under sub section 1 of Section 80 of the Code of Civil Procedure, 1908. In what all circumstances, such defects will be fatal? What would be the effect if the period of limitation for institution of the suit expires during the period of two months mentioned in sub section 1 of Section 80 of the Code ?
21. In a case where an employee is terminated from service by a state instrumentality, breach of fundamental rights or constitutional rights can be agitated before the Civil Courts unless the jurisdiction of the civil suit is specifically barred'. Discuss with reference to the provisions of law and precedents.
22. In a suit the defendant appeared. Upon hearing both sides, the court found that the plaint is liable to be returned for want of territorial jurisdiction. On the court finding so, what shall the court and plaintiff do?. Describe the steps to be taken by the Court as well as the plaintiff in such a case.
23. A suit was scheduled for trial on 12.07.2023. Plaintiff and his witnesses were present in court and were examined in chief. On the application filed by the defendant the suit was adjourned to 15.07.2023 for cross examination of the plaintiff and his witnesses and also for the evidence of the defendant. Since the defendant or his counsel did not turn up on that day, the Court after hearing the counsel for the plaintiff rendered a judgment on merits. Examine the correctness of the procedure adopted by the Court and the remedies available to the defendant.





-: 6 :-

24. Section 207 of the Code of Criminal Procedure insist on supply to the copy of police report and other documents/materials. Which are the copies of the documents/materials to be supplied to the accused along with a copy of the police report?. Explain the changes brought about in the Criminal Rules of Practice in this respect.
25. What are the purpose for which and the procedure for requiring attendance of a prisoner before a Magistrate?
26. A witness gave evidence in a language which is not known to the Court, accused or his pleader. Explain the procedure for recording evidence of a such witness with reference to the statutory provisions. What shall be the legality of conviction if such a procedure is not followed ?
27. Statutory bail under Section 167(2) of the Code of Criminal Procedure is an indefeasible right. Can the court impose conditions while granting statutory bail to the accused. If such a condition is violated, what consequence shall follow ?
28. 'Every omission shall not be a contradiction'. Explain with reference to the statutory provision and the law laid down in the Tahsildar Singh's case.
29. In a case where offences punishable under sections 143, 147, 323 and 341 read with 149 of the Indian Penal Code are alleged, a petition for compounding of the offences was filed. The Magistrate recorded the compounding and acquitted the accused stating that offences under section 323 and 341 are compoundable and other offences are cognate offences. Comment.
30. The period of limitation for taking cognizance of an offence shall commence on the date of the offence. It is not so always. Explain. In which circumstances exclusion and extension of period of limitation can be claimed?.

Part - III

Answer both the questions. Answers to the questions in this Part should be written in the Common Answer Book. (2 x15 marks = 30 marks)

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

31. Prepare an order based on the following facts: (Refer Statutory provisions and case laws)

On 20.01.1980, the trial court passed a decree for declaration of title and recovery of possession in O.S.No.100/1979 in favour of the plaintiff. The defendants challenged the decree filing A.S.No.10/1980. The appeal filed by the defendants was allowed and the case was remanded to the trial court. After remand, the trial court again decreed the suit on 04.01.1992. The defendants filed A.S.No.65/1992 challenging the judgment and decree of the trial court. That appeal was dismissed for default on 10.08.2003. During the pendency of AS.No.65/1992, there was no stay of execution of the decree.





-: 7 :-

The decree holder filed Execution Petition No.90/2004 on 15.10.2004. The judgment debtors opposed the Execution Petition contending that the same is time barred. According to the judgment debtors, the relevant date with reference to which the period of limitation is to be reckoned is 04.01.1992. The decree holders contended that the relevant date with reference to which the period of limitation is to be reckoned is 10.08.2003, the date of dismissal of the appeal for default.

32. A complaint was filed on the following allegations:

The first accused is running a travel and recruiting agency under the name "M/s.Kevin Enterprises". The head office is at Chennai and branch office is at Thiruvananthapuram. 2nd accused is the employee of the 1st accused in the office at Thiruvananthapuram. On getting information, the complainant approached the accused and he was asked to go over to Chennai to meet the 1st accused. 1st accused was informed of his desire to go on employment to the Middle-East. He promised to arrange a Visa. The complainant was got interviewed at the intervention of the 1st accused by one Sharaff. Thereafter, Rs.75,000/- was demanded informing that he was successful in interview and he will get Visa shortly. As a first instalment, the 1st accused wanted Rs.25,000/-. Since he had no amounts with him and as directed by the 1st accused, he returned to Thiruvananthapuram and paid Rs.25,000/- to the 2nd accused on 10.01.2000 for which a receipt was also given. Then he was frequently contacting the 1st accused at Chennai and he was being given encouraging information. He was also informed subsequently against the earlier assurance that the interview already conducted has been concluded and another Visa could be arranged without interview. The balance amount of Rs.50,000/- demanded by the 1st accused was handed over to him when he came over to Thiruvananthapuram on 20.03.2000. Thereafter, as directed by the 1st accused, the complainant reached Chennai for medical check-up. He underwent medical check-up and stayed there for sometime. Since the attitude of the 1st accused was not found encouraging, he had to return. Finally he realised that he was being cheated. Therefore, on 28.06.2000, he went to Thiruvananthapuram office, where both the accused were present. When the amount was demanded, the attitude of the 1st accused was denial coupled with a statement that his amount is in the Arabian sea.

The complainant examined himself as PW1. Two other witnesses were examined as PWs.2 and 3. Exhibit P1 is the document proved by him. DW1 is the witness examined for the defence. Ext.D1 is the document proved for the defence.

PW1 has spoken to the entire case put forward by him. He said that it was on the basis of the deceit and the fraudulent or dishonest inducement of the first accused that he parted with Rs.75,000/- by two instalments. He also said that he was induced to make the payment on the assurance given by the 1st accused that everything including N.O.C, Visa and job will be provided. The attitude of the 1st accused, including his conduct on the last date when the amount was demanded back, was also spoken to by him.

PW2, a parallel college teacher and a friend of PW1, was examined to prove the payment of Rs.50,000/- to the 1st accused on 20.03.2000 and refusal of the 1st





-: 8 :-

accused to repay the amount on 28.06.2000. PW2 said that on both the occasions, he was present and he saw the payment as well as the refusal of the 1st accused with an observation that the amount is in the Arabian Sea.

PW3, a tea-shop owner, was examined only to prove that on 28.06.2000 when the complainant demanded the amount back, the 1st accused denied having received any amount and finally told him that his amount is in the Arabian Sea. The version of PW3 is that he came with a dual purpose viz., purchase of tea from a wholesale shop and making enquiries with the 1st accused regarding NOC for which arrangements were already made.

The defence was that on behalf of the first accused, an amount of Rs.25,000/- alone was received by the 2nd accused and at the request of the complainant, it was repaid by the 2nd accused.

In the cross examination of PW1, one suggestion made was that the amount was paid to DW1 who in turn paid the same to the complainant. Another suggestion was that the entire amount of Rs.25,000/- paid by the complainant was already spent for expenses in connection with recruitment, interview, etc.

While questioned under S.313 of the Code of Criminal Procedure, even though the first accused at first denied having received Rs.25,000/- through the 2nd accused on 10.01.2000, in answer to a subsequent question, he admitted that the amount was received by the 2nd accused and Ext.P1 is the receipt issued by him for that purpose. When he was asked during questioning whether he has anything more to say, he said that he did not receive any amount from anybody. At the time of questioning under S.313, neither himself nor the 2nd accused said that the amount was repaid through DW1 or otherwise or Ext.D1 receipt was received. Second accused did not even admit receipt of Rs.25,000/-. He denied Ext.P1 receipt also. Finally, in answer to the last question, he said that he did not receive any amount at all.

From the side of the defence, they examined DW1. He said that even the payment of Rs.25,000/- on 10.01.2000 was through him and that it was he who persuaded the 2nd accused to receive the amount in spite of his refusal on the ground that he cannot receive the amount without the direction from the 1st accused. He also said that again at the request of the complainant, he went to the 2nd accused and the 2nd accused at first refused to return the amount in the absence of the 1st accused. His further statement is that when he insisted and agreed to undertake the responsibility the second accused yielded but wanted Ext.P1 to be returned. He also said that the complainant informed that Ext.P1 is missing and therefore on his undertaking the amount was repaid by the 2nd accused to the complainant and the complainant issued Ext.D1 receipt in which he also signed.

Write a judgment based on the above facts.

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