

**HIGH COURT OF KERALA**  
**KERALA STATE HIGHER JUDICIAL SERVICE EXAMINATION - 2014**  
**(WRITTEN EXAMINATION)**

**PAPER - I**

Date of Examination: 12-07-2014

Roll Number:

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Maximum Marks: 150

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

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**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 answered. 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 answered (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) which will be evaluated using OMR software.
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.

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## PART – A

*(In this Part there are 18 Objective Type Multiple Choice questions carrying 2 marks each. All the questions are to be answered. 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 A suit under Section 92 of the Code of Civil Procedure is being instituted. Which of the following statements is true?
- a) The suit may be instituted by the Advocate General with the previous assent of the Government.
  - b) The suit may be instituted by two or more persons having an interest in the trust with the permission of the Advocate General.
  - c) The suit may be instituted by two or more persons having an interest in the trust with the leave of the Court.
  - d) The suit may be instituted by the Advocate General only with the leave of the Court.
- 2 A instituted a suit for money against B. On A's application, immovable property belonging to B was attached. B contended and proved that attachment was applied for on insufficient grounds. B applies for awarding compensation to him payable by A.
- Which of the following statements is correct ?
- a) Court can award compensation not exceeding fifty thousand rupees.
  - b) Court has no jurisdiction to award compensation.
  - c) The only remedy of B is to file a suit for compensation.
  - d) Court can award compensation not exceeding ten thousand rupees.
- 3 A suit for recovery of possession of immovable property was decreed ex parte. The application to set aside the ex parte decree filed by the defendant was allowed. The plaintiff intends to challenge the order.
- Which of the following statements is correct ?
- a) The plaintiff can file an appeal challenging the order.
  - b) The plaintiff has no right of appeal against the order.
  - c) The appeal lies only to the High Court.
  - d) The appeal lies to the District Court if the valuation is not above Rs. Ten lakhs and to the High Court if the valuation is above Rs. Ten lakhs.

- 4 An appeal was filed by the defendant in a suit for money, beyond the period of limitation. The appellant filed an application for condoning the delay in filing the appeal. The appellant also filed an application for stay of execution of the trial court decree.

Which of the following statements is correct ?

- a) Appellate court shall not grant stay before condoning the delay after issuing notice to the respondent.
- b) Appellate court may grant a stay on condition that sufficient security for the decree amount is furnished.
- c) Appellate court may condone the delay without notice and grant a stay on condition of deposit of the decree amount.
- d) Appellate court shall dismiss the stay petition with a direction to file a stay petition after the delay is condoned.

- 5 In execution of a money decree for Rs. 25,000/-, the judgment debtor was arrested and detained for the maximum period provided under Section 58 of the Code of Civil Procedure. Immediately after the release of the judgment debtor from civil prison, the decree holder filed an Execution Petition for attachment and sale of the immovable property of the judgment debtor.

Which of the following statements is correct ?

- a) It amounts to harassment and the Execution Petition is liable to be dismissed.
- b) Since the judgment debtor was detained for the maximum period, the decree debt is wiped off and the E.P. is not maintainable in law.
- c) The Execution Petition could be filed only after one year of the release of the judgment debtor from civil prison.
- d) By the detention in prison, the judgment debtor is not discharged from the decree debt. The E.P. is maintainable.

- 6 The trial court passed a decree for recovery of possession of immovable property. The defendant filed Appeal. No stay of execution was granted. Pending the Appeal, the suit property was delivered to the plaintiff in execution. The appellate court allowed the Appeal and dismissed the suit.

Which one of the following remedies is available to the defendant ?

- a) file an application before the trial court for restitution under Section 144 C.P.C.
- b) file an application before the appellate court for restitution under Section 144 C.P.C.
- c) file an application under Rule 97 of Order XXI C.P.C..
- d) File a suit for recovery of possession.

- 7 Which one of the following statements is untrue ?
- a) Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other.
  - b) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.
  - c) Each material proposition affirmed by one party and not denied by the other shall form the subject of a distinct issue.
  - d) Issues are of two kinds: issues of fact and issues of law.

- 8 Which one of the following statements is untrue with regard to appeal ?
- a) No appeal shall lie from an original decree passed ex parte.
  - b) No appeal shall lie from a decree passed by the court with the consent of parties.
  - c) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by courts of small causes, when the amount or value of the subject matter of the original suit does not exceed ten thousand rupees.
  - d) Where any party aggrieved by a preliminary decree does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

- 9 'A' entered into an agreement with 'B' to purchase one acre of land for a consideration of Rs. Ten lakhs. An advance of Rs. One lakh was paid by A to B. Contrary to the terms of the agreement, B transferred the property to C. C cut and removed the valuable trees in the property and thereby the value of the property was considerably diminished. A's suit for return of advance amount was decreed against B. In execution, the property in question was sought to be sold for realization of the decree amount.

Which of the following statements is true ?

- a) A is entitled to a charge on the property as against B and C and therefore the property can be sold.
- b) The property cannot be sold since B had no title to the property at the time when the decree was passed.
- c) Since C is a bonafide purchaser, the property is not liable to be sold.
- d) Since C purchased the property before the institution of the suit, charge under Section 55 (6) (b) of the Transfer of Property Act is not available in favour of A.

- 10 During the continuance of the mortgage, mortgagee takes possession of the mortgaged property.

Which of the following statements is untrue ?

- a) The mortgagee must manage the property as a person of ordinary prudence would manage if it were his own.
- b) The mortgagee must try his best endeavours to collect the rents and profits thereof.
- c) The mortgagee must not commit any act which is destructive or permanently injurious to the property.
- d) The mortgagee shall not spend money for making his own title thereto good against the mortgagor.

- 11 Which one of the following statements is untrue, with regard to mistake under the Indian Contract Act ?

- a) When both parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.
- b) A contract is not voidable because it was caused by a mistake as to any law in force in India.
- c) A mistake as to a law not in force in India has the same effect as mistake as to any law in force in India.
- d) A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

- 12 Which one of the following statements is untrue ?

- a) The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released .
- b) Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to the transactions subsequent to the variance.
- c) Where there are co-sureties, a release by the creditor of one of them would discharge the others.
- d) Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

- 13 A person suing for specific performance of a contract for transfer of immovable property may, in an appropriate case, ask for possession or partition and separate possession of the property, in addition to such performance; or ask for refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

This statement regarding reliefs in addition to specific performance is:-

- a) incorrect.
  - b) Fully correct.
  - c) Correct only in respect of refund of earnest money.
  - d) Correct only in respect of possession.
- 14 The plaintiff in a suit for perpetual injunction under Section 38 of the Specific Relief Act, or mandatory injunction under Section 39 of the said Act, may claim damages either in addition to, or in substitution for such injunction and the court may, if it thinks fit, award such damages.

This statement regarding the claim for damages is :-

- a) Correct.
  - b) Incorrect.
  - c) Correct, only in respect of a suit for perpetual injunction.
  - d) Correct, only in respect of a suit for mandatory injunction.
- 15 A party aggrieved by a decree files a review petition without filing an appeal. The review petition is dismissed on merits. Which of the following is the remedy available to the party to challenge the order dismissing the review petition.
- a) He can prefer an appeal under Order 43 Rule 1 (w) of the CPC.
  - b) He can prefer an appeal under Section 96 read with Order 41 Rule 1 CPC.
  - c) He can file a Revision before the High Court under Section 115 CPC.
  - d) He can file an application under Section 151 CPC

16 Pick the true statement.

- a) In the absence of any contrary intention appearing in the document the title in the case of sale of immovable property normally passes on execution of the sale deed.
- b) In the absence of any contrary intention appearing in the document the title in the case of sale of immovable property normally passes on execution and registration of the sale deed.
- c) In the absence of any contrary intention appearing in the document the title in the case of sale of immovable property normally passes on execution and registration of the sale deed and payment of full consideration.
- d) In the absence of any contrary intention appearing in the document the title in the case of sale of immovable property normally passes on execution and registration of the sale deed and payment of substantial portion of the consideration.

17. 'A' contracts with 'B' assuming 'B' to be 'C'. The contract is:

- a) voidable at the option of 'C'.
- b) voidable at the option of 'A'.
- c) void.
- d) It is a valid contract.

18 'A' and 'B' having separate funds, jointly purchased a property on payment of Rs. Four lakhs as consideration. 'A' contributed Rs. Three lakhs and 'B' contributed Rs. One lakh towards the consideration and it is so recited in the sale deed. 'A' files a suit for partition claiming  $\frac{3}{4}$  shares.

Which of the following statements (including the provision of law) is correct ?

- a) 'A' is entitled to  $\frac{3}{4}$  shares- under Section 45 of the Transfer of Property Act.
- b) 'A' is entitled to  $\frac{3}{4}$  shares- under Section 5 of the Transfer of Property Act.
- c) 'A' and 'B' are entitled to equal shares.
- d) 'A' has to file a suit for declaration of his  $\frac{3}{4}$  rights and a simple suit for partition is not maintainable.

## 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 answered. The first 12 answers alone will be evaluated if more than 12 questions are answered.) Answers to the questions in the Part should be written in the Answer Book bearing Serial (B). Answers written elsewhere will not be valued.]

1. On the basis of the following particulars on the certified copy of the judgment, what is the last date for filing Appeal before the District Court against a decree in a suit? Give reasons and discuss the principles of law.

Date of judgment:	1-1-2014
Date of copy application:	3-1-2014
Date of calling for stamp papers:	6-1-2014
Date of production of stamp papers:	9-1-2014
Date when copy was ready:	20-1-2014
Date notified to receive copy:	23-1-2014
Date when copy was delivered:	22-1-2014

2. What are the conditions to be satisfied for invoking the principle of constructive res judicata?
3. What are the salient aspects of the two decisions of the Supreme Court in Salem Advocate Bar Association Vs. Union of India ? Discuss at least five important provisions of the Code of Civil Procedure discussed therein.
4. Can the civil court refer unwilling parties to arbitration, exercising powers under Section 89 of the Code of Civil Procedure ?
5. (a) The sole defendant in the suit died. An application for impleading the legal representatives of the deceased defendant was filed on the 200<sup>th</sup> day of the date of death. State the nature of the applications to be filed by the plaintiff, with reference to the provisions of law. (4 marks)  
  
(b) The first defendant died. One of the legal representatives of the deceased defendant is in the array of parties. Application for impleading was filed on 200<sup>th</sup> day of the date of death. Is there any difference between the examples in (a) and (b) ? Discuss the principles of law. (3marks)
6. Only the first defendant was served with summons in a suit. The plaintiff did not take steps to send fresh summons to the other defendants within time. The Court dismissed the suit for default Under Rule 5 of Order IX of the Code of Civil Procedure. Is the order correct ? Can the suit be restored to file ? If so under which provision of law ?



7. What are the requisite conditions for execution of an unprivileged will ? How can it be revoked ?
8. What is the court fee payable in the following types of suits ?
  - (a) partition suit
  - (b) suit for specific performance of contract for sale
  - (c) suit for recovery of possession of immovable property
  - (d) suit for injunction.
9. The general principle is that limitation only bars the remedy, but not the right. Is there any exception to this general principle ? Discuss.
10. Write short notes on :
  - (a) disinheritance as a result of conversion, under the Hindu Succession Act. (4 marks)
  - (b) What are the requisite conditions and ceremonies for a valid Hindu marriage ? (3 marks)
11. Discuss the principles under the Hindu Marriage Act pertaining to inheritance by illegitimate children .
12. The plaintiff granted a licence to the defendant. Licence was terminated. The defendant did not vacate the building. Suit was filed 12 years after the termination of license. The defendant contended that he has perfected title by adverse possession. Discuss the principles of law.
13. What are the main changes brought about by the Amendment Act 39 of 2005 in the Hindu Succession Act ?
14. Discuss the difference between Section 11 and Order 2 Rule 2 of the Code of Civil Procedure.
15. Write short note on the following: ( 3 ½ marks each)
  - (a) Duties of the guardian of the person of a ward under the Guardians and Wards Act.
  - (b) voidability of transfers made by guardian of a ward in contravention of the provisions of the Guardians and Wards Act.
16. Explain the distinction between liquidated damages and penalty clauses under the Indian Contract Act. Give illustrations.

17. Write short notes on: (3 ½ marks each)
- (a) Marz- ul- maut
  - (b) conditions for a valid talak. Discuss the recent precedents.
18. An application was filed before the court under a special statute beyond the period of limitation. The period of limitation provided under the Limitation Act is different from the period provided under the special statute. There is no provision in the special statute for condoning the delay. Can the delay be condoned ? Discuss the principles of law.

### PART C

[The only question (Judgment 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. Question: Write a judgment disposing of an appeal filed by the plaintiff challenging the judgment and decree of the trial court. Materials are given below.

#### Parties

Plaintiff ( Appellant ) : 1 Chandran

Defendant(Respondent) : 1 Raman

The suit was instituted for specific performance of contract for sale of immovable property.

#### **Gist of the averments in the plaint:**

The plaint schedule immovable property belongs to the defendant. The mother of the defendant has a life estate in the property. The Plaintiff and the defendant executed an agreement for sale on 01.01.2006 for the sale of the defendant's rights as well as his mother's life interest in the plaint schedule property, for a total consideration of Rs. 1,75,000/-. On the same day, the plaintiff paid an advance amount of Rs. 75,000/-. The plaintiff is and has been always ready and willing to perform his part of the contract. Though the plaintiff requested the defendant to execute the sale deed after receiving the balance sale consideration, the defendant did not accede to the request. The defendant committed breach of contract. The plaintiff is entitled to a decree for specific performance of the contract or in the alternative for a decree for return of the advance amount, with a charge on the plaint schedule property.

**Gist of the averments in the Written statement:**

The defendant did not execute any agreement for sale. The defendant did not receive advance sale consideration as alleged in the plaint. Defendant's mother has a life estate in the property. The defendant alone therefore cannot execute a sale deed regarding the plaint schedule property. The averment in the plaint that the plaintiff was ready and willing to perform his part of the contract is untrue. The plaintiff is not entitled to a decree for specific performance or for return of advance sale consideration.

**Issues framed by the trial court:**

1. Whether the plaintiff and the defendant executed an agreement for sale on 01.01.2006 and whether in pursuance of that agreement the defendant accepted an advance sale consideration of Rs. 75,000/-?
2. Whether the plaintiff was ready and willing to perform his part of the contract?
3. Whether the plaintiff is entitled to a decree for specific performance of the contract or if not in the alternative a decree for refund of advance sale consideration as prayed for ?

**Evidence:**

PW1 – Chandran

PW2 – Krishnan Nair (Scribe)

PW3 – Govindan (Retired Surveyor)

**Exhibits for the plaintiff:**

- A1 : Agreement for sale dated 01.01.2006.
- A2 : Passbook pertaining to the savings bank account of the plaintiff showing a balance of Rs. 5,00,000/- as on 01.01.2006 and on the date of the suit.
- A3 : Certified copy of savings bank account of the defendant showing credit of Rs. 75,000/- on 03.01.2006 as per a cheque issued by the plaintiff.

**Defendant's Evidence:**

DW1- Raman (defendant)

**Defendant's Exhibits:** Nil

**EVIDENCE OF PW 1:**

PW 1 filed affidavit in lieu of chief examination reiterating the plaint averments and denying the averments in the written statement.

**Cross-examination**

I worked in Dubai for several years. I came back in 1995. Thereafter I did not go to Dubai. I had paid Rs. 75,000/- by cheque to the defendant. The agreement was executed at my residence at Palakkad. The defendant came to my residence with a photocopy of his title deed relating to the plaint schedule property. Thereafter, the defendant himself engaged the scribe Krishnan Nair. The plaintiff and Krishnan Nair came to my house on 01.01.2006 and I handed over a cheque for Rs. 75,000/- to the defendant. The defendant and I signed Exhibit A1 agreement for sale in the presence of Krishnan Nair. It was about 10 O'clock in the morning. I was always willing to pay the entire amount due to the defendant. The defendant agreed to convey his rights as well as his mother's life interest. However, the defendant was never earnest. He, under one pretext or the other put off the execution of the sale deed. Retired Surveyor, Govindan, measured the properties on 03.03.2006, in the presence of the defendant. I had money at that time. Even now, I have enough money in my bank account to pay the balance sale consideration. I deny the suggestion that I was never ready and willing to perform my part of the contract. I am relinquishing all claims with respect to the rights of the defendant's mother in the property and I would be satisfied by a conveyance with respect to the defendant's rights alone.

**EVIDENCE OF PW 2:**

**Chief Examination:** I am a scribe. I drafted exhibit A1 as directed by the defendant. The defendant approached me for drafting an agreement for sale. I was present in the plaintiff's house on 01.01.2006 when the plaintiff and the defendant executed Exhibit A1. I saw the plaintiff and the defendant putting their signature in Exhibit A1.

**Cross- examination:** I am not a relative of the plaintiff. In fact, my wife is related to the defendant. I have no enmity with the defendant. I deny the suggestion that I did not witness the execution of Exhibit A1. I deny the suggestion that the defendant did not approach me for preparing an agreement for sale.

**EVIDENCE OF PW3:**

**Chief Examination:** The property was measured by me on the request of the plaintiff. The defendant was present when the property was measured.

**Cross- examination:** I did not read Exhibit A1. I do not know anything about the contract between the plaintiff and defendant.

### EVIDENCE OF DW 1

DW1 filed affidavit in lieu of chief examination reiterating the averments in the written statement and denying the averments in the plaint.

#### **Cross-examination:**

The signature in Exhibit A1 looks like my signature. I deny the suggestion that I signed Exhibit A1. Entry with respect to the credit of Rs. 75,000/- in exhibit A3 pertains to my bank account. I had borrowed money from the plaintiff and I had handed over a blank signed paper. I never engaged PW2. I deny the suggestion that Exhibit A1 was prepared by PW2 on my request. I never went to the plaintiff's house on 01.01.2006. I deny the suggestion that I went to the Plaintiff's house on 01.01.2006. I deny the suggestion that the plaintiff was always ready to pay the balance of sale consideration.

#### **Findings of the trial court:**

1. The defendant executed Exhibit A1 agreement after accepting an advance sale consideration of Rs. 75,000/-. There was an agreement for the sale of the plaint schedule property for a total consideration of Rs. 1,75,000/-
2. The plaintiff was always ready and willing to perform his part of the contract and the defendant committed breach of the contract.
3. Specific performance of part of a contract alone is not permissible. A vested remainder subject to an intervening estate cannot be conveyed.
4. The plaintiff is only entitled to a decree for re-payment of advance sale consideration.

#### **RESULT:**

The suit was therefore decreed by the trial court for return of the advance sale consideration with a charge on the plaint schedule property. The prayer for specific performance of Exhibit A 1 agreement was refused.

**Contentions of the appellant in the Memorandum of Appeal.**

1. A vested remainder subject to an intervening life estate is capable of being transferred.
2. When the vested remainder minus the life estate is capable of specific performance, specific performance ought to be granted if the plaintiff is prepared to relinquish the entire claims regarding the life estate. Relinquishment can be had at any stage of the proceeding and it need not be set forth in the pleadings.

**Application filed by the plaintiff before the Appellate Court:**

The plaintiff filed an application before the appellate court relinquishing all claims for performance of the part of the contract pertaining to the life estate of the defendant's mother and limited the claim for specific performance only with respect to the defendant's rights in the plaintiff schedule property.

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