# Kerala Judicial Service Mains 2009 (Regular) · Question papers

## Paper II · compulsory paper

Marks: 100 · Duration: 3 hours

### Part I

Answer all questions in one or two sentences. Each question carries 1 mark.

**(1)** In a suit for injunction the defendant denied title of the plaintiff. Court framed an issue regarding plaintiff's title. What is the provision under which the court fee has to be paid? How it has to be computed? [1 mark]

**(2)** 'A' filed a suit for partition alleging that 'B' & 'C', who are co-owners, have excluded him from possession of the property.
(i) What is the provision for paying court fee?
(ii) How the court fee has to be computed? [1 mark]

**(3)** What is the maximum period of limitation available under the Limitation Act 1963? What was the maximum period of limitation that was available under the Limitation Act 1908? [1 mark]

**(4)** What are the essential differences between a 'bond' and an 'agreement' in the context of the Kerala Stamp Act? [1 mark]

**(5)** A case involving a non-compoundable offence was referred to the Lok Adalath and it was settled. An award was also passed. Is there any illegality? If yes, State reasons. [1 mark]

**(6)** 'A' wanted to file a prohibitory injunction suit against a municipality, from granting licence to 'B' for running a factory, apprehending that it would cause nuisance to him. Can the suit be instituted without the statutory notice? State reasons. [1 mark]

**(7)** Is there any presumption regarding the date shown on a cheque? If so, which is the provision and what is the presumption? [1 mark]

**(8)** A person files an application for permission to sue as an indigent person on 10.1.2009. His application was allowed only on 10 June 2009. The last date for filing the suit was 15th March 2009. Is the suit barred by limitation? [1 mark]

**(9)** 'A' executed a sale deed in favour of 'B' while he was of sound mind. It is established by evidence that 'A' usually was of unsound mind before and after the execution of the document. Is the sale deed executed by 'A' valid? State reasons. [1 mark]

**(10)** 'A' lost a gold chain weighing 10 sovereigns. 'B' found out the chain and returned it to 'A'. At that time 'A' promised to pay Rs.10,000/- to 'B'. Thereafter A' refused to pay. Can he enforce the contract? Explain with statutory provisions. [1 mark]

**(11)** Whether a Will, properly executed, will come within the definition of "instrument" in Transfer of Property Act, 1882? if not why? [1 mark]

**(12)** Plaintiff filed a suit to recover a time-barred debt. The defendant did not raise the contention that the suit was barred by law of limitation. Can the court consider that issue? State reasons. [1 mark]

**(13)** What is meant by "nec vi nec clam nec precario"? [1 mark]

**(14)** Suit for specific performance was decreed. Can the defendant thereafter rescind the contract? If yes, how it can be done? [1 mark]

**(15)** Whether a licence under the Easements Act can be transferred? Is there any exception to the general rule? [1 mark]

**Part II**

Answer any 15 questions in no more than 120 words each. Each question carries 3 marks.

**(1)** A suit was filed, praying for cancellation of a sale deed pertaining to 10 cents of immovable property situated in Ernakulam city. The consideration shown in the document is Rs.1000/- per cent. At the time of execution of the document, the actual market value was Rs.1,00,000/- per cent.
(i) What is the provision under which the court fee is payable for cancellation of the document?
(ii) What is the basis of calculation of court fee?
(iii) What is the amount of court fee payable in the given case? [3 marks]

**(2)** An insufficiently stamped document was produced in evidence in a civil case. What is the procedure for admitting the document in evidence? Discuss with the provisions of law. [3 marks]

**(3)** 'A' drew and issued an undated cheque to 'B' on 1-1-2010 for discharging a debt and the former authorized the latter to put a date, beyond a period of 2 months from the date of its issue. 'B' put date as 15.2.2010 on the cheque and presented it. It was dishonoured. 'B' filed a suit for compensation against 'A'. 'A set up a defence of material alteration of the cheque. Is that contention sustainable? If so, state reasons with statutory provision. [3 marks]

**(4)** 'A' executed a mortgage deed in favour of 'B'. The mortgage money was Rs.1,000/-. The deed was not registered. It was produced by 'B' in evidence in a suit. Whether it is admissible in evidence? Explain with statutory provision. [3 marks]

**(5)** What is the nature of liability of a surety? If the terms of the contract between the principal debtor and the creditor were varied without surety's consent, what is the legal effect? [3 marks]

**(6)** When can a declaratory decree be granted and what is the effect of the declaration? [3 marks]

**(7)** 'A' executed a sale deed in the name of 'B'. A stipulation in the deed shows that in the event of sale of the property by 'B', it can be made only to the family members of 'A'. What is the effect of that clause? Explain with statutory provisions. [3 marks]

**(8)** Explain the terms "period of limitation" and "prescribed period" in the context of the Limitation Act ,1963. [3 marks]

**(9)** What is the normal rule in the Limitation Act regarding the effect of substituting or adding new plaintiff or defendant in a pending suit. Can the court, in a given case deviate from the normal rule? [3 marks]

**(10)** Is there any presumption to be drawn while enforcing a contract to transfer movable property by way of specific performance? Is there any exception to this presumption? [3 marks]

**(11)** State six situations when an injunction can be refused u/s.41 of the Specific Relief Act. [3 marks]

**(12)** What are the requisites to constitute easements of necessity u/s.13 of the Easements Act? [3 marks]

**(13)** 'A' constructed a building on a land. After 10 years he filed a suit against 'B', A's neighbour, alleging that he has prescribed right to use light and air to the Open plot and to the building after its construction. Is the claim sustainable? State reasons. [3 marks]

**(14)** 'A' has a right of easement of necessity through B's land for ingress and egress. Can 'B' set out the way? How can it be done? [3 marks]

**(15)** For filing a suit, appeal or application, a special or local law prescribes a period of limitation different from the period of limitation prescribed by the Schedule to the Limitation Act. Do the provisions of the Limitation Act applicable to such suit, appeal or application? Explain. [3 marks]

**(16)** A building situated in an area covered by the Kerala Buildings (Lease and Rent Control) Act was let out to a tenant. The term of tenancy agreed upon between the landlord and the tenant was three years. After one year, the landlord required the building bonafide for his son's occupation. Can he file an application for eviction under Sec.11(3) of the Act? State reasons to support your answer. [3 marks]

**(17)** 'A', the landlord filed a petition for eviction of a building tenant, 'B', alleging that the latter had kept rent in arrears for a period of fifteen months. 'B' entered appearance and contested the petition stating that he had paid rent for a period of twelve months and that three months rent fell in arrears due to the recalcitrant attitude of the landlord. Notwithstanding such a contention raised, the tenant did not deposit arrears of rent. What is the remedy available to the landlord? What is the liability of the tenant in such a situation? [3 marks]

**(18)** Whether a daughter born in a Hindu joint family governed by Mithakshara law, can be regarded as a co-parcener? If so, by virtue of which statutory Provision? What are her rights, if she can be considered as a co-parcener? [3 marks]

**(19)** What are the conditions to be complied with for execution of an unprivileged Will u/s.63 of the Indian Succession Act? [3 marks]

**(20)** Can a Muslim woman obtain divorce from her husband? If so, state three grounds on which she can claim divorce from her husband? [3 marks]

### Part III

Answer any 5 questions in no more than 250 words each. Each question carries 8 marks.

**(1)** What are the causes for termination of agency? Is there any difference if the agent has an interest in the subject matter? What are the duties of an agent on termination of agency by principal's death or insanity? [8 marks]

**(2)** Explain the principles regarding adverse possession. As between co-owners, what are the requirements to constitute this plea? [8 marks]

**(3)** Explain the term "Lis Pendens'? Whether the purchaser of an immovable property for value from a party to a suit is bound by the doctrine of lis pendens? Does this doctrine apply to any suit which is collusive in nature? Explain the expression "pendency of the suit' in Sec.52 of Transfer of Property Act. [8 marks]

**(4)** 'A' contracted with 'B' to sell 10 cents of immovable property and 'B' agreed to purchase the same for Rs.1,00,000/-. Rs.50,000/- was paid as advance to 'A'. B' was put in possession of the property. The agreement for sale was executed by both parties on stamp paper for sufficient value. Time fixed for performance was 3 months. For a period of four years, none of the parties took initiative to complete the transaction. After four years, 'A' filed a suit for recovery of possession against 'B' on the strength of title. 'B' took up a contention that he is possessing the property in part performance of the contract. In this context the following questions arise:

(i) What do you mean by part performance?

(ii) What are the essential ingredients required to claim its benefit?
(iii) In the given problem, can 'B' claim part performance?
(iv) What are the rights and liabilities of 'A' & 'B' in the given problem? [8 marks]

**(5)** What is the meaning of the term 'acknowledgement in the context of Section 18 of the Limitation Act? How an acknowledgement of liability can be made and what is its effect? What is the distinction between Sec.18 Limitation Act and Sec.25(3) Contract Act? [8 marks]

**(6)** Can a contract be rescinded by one of the parties? If so, what are the legal consequences? Whether the seller of property, against whom a decree for specific performance has been obtained, can claim rescission? If so, how it can be done? [8 marks]

**(7)** What are the ingredients to be established to claim a right of way by prescription? Which are the rights that cannot be acquired by prescription? [8 marks]

**(8)** 'A' the owner of a building let it out to 'B', the tenant. 'A' wanted to file a petition for eviction on the ground of objectionable sublease. What are the essential elements that 'A' will have to establish for claiming eviction? Assume that 'B was the Managing Partner of a firm to which the lease was made and 'B', in that capacity, executed the lease deed. Subsequently the firm was dissolved and the business continued by 'B' in the room. Can 'B' be evicted on the ground of sub lease? [8 marks]