Kerala Judicial Service (Mains) 2022

Paper II · compulsory paper

Marks: 100 · Duration: 3 Hours

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 = 15 marks)

1. Where both the parties to any agreement are under a mistake as to a matter of fact essential to the agreement.

(A) The agreement is voidable.

(B) The agreement can't be enforceable at law.

(C) The agreement is void.

(D) The agreement is not void

2. Which of the following actions can be brought into law for the recovery of specific immovable property.

(A) A suit based on the title

(B) A suit based on the possessory title

(C) A suit based merely on the previous possession

(D) All of the above

3. Transfer of Spes Succession is

(A) Valid

(B) Void

(C) Voidable

(D) Either A or B

4. 'A' promises to pay 'B', a sum of Rs.10,000/- if it rains and in return, 'B' promises to pay 'A' Rs.20,000/- if it does not rain. It is a/an .....

(A) Valid agreement

(B) Contingent contract

(C) Wagering contract

(D) Uncertain agreement

5. Charge can be created by

(A) Act of parties

(B) Operation of law

(C) Both ‘A’ and ‘B’

(D) Neither ‘A’ or ‘B’

6. As per Section 14 of the Hindu Succession Act, 1956, any property possessed by a female Hindu, whether acquired by her before or after the commencement of this Act, shall be held as a.....

(A) Half owner

(B) Limited owner

(C) Full owner

(D) All of the above

7. Section 5 of the Limitation Act applies to

(A) suit

(B) appeal & application

(C) execution

(D) all the above.

8. The award made by the Lok Adalat

(A) is deemed to be a decree of the civil court like arbitration Award

(B) is deemed to be a decree of the civil court

(C) is effective as an Arbitral award

(D) is not binding on the party

9. An easement

(A) is extinguished when the servient owner leaves on his own.

(B) cannot be extinguished.

(C) is extinguished upon the death of the dominant owner.

(D) is extinguished when the dominant owner releases it expressly or impliedly to the servient owner.

10. All litigation for or against the Municipality shall be conducted by or against

(A) Chairperson

(B) Secretary

(C) Council

(D) None of the above

11. The laws relating to the testamentary succession as per the Indian Succession Act, 1925 are not applicable to.....

(A) Christians

(B) Hindus

(C) Muslims

(D) Sikhs

12. Instruments to be assessed for stamp duty in Kerala State executed outside India will be stamped.....

(A) Within 3 months after it received in Kerala

(B) Within 6 months after it received in Kerala

(C) At the date of execution

(D) At the date and time as decided by the executant

13. Which of the following types of leases of immovable property does not require registration?

(A) A lease for year to year

(B) A lease for 6 months

(C) A lease for a term exceeding one year

(D) All the above

14. The amount of court fee to be paid on the plaint at the time of institution of the suit shall be:

(A) One-tenth of the amount of fee chargeable under the Kerala Court-Fees and Suit Valuation Act

(B) One-fourth of the amount of fee chargeable under the Kerala Court-Fees and Suit Valuation Act

(C) Half of the amount of fee chargeable under the Kerala CourtFees and Suit Valuation Act

(D) Full court fee chargeable under the Kerala Court-Fees and Suit Valuation Act

15. A promissory note, bill of exchange or cheque payable to bearer, is negotiable:

(A) By endorsement and delivery thereof.

(B) By the holder by endorsement

(C) By delivery thereof.

(D) None of the above.

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. The plaint A schedule property belongs to the plaintiff and is .in his possession. It is admitted that when the plaintiff purchased the plaint A schedule property, it was barren land. Thereafter he levelled the land and constructed a house in it. He also constructed a compound wall on the eastern side of the plaint A schedule property. The plaint B schedule property belongs to the defendants and is situated on the north eastern corner of the plaint A schedule property. The case of the plaintiff is that mud has been excavated from the plaint B schedule property to a considerable extent in such a manner affecting the eastern compound wall of the plaint A schedule property and losing its lateral support. The suit has been instituted by the plaintiff for a permanent prohibitory injunction restraining the defendants from removing mud from the eastern side of the plaint B schedule property and from causing any damage to the compound wall situated on the western boundary of the plaint B schedule property.

The defendants admitted the removal of earth. According to them, the 3“ defendant for the purpose of constructing a residential house therein removed earth at a height of 5 feet and left a considerable distance from the western boundary. It is their further case that, by such removal, no damage is caused to the eastern compound wall of the plaint A schedule property and apprehension of the plaintiff that its natural support would be affected is unfounded and without any basis.

The plaintiff seeks relief on the basis of his right to lateral support. Is the plea sustainable in view of the facts? Give reasons.

17. The petitioner is the landlord and the respondent is the tenant. The definite case of the petitioner is that the respondent ceased to occupy the petition schedule building for more than 2 years continuously prior to the filing of the petition without any reasonable cause. On the other hand, the respondent contended that he never ceased to occupy the petition schedule building but it is in his absolute possession and he is conducting aquarium business therein. It is further contended that he could not open the shop for three months as he was laid up.

To prove the case of the petitioner, the petitioner himself gave evidence as PW1. He deposed in tune with the averments in the petition. A commission has been taken out immediately after filing of the petition. Commissioner reported that the petition schedule building remained closed as on the date of the inspection. The Commissioner further reported that the building was covered with cob-web and dust. The Commissioner was examined as PW2. The Commissioner conducted an inspection at 5 p.m. According to the respondent, he closed the building initially by 5 p.m. and the petitioner deliberately brought the Commissioner at 5 pm., after he closed the building. Thus, according to the respondent, even on the date of inspection by the Commissioner, he had opened the building and conducted business therein.

The respondent gave oral evidence. He did not produce any documentary evidence to show that he actually conducted business during the past six months prior to the filing of the petition. However, he produced D & O licence fee receipt. He also did not produce any medical evidence to prove his illness.

Is the petitioner entitled to eviction? If yes, on what ground under Kerala Building (Lease and Rent Control), Act, 1965. Give reasons.

18. Distinguish between a customary easement and a customary right?

19. Write short notes on 'Joint Hindu family' and 'Hindu coparcenary'.

20. What are the major amendments brought out to the Specific Relief Act in 2018? Whether the amendment is retrospective?

21. The plaint schedule property belonged to the father of the plaintiff. Father died. According to the plaintiff, on the death of the father, the property devolved upon him and the defendant. He filed a suit for partition.

The defendant resisted the suit contending that it is his exclusive property. According to him, his father much before his death bequeathed the property to him as per Ext.B1 will.

The plaintiff specifically denied the execution of the will.

Both plaintiff and the defendant gave oral evidence in tune with their pleadings. One of the attesting witnesses to the will died. The remaining attesting witness was examined as DW2. He deposed that he witnessed the execution of the will. But his evidence is not sufficient to satisfy the ingredients of Section 63 of the Indian Succession Act.

Thereafter the plaintiff filed three petitions; one to send the admitted signature of the testator as well as Ext.B1 will for scientific examination to compare signatures contained in those documents and the second one to issue summons to the Joint Sub Registrar of SRO, to prove the registration of

Ext.B1. The third petition was to issue summons to the scribe to examine him. - The plaintiff sought to introduce the above additional evidence in order to prove the due execution of the Will by resorting to Section 71 of the Indian Evidence Act. However, it is a fact that DW2 did not either deny or recollect the execution of the Will.

Can the propounder/plaintiff be permitted to adduce the evidence mentioned above to prove the execution of the will? — Explain.

22. 'A' promises to obtain for 'B' employment in public service and 'B' promises to pay Rs. 1,000/- to 'A'. 'B' secures the employment but fails to pay Rs. 1,000/- to 'A'. Can 'A' recover Rs. 1,000/- from 'B'? If so, why?

23. 'A' during his minority takes a loan of Rs. 20,000/- from 'B' and executes a pronote in favour of 'B'. When 'A' becomes major, he writes another pronote in favour of 'B' in the place of old pronote, but fails to pay the debt. 'B' files suit against "A' for recovery of said amount on the basis of new pronote. Will 'B' succeed?

24. 'A' makes a gift to 'X', 'Y and 'Z". 'X' and 'Y" accept while 'Z' refuses. What happens to the gift?

25. The only point in dispute before the court is whether the premises in dispute had been let out to the defendant for residential purposes as contended by the plaintiff or the same had been taken by him for commercial purposes as contended by the defendant. The parties had admittedly executed an agreement in writing in which the purpose of letting is mentioned. The agreement, though it required registration, has not been registered. The plaintiff has produced the agreement in court for proving his case about the purpose of letting. The defendant has contended that the agreement cannot be admitted into evidence for determining the controversy. How will you decide? Give reasons.

26. 'A' gives a promissory note to 'B' on 1-1-1993. "A' was out of India from 1-1-1994 to 1-1-1996. 'B' sued "A' on 2-1-1996. Is the suit within the period of limitation? Decide.

27. A right to sue accrues to "Z' during his minority. After the accrual but while "Z' is still a minor, he becomes insane. When will the period begin to run?

28. A Muslim girl is given in marriage by her father. When she attained the age of 17 years, she repudiated the marriage and brought a suit for dissolution of her marriage. What facts she is required to prove in order to succeed? Can the husband successfully resist the suit on any ground?

29. Discuss the law relating to refund of court-fees.

30. How the amount of Court-fee, in the following suits will be computed:

i. Suits for a declaratory decree with consequential relief.

ii. Suits to obtain an injunction

31. What are the criteria for giving legal services under the Legal Services Authorities Act, 1987? Who are the persons entitled to legal services under this Act?

32. 'A' sends a price list of goods to 'B' on the latter's request. 'B' places an order on dealer 'A' for goods specified in the price list on prices quoted in the said list. 'A' did not execute the order for supply. What is 'B's remedy, if any ?

33. The plaintiff filed suit for a decree for permanent - prohibitory injunction restraining the defendant/Panchayath from trespassing into his property shown in plaint schedule and cutting and

making a concrete pathway through it. The defendant raised a preliminary objection challenging the maintainability of the suit on the ground that the plaintiff has not issued a statutory notice under S.249(1) of the Kerala Panchayat Raj Act, 1994, against the Secretary before instituting the said suit.

Per contra, the plaintiff contended that the cause of action had arisen on an apprehension that the defendant will do some unlawful activity, by way of trespassing into the property and cutting trees, without his consent.

Is statutory notice under Section 249(1) required? Explain.

34. What are the presumptions as to negotiable instruments?

35. Is there any time limit prescribed under the Registration Act to get the document registered from the date of its execution?

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. The larger property comprising the Plaint A and B schedule properties belonged to the father of the plaintiff and the defendant. On the death of the father, the plaintiff and the defendant partitioned the larger property in the year 1995. The plaint A schedule property was allotted to the plaintiff and the plaint B schedule property was allotted to the defendant. The plaint C schedule way is the only way to the plaint A schedule property. It forms part of plaint B schedule property and runs through it. A suit for declaration of easement right and injunction was instituted in 2020 when the defendant obstructed the way. According to the plaintiff, he has been using the C schedule way for access to A schedule property since 1995 openly, continuously, peacefully and as a matter of right and thereby acquired prescriptive easement right over the same. The plaintiff claimed easement of necessity, as well, as originally A and B schedule property, belonged to a common owner and by severance, it devolved upon the plaintiff and the defendant.

Can the plea of prescriptive right of easement and easement of necessity co-exist in a suit?

Can one of the pleas be claimed as an alternative relief?

Examine-in the light of the inherent characteristics of both easements.

37. The plaint schedule property originally belonged to late Balakrishnan. The plaintiff and the defendant are his legal heirs. The plaintiff filed a suit for declaration and possessory right over the plaint schedule property on the basis of adverse possession and limitation. According to the plaintiff, even during the lifetime of late Balakrishnan, the plaint schedule property was entrusted to him orally and since the death of late Balakrishnan on 2.2.1980, he has been in continuous, uninterrupted, open, peaceful and hostile possession and enjoyment of the plaint schedule property and he has perfected title over the property by adverse possession and limitation. However, there is no pleading of ouster in the plaint.

The defendant disputed the said case set up by the plaintiff and contended that on the death of Balakrishnan, the plaint schedule property devolved upon the plaintiff and the defendant and the plaintiff is only a co-owner.

The plaintiff produced land revenue payment receipts from 1980 to prove that he paid land revenue in his name. He also gave oral evidence. The defendant gave rebuttal evidence.

Is the claim of the plaintiff based on adverse possession and limitation sustainable? — Explain referring to the principle governing the law of adverse possession, limitation and ouster.

38. The plaint schedule house belongs to the plaintiff. The defendant was permitted to use the plaint schedule house by the former owner as per Ext.A1 licence deed with a stipulation to pay the licence fee of Rs.200/- per month. After the plaintiff obtained right over the house, the defendant continued his occupation in the plaint schedule house. The period of licence stipulated in Ext. A1 is over. Therefore, the plaintiff terminated the licence by issuing a lawyer notice. Since there was no compliance, the plaintiff instituted a suit for a mandatory injunction directing the defendant to surrender possession of the plaint schedule house and to realise the arrears of the licence fee.

The defendant admitted that the plaint schedule house belongs to the plaintiff. But, contended his status is that of a lessee, not a licensee. According to him, he was the tenant of the house under the former landlord and after his death, he continued the occupation., He further contended that while he was in occupation of the house as a tenant, merely 3 years after the original oral entrustment, the former landlord brought a written document and required him to sign the same. He was made to understand that the written document was one evidencing the terms and conditions in the original oral rental arrangement that came into existence way back in 1988. He also contended that Ext.A1 licence agreement was never acted upon and it is only a sham document. According to the defendant, since he is a tenant in respect of the plaint schedule house, he is entitled to get the benefit under the provisions of the Kerala Building (Lease and Rent Control) Act and the suit for eviction is not maintainable.

The plaintiff was examined as PW1. The licence deed was marked as Ext.A1. One of the witnesses to Ext A1 was examined as PW2. The defendant did not mount the box, on his behalf, his wife was examined as DW1.

What is the nature of the jural relationship between the plaintiff and the defendant?

What are the factors that distinguish a lease from a licence?

39. a. Abdulla married Asma in the year 1990 in accordance with the customary Muslim religious rites. Four children have been begotten in the marriage. During the subsistence of the said marriage, Abdulla contracted another marriage with one Aysha and started residing with her. Can Asma seek dissolution of marriage under the Dissolution of Muslim Marriage Act, 1939 on the plea that her husband contracted second marriage? — Explain with reference to clause 2(viii)(f) of the Dissolution of Muslim Marriage Act, 1939?

(B) Can a Muslim wife repudiate the marriage with her husband dehors the provisions of the Dissolution of Muslim Marriage Act, 19392 — Explain with reference to the latest case law.

40. a. The landlord sought eviction under Section 11(3) of the Kerala Building (Lease and Rent Control), Act, 1965 for his own occupation to-start a business. The eviction was granted and the order has become final. At the execution stage, the landlord died and his legal heirs were impleaded.

The tenant raised a contention that on the death of the landlord, the order of eviction on the ground of his personal need became nullity and not executable.

Is the contention sustainable? Are the legal representatives of the landlord entitled to execute the order?

(B) What is the distinction between grounds for eviction under Section 11(3) and 11(8) of the Kerala Building (Lease and Rent Control), Act, 19657

41. What are the powers and functions of Lok Adalat and Permanent Lok Adalat?

42. What are the documents of which registration is compulsory? What are the effects of the non-registration of documents required to be registered?

43. How the market value of the property/building is determined for the purpose of court fee and jurisdiction?