

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

**PAPER - I**

Date of Examination: 11-05-2013

Roll Number:

Maximum Marks: 150

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

**INSTRUCTIONS TO THE CANDIDATES**

1. Candidates should write their Roll Number in their Question Booklets at the space provided for the purpose.
  2. Candidates should not open their Question Booklets before 10 a.m.
  3. **This Question Booklet has three parts:- Part -A, Part-B and Part-C.** In **Part -A**, there are 18 Objective Type Multiple Choice questions carrying 2 marks each. All the questions are to be attempted. In **Part-B**, there are 18 descriptive type questions (answers not to exceed 100 words) carrying 7 marks each. Of these 18 questions, 12 questions are to be attempted (the first 12 answers alone will be evaluated if more than 12 questions are answered). The only question in **Part-C** (Judgement Writing) carrying 30 marks is compulsory.
  4. After opening the Question Booklet at 10 a.m., ensure that it has three parts - **Part -A, Part -B and Part -C**, that there are 18 Objective Type Multiple Choice questions in Part -A, that there are 18 descriptive type questions in Part -B and that there is One question in Part -C. If there are any missing or illegibly printed questions, the matter should be brought to the notice of the Invigilator immediately and the Question Booklet should be got replaced.
  5. Answers to the questions in Part -A of the Question Booklet should be marked in the OMR Answer Sheet bearing Serial (A). Candidates should not separate the 'ROLL NUMBER' portion and 'ANSWERS' portion of the Answer Sheet along the thin perforation in between.
  6. Answers to the questions in **Part-B** of the Question Booklet should be written in the Answer Book bearing Serial (B). It should be tied separately using the piece of twine provided.
  7. Answer to the question in **Part-C** of the Question Booklet should be written in the Answer Book bearing Serial (C). It should be tied separately using the piece of twine provided.
  8. The candidate may choose the Part to be answered first. But, the answers to the questions in each Part of the Question Booklet should be written only in the OMR Answer Sheet/Answer Book meant for the respective Part. If the candidates write answers to the questions in a particular Part of the Question Booklet in the Answer Book meant for a different Part, those answers will not be evaluated.
  9. The candidates should use only BLACK/BLUE INK ballpoint pen for filling the various entries and marking answers in the Serial (A) OMR Answer Sheet. But, the candidates may use BLACK/BLUE INK fountain pen/Ballpoint pen for filling the various entries and writing answers in the Serial (B) and Serial (C) Answer Books. Use of pencil, Gel pen or sketch pen and use of any colour ink other than black/blue is not permitted.
  10. No candidate will be allowed to leave the examination hall without handing over the OMR Answer Sheet bearing Serial (A) and the separately tied answer books bearing Serial (B) and Serial (C) to the Invigilator. Candidates can take the Question Booklet with them.
  11. Answer Key to the questions in **Part -A** of the Question Booklet will be published in the website [www.hckrecruitment.nic.in](http://www.hckrecruitment.nic.in) after the examination.
  12. Strict compliance of instructions is essential. Any malpractice or attempt to commit any kind of malpractice in the examination will result in summary disqualification of the candidate.
-

### PART - A

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

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

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

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

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

## **PART - B**

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

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

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

### **PART - C**

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

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

#### **Parties**

Plaintiff : Malathi  
Defendant : Chandran

#### **Plaint**

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

#### **Written statement**

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



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

### Evidence

PW1 - Plaintiff

Ext.A1 – Agreement dated 22.9.2000

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

DW1- Defendant

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

Ext. B6 – Reply notice

### Ext.A1 agreement

Titled and styled as 'licence agreement'.

Date of execution – 22.9.2000

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

**PW1**

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

**Cross-examination**

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

**Re-examination**

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

**DW1**

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

**Cross-examination**

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

**Findings and decree of the trial court**

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

\*\*\*\*\*