Kerala Judicial Service (Mains) 2020

Paper II · compulsory paper

Marks: 100 · Duration: 3 Hours

Part - I

Answer all the questions (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 = 15 marks)

1. When does the period of limitation for a suit for recovery of possession on the strength of title begin to run?

(A) When the defendant enters into possession

(B) 12 years after the date on which the defendant enters into possession

(C) 12 years from the date on which possession of the defendant becomes adverse

(D) None of the above.

2. A Will executed by a Hindu is governed by the provisions of -

(A) Hindu Succession Act

(B) Indian Succession Act

(C) Wills Act

(D) Registration Act.

3. The time fixed for averting an order of eviction passed under Section 11(2) of the Building (Lease and Rent Control) Act by deposit of arrears of rent, interest and costs can be extended.

(A) once

(B) more than once

(C) by one month

(D) cannot be extended.

4. What is the period of limitation to file an Execution Petition for execution of a decree for prohibitory injunction?

(A) 3 years

(B) 12 years

(C) 30 years

(D) None of the above

5. Which among the following relationships does not require consideration?

(A) Agency

(B) Partnership

(C) Indemnifier and indemnified

(D) none of the above.

6. Lispendense applies,

(A) From the filing of the suit till its decree

(B) From the filing of Execution till satisfaction of decree

(C) From the filing of the suit till satisfaction of the decree

(D) None of the above

7. When can an agent delegate?

(A) When he is expressly or impliedly permitted

(B) nature of agency require

(C) custom or trade permits

(D) All of the above.

8. What is a holograph Will ?

(A) A Will in the testator's handwriting

(B) A type written Will

(C) A Will which omitted to give details of the assets

(D) A lost Will

9. Which among the following documents is to be attested by 2 witnesses?

(A) Sale deed

(B) Power of attorney

(C) Gift deed

(D) All of the above.

10. Section 5 Limitation Act apply to:-

(A) Institution of suits

(B) Execution petitions

(C) Applications other than in execution

(D) Applies to all proceedings in the Court.

11. Which among the following vitiating factors render a contract void?

(A) Fraud

(B) Undue influence

(C) Coercion

(D) None of the above.

12. Which among the following is a discontinuous easement?

(A) Right of way

(B) Right to light

(C) Natural flow of water

(D) All of the above.

13. When no rate of interest is mentioned in the negotiable instrument on the amount due thereon, then at what rate is the payee entitled for interest?

(A) No interest

(B) 6%

(C) 12%

(D) 18 %

14. The fee payable on an application for re-fund of court fee is?

(A) Five Rupees

(B) Ten Rupees

(C) No Court fee

(D) Ad valorem court fee on the amount to be refunded

15. A, B and C inherited a property with a residential building thereon from their parents. A, who was residing in the building, refused to share income from the property and excluded B and C from possession. B filed a suit for partition and separate possession. The court fee payable is to be calculated on:-

(A) The market value of the entire property

(B) The market value of the plaintiff's share

(C) One-half the market value of the property

(D) Fixed Court fee is payable

Part - II

Answer any 15 questions. Answer 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 = 45 marks)

16. A avails a loan from a Bank. Few months later, A creates equitable mortgage of his immovable property as security for the loan earlier availed. No amount is paid to A by the Bank when the mortgage is created. Is there a valid mortgage? Is the mortgage supported by consideration? Elucidate.

17. A causes B to execute a gift deed in his favour representing-to B that the document is a Power of Attorney. Subsequently B realises that the document he was made to execute was a Gift Deed. Should B file a suit to set aside the document or for declaring the document as void? What is the difference between void and voidable documents?

18. B owes a debt to A. An year later, when A demanded the amount, B issued a promissory note in favour of A, Consequent on the failure of B to pay the amount, A proposed to file a suit. Then he noticed that the promissory note is insufficiently stamped. Thereupon A filed a suit on the original cause of action. B sets up a defence of novation on the premise that, on execution of the promissory note the original contract has been substituted and that the remedy is only on the substituted agreement. Is the suit maintainable? Discuss.

19. A owes a debt to B. The debt became time barred. Thereafter, A executed a document in favour of B acknowledging and undertaking to pay the amount. B files a suit on the document, for recovery of money. A contends that, the claim is barred by limitation and that the document cannot operate as an acknowledgment of debt to save limitation, since it was executed beyond the period of limitation, and also that the undertaking is without any consideration. Is the suit maintainable? Comment.

20. A executed a gift of immovable property in favour of B, which is not onerous. After registration of the document, it is got back from the Sub Registry Office by B and he retained it. However, he omitted to effect mutation based on the gift. A few months later A and B fell apart and A executed a deed cancelling the gift. Is the cancellation valid? Who retains title over the property?

21. A entered into a contract with B for supply of specified quantity of certain article on or before a specified date at a fixed price. Subsequently, availability of the article in the market became scarce and the price of the article soared high. A contends that the contract has become frustrated. Is the contention liable to be accepted. Discuss with reference to the doctrine of frustration?

22. A and B are neighbours. There arose a dispute between them regarding title over a strip of land lying in between their admitted properties. B fenced up the disputed portion with his property. Attempts for settlement through private negotiations failed. Finally A filed a suit for the relief of declaration of his title over the disputed plot. B raised a contention that the suit for mere declaration is not maintainable. Comment.

23. A owns 20 cents of property. It is bounded on three sides by properties of strangers and on the one side by a public road. Retaining the 15 cents adjoining the road, A sells the remaining 5 cents to B. The sale deed does not reserve a right of way for B. A obstructs B from using any portion of his remaining 15 cents for access to the road. What is the nature of the right of way that B could claim, explain ?

24. Explain the difference between a customary easement and a customary right.

25. On account of a breach of contract entered into with B, A suffered damages. A assigned to Z, the right to sue B for damages. Is the transfer valid? Is it an actionable claim?

26. A executed and registered an unilateral document in favour of B, undertaking to purchase 25 cents of property belonging to B at a consideration of Rs.2.5 lakhs. B was not a signatory to the document. On the date of execution of the document A paid an amount of Rs.1 lakh to B towards advance. A filed a suit for specific performance of the agreement for sale. B contends that the document is an unilateral one executed by A alone and hence there is no contract. Is the defence acceptable. Is there a valid agreement? Explain.

27. Explain the difference between acknowledgment of a debt under Section 18 and Section 19 of the Limitation Act.

28. A owes a debt to B. B dies. B's wife and children filed a suit against A for recovery of the debt. A raises an objection that the suit cannot be maintained without production of a Succession Certificate. Is the institution of the suit bad in the eye of law ? Can a decree be passed in the suit without a Succession Certificate.

29. A Rent Control Petition filed by the landlord for eviction of his tenant under Section 11(3) of the Building (Lease and Rent Control) Act for the bona fide need of his son was dismissed finding that the

son is employed abroad. The son lost his job and returned to his native place. The landlord again: files another petition on the very same ground. Is there any bar in maintaining the second petition?

30. Elucidate the difference between an order of eviction under Section 11(2) and 12 of the Kerala Buildings (Lease and Rent Control) Act.

31. A borrowed an amount of Rs.1 lakh from B. When B demanded repayment of the amount, A executed a document, styled as an agreement, in favour of B undertaking to pay the amount within six months. On default in repayment, B filed a suit on the document. A raises an objection that the document in question though styled as an agreement is a bond and is insufficiently stamped. Is the document an agreement or bond. Explain ?

32. Explain the mode of calculation of market value, for the purpose of payment of court fees, in respect of (1) agricultural land (2) building (3) non-agricultural land.

33. A issued a cheque to B for valuable consideration. The cheque when presented for payment, was dishonoured for insufficiency of funds. B filed a suit on the dishonoured cheque. A raises a contention that the suit is bad for non-issuance of a notice as mandated under Section 93 of the Negotiable Instruments Act. Discuss on the sustainability of the plea.

34. A Panchayat road is being widened by reducing properties of its adjoining owners, without any surrender or process of acquisition. The owners filed a suit for prohibitory injunction. The Panchayat raised a defence that the suit is not maintainable without a notice as mandated under Section 249 of the Panchayat Raj Act. Is the contention acceptable?

35. Pending suit, the parties were referred to mediation. At mediation, the parties entered into a settlement. On recording the compromise, the matter is sent back to Court, Is the Court required to pass any further orders thereon? Is there any difference if the settlement is before the Adalath held under the Legal Services Authorities Act, 1987?

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 = 40 marks)

36. A availed a loan from a bank for his business purposes. B stood as surety for the transaction. Along with the loan agreement and other security documents, A executed an agreement of hypothecation, hypothecating the goods in trade in favour of the Bank. On default in repayment, Bank filed suit against A and B.

By the time the suit was filed none of the hypothecated goods were available. B contended that consequent on the loss of the goods, he is discharged. (a) Comment. (b) What are the circumstances leading to discharge of surety?

37. What are the grounds on which a tenant can be evicted under the Kerala Buildings (Lease and Rent Control) Act, 1965. Mention the salient features of each ground.

38. What are the different types of Partnerships under the Indian Partnership Act? Discuss.

39. “Possession counts nine points in law”, discuss.

40. "There is no single litmus test to distinguish licence and lease" - critically analyse.

41. What are the grounds of divorce available to a Muslim woman under the Dissolution of Muslim Marriage Act ? Explain.

42. "One cannot approbate and reprobate is the basic concept of doctrine of election under the Transfer of Property Act" - critically examine.

43. "Limitation bars the remedy and not the right"; Explain. Are there any exceptions to the rule ? Discuss.

De Facto IAS