



# **KERALA**

## **Judicial Services Exam**

### **CIVIL JUDGE**

**High Court of Kerala**

## **Judgement**

## **Volume - 1**



# KERALA JUDICIAL SERVICES

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## Judgement writing

A judge, by his conduct, by his fairness in hearing and by his just and equitable decisions, should earn for himself and the judiciary, the trust and respect of the public and the members of the bar.

### Introduction: - What is a judgment?

A Judgment may be defined as a reasoned pronouncement by a judge on a disputed legal question which has been argued before him. It is a literary composition, but a composition subject to certain conventions. It possesses its own characteristics and its own standards of merit. The art of composing judgments is not taught; it is acquired by practice and by study of the models provided in the innumerable volumes of the law reports in which are recorded the achievements of past masters of the art.

### Dictionary meaning

1. Judgment. Black's Law Dictionary, 9<sup>th</sup> Ed. West Publishing Company. 2009  
A court's final determination of the rights and obligations of the parties in a case. The term judgment includes an equitable decree and any order from which an appeal lies.
2. English law. An opinion delivered by a member of the appellate committee of the House of Lords; a Law Lord's judicial opinion.
  - \* An action is instituted for the enforcement of a right or the redress of an injury. Hence a judgment, as the culmination of the action declares the existence of the right, recognizes the commission of the injury, or negatives the allegation of one or the other. But as no right can exist without a correlative duty, nor any invasion of it without a corresponding obligation to make amends, the judgment necessarily affirms, or else denies, that such a duty or such a liability rests upon the person against whom the aid of law is invoked.
  - \* The pre-requisite for a 'good' Judgment/Order is a good hearing. The process of reasoning by which the court comes to the ultimate conclusion and decrees the suit should be reflected clearly in the judgment. Judgment is the most important document for the parties as well as the Judge and more important for the Judge are the reasons in support of his/her judgment. Clear thinking is the key to clear

writing. A clearly expressed judgment demonstrates the interest of the subject and the exposition of legal reasoning. Reasons given by a judge in a judgment indicate the working of his/ her mind, approach his/ her grasp of the question of fact and law involved in the case and the depth of his knowledge of law. In short, a judgment reflects the personality of the judge and, therefore, it is necessary that it should be written with care and after mature reflection.

## **Civil and criminal matters**

1. In civil matters, the judgments as the requirement of law goes, may be broadly classified into two categories, namely, long and short judgments. In original suits, the final decision of a case requires writing of a long and reasoned judgment. These includes suits for permanent or prohibitory injunction; possession and mesne profit; specific performance of contract; cancellation of documents; partition and possession; dissolution of firm and accounting; redemption or foreclosure of mortgage etc. As compared to it a Judge is required to write short judgments, in the matter of interlocutory orders; summary suits; preliminary issues; review; restoration; accepting compromise etc.
2. The Code of Civil Procedure, 1908 (the Code) "Judgment" in Section 2(9) as the statement given by the Judge, on the grounds of a decree or order. The "order" under Section 2(14) is defined as formal expression of any decision of a Civil Court, which is not a decree. The "decree" in section 2(2) means formal expression of an adjudication, which, so far as regards the Court expressing it, conclusively determination the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. The rejection of a plaint and determination of any question under Section 144 is also a decree.
3. Order XX of the Code, deals with "Judgment and Decree", Rule 4 (1) provides that judgment of Court of Small Causes need not contain more than the points for determination and the decision thereon. Sub-Rule (2), provides for a judgment of other Courts to contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decisions. Rule 5 mandates that in suits in which issues have been framed, the Court shall state its finding or decision, with the

reasons there of, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

4. In criminal matters, Chapter XXVII of the Code of Criminal Procedure, 1973 provides for 'the Judgment'. Section 353 requires the judgment in every trial to be pronounced in open Court immediately after the termination of the trial, or at some subsequent time of which notice shall be given to the parties or their pleaders. The judgment as provided in Section 354, is to be written in the language of the Court, and shall contain the point or points for determination, the decision thereon and the reasons for the decision. The section further provides that the judgment shall specify the offence (if any) of which, and the section of IPC, or other law under it, accused is convicted and punishment to which he is sentenced. If the judgment is of acquittal it shall state the offence of which the accused is acquitted and direct that he be set at liberty. In case of conviction for an offence punishable with death or in the alternative with imprisonment for life, the judgment has to state the reasons for sentence awarded and special reasons for death sentence. In case of conviction with imprisonment for a term of one year or more, a shorter term of less than three months, also requires the Court to record reasons for awarding such sentence unless the sentence is one of imprisonment, till the rising of the Court or unless the case was tried summarily under the provisions of the Code.
5. For orders under Section 117 (for keeping peace and for good behaviour), Section 138(2) (confirming order for removal of nuisance), Section 125 (for maintenance) and Section 145 or 147 (disputes as to immovable properties), the Code provides in sub-section (6) that order shall contain the point or points for determination, the decision thereon and the reasons for the decision. Section 355 provides for a summary method of writing judgment by Metropolitan Magistrate, giving only particulars regarding the case, name, parentage and residence of the accused and complainant, the offence complained of or proved; plea of the accused and his examination (if any); the final order and the date of order, and where appeal lies, a brief statement of the reasons for the decision. The order to pay compensation where the Court imposes sentence or fine; order of compensation for groundless arrest and the order to pay cost in non-cognizable cases, may be made with the judgment under Sections 357, 358 and 359 of the Code. Section 360 provides for order to release on

probation and special reasons in certain cases where the Court deals with accused person under Section 360 or Probation of Offenders Act, 1958.

6. The Code of Civil Procedure, 1908 and Code of Criminal Procedure, 1973 have provided sufficient guidelines for writing judgment. These, however, are not exhaustive. There is a wide discretion left with the Judges to choose their style of writing, language, manner of statement of facts, discussion of evidence and reasons for the decision.

## The format of Judgment writing

Civil judgment and criminal judgment are different in their structure and format. So, make a thorough reading of the facts and understand what kind of case it is. Start the judgment with the name of the court and then the name of the presiding officer followed by the cause title of the case. Start the body of the judgment with the facts of the case in your point of view. In case of civil cases write down the issues framed, both issue in law and issue in fact. Take out each issue and critically analyze it with the arguments advanced from both the side. If it is a criminal case, frame the charges and discuss each charge based on the pleadings given. Compare and elucidate all materials said to be placed before the court and apply the relevant provision of law. The most important part of the judgment is the ratio decidendi where you have to make a decision about the case and give reasons for that decision. This is where the candidate's articulation skills are assessed in the judgment written. One can either adopt a chronological approach or a thematic approach to reach a conclusion. Either way, a logical sequencing of the trial is necessary as far as a good judgment is concerned. Here is an outline of how a judgment should proceed:

### Introduction

- \* Preliminary issues
  - \* Summary of the prosecution/plaintiff's case
  - \* Summary of the defendant's case
  - \* Issues to be determined
-

## **Evidence and factual findings**

- \* Argument of prosecution or plaintiff on the first issue or charge
- \* Argument from the side of the defendant
- \* Evidence from either side
- \* Judges evaluation of the evidence and the arguments

## **Applicable Law on each issue**

- \* Statement of law
- \* Case law in support
- \* Application of law to the facts

## **Judgment**

- \* Finding of the guilt
- \* Decision made
- \* Reasons for the decision
- \* The sentence or the order passed

## **Style of judgment writing**

Writing as much as possible in plain English language is the best way to nail a judgment writing task. At the same time avoid repetitions and long sentences which could cause difficulty in understanding the point. A good judgment explains the losing party why they lost, so each and every nuance of the case could be explained in the simplest manner. Including footnotes can help you to avoid dragging the judgment into a lengthy one. Even though the substance is more important than the style, following a single style of writing will make the judgment look neat and tidy

## **Conclusion**

A judge renders justice through his decisions. The decision-making culminating in the judgment is the heart and soul of the judicial process. Good judgments enhance the prestige of the Judge and eventually the prestige of the judiciary. Bad judgments, obviously, have the opposite effect. Therefore, there is a need for the judges to make a constant and continuous effort to render good judgments. Decision making is not about writing a judgment. Nor does it begin when a judge starts hearing final arguments. It pervades every stage of the case-in making interim orders, in framing issues or charges, in allowing or disallowing questions in oral evidence, in admitting or rejecting documents, in hearing arguments, in analyzing the material and



reaching a decision, and even in granting or refusing adjournments. In short, it is the way judge hears, behaves, conducts and decides a case.

In the midst of swelling litigation, backlog and insufficient research facilities, writing a good quality judgment is an ongoing challenge. Art of writing a judgment depends on the knowledge, proficiency, and aptitude of the judge. Judicial officers, seldom have the occasion to reflect on their approaches to writing judgments. Their experience prior to appointment often does not train them how to write judgments. As a rule, many blindly pursue the usual method followed by their forerunners, their assumptions about what must go in a judgment. Judges spend most of their time reading judgments written by others.

It is worthwhile to keep the following basic rules in mind while writing a judgment:

- \* Reasoning should be intelligible and logical.
- \* Clarity and precision should be the goal.
- \* Use of strange and difficult words and complex sentences should be avoided.
- \* A judge cannot use his personal knowledge of facts in a judgment.
- \* The findings and directions should be precise and specific.
- \* While exercising appellate or revisional jurisdiction, unnecessary criticism of the trial courts' conduct, judgment or reasoning should be avoided.

## Case Study

### Indian contract ACT, 1872

S. no.	Case name	Related To
1.	Mhada us. Shapoorji Pallonji & Co. (P) Ltd., (2018) 3 SCC 13	Government Contracts and Tenders
2.	Sam Built Well (P) Ltd. v. Deepak Builders, (2018) 2 SCC 176	Government Contracts and Tenders - Judicial Review / Validity - Opinion of project owner / Experts on satisfaction of eligibility criteria Relevance of - Judicial restraint.
3.	Mhada us. Shapoorji Pallonji & Co. (P) Ltd., (2018) 3 SCC 13	Government Contracts and Tenders arbitration or Foreign seated arbitration Determination of :
4.	Raveechee & Co. v. Union of India. (2018) 7 SCC 664	Arbitration Act, 1940 SS. 29 and 13- Pendente lite interest.

### Negotiable instrument ACT, 1881

S. no.	Case name	Related To
1.	Kishan rao vs. Shakargauda	Supreme Court reiterated that mere denial of a debt or liability cannot shift the burden of proof from the accused in a case of dishonour of the cheque.
2.	Priyanka Nagpal vs. State (NCT of Delhi), (2018) 3 SCC 249	Negotiable Instruments Act, 1881 - S. 138 - Sentence and compensation:
3.	P. Ramadas vs. State of Kerala, (2018) 3 SCC 287	Negotiable Instruments Act, 1881 - S. 138:
4.	P. Ramadas vs. State (NCT of Delhi), (2018) 3 SCC 249	Negotiable Instruments Act, 1881 - S. 138 - Sentence and compensation:
5.	P. Ramadas vs. State of Kerala, (2018) 3 SCC 287	Negotiable Instruments Act, 1881 - S. 138:

## Specific Relief Act, 1963

S. no.	Case name	Related To
1.	Maharashtra State Electricity Distribution Co. Ltd. vs. Datar Switchgear Ltd., (2018 3 SCC 133	Contract and Specific Relief - Termination /Discharge of Contract - Termination/ Repudiation for Breach of Contract:
2.	Kalawati vs. Rakesh Kumar, (2018) 3 SCO 658	Specific Relief Act, 1963 - S. 16(e) -Specific performance of contract.
3.	Krishna Devi vs. Keshri Nandan, (2018) 4 SCC 481	Contract and Specific Relief - Formation Defects - Fraud and misrepresentation - Matters required to be established:
4.	M.P. Power Management Co. Ltd. vs. Renew Clean Energy (P) Ltd., (2018) 6 SCC 157	Contract and Specific Relief - Performance of Contract Time of Performance - Time of the Essence - Termination/Discharge/ Compensation/Penalty for delayed performance:
5.	Y.P. Sudhanva Reddy v. Karnataka Milk Federation, (2018) 6 SEC 574	Section 34, 35, 37 and 38
6.	Urmila Devi D. Mandir Shree Chamunda Devi, (2018) 2 SCC 284	Specific Relief Act, 1963 - S. 21 - Compensation in lieu of specific performance:
7.	Manjeet "Singh vs. National Insurance Co. Ltd.; (2018) 2 SCC 108	Contract and Specific Relief - Termination/ Discharge of Contract Termination/ Repudiation for Breach of Contract:
8.	Eureka Builders Gulabchand, (2018) SCC 67	Transfer of Property Act, 1882 - Ss. 8, 7 and 54 - Nemo dat quod non habet:

## Transfer of Property 1882

S. no.	Case name	Related To
1.	A Dharmalingam VS. Lalithambal, (2018) 6 SCC 65	Transfer of Property Act, 1882 - Ss. 54, 7 and 8 Sale of remainder men's interest during lifetime of holders of life estate:
2.	Dharmalingam vs. Lalithambal, (2018) 6 SCC 65	Transfer of Property Act, 1882 - Ss. 54, 7 and 8 Sale of remainder men's interest during lifetime of holders of life estate:
3.	A.P. Industrial Infrastructure Corpn. Ltd. vs. S.N. Raj Kumar, (2018) 6 SCC 410	NA
4.	Balwant Vithal Kadam v. Sunil Baburaoi Kadam, (2018) 2 SCC 82	Transfer of Property Act, 1882 - S. 54 - Agreement for sale/ agreement to sell of immovable property:
5.	A. Dharmalingam vs. Lalithambal, (2018) 6 SCC 65	Transfer of Property Act, 1882 - Ss. 54, 7 and 8 Sale of remainder men's interest during lifetime of holders of life

## The Transfer of Property Act, 1882

S. no.	Case Name	Facts	Date
1.	Tanu ram bora Versus Promod ch. Das (d) Through Lrs. And Others	[Section 43 of Transfer of Property Act, 1882 Transfer By Erroneous Representation of Title Will Hold Good If Transferor Acquires Title Later.	February 8 <sup>th</sup> 2019
2.	Ganesan (d) Through lrs Versus Kalanjam And others	Not always Necessary that attesting witnesses Should Actually see The testator Sign the will	11 July, 2019
3.	Sopan (dead) Through his L.r. Versus Syed nabi	Sale with a Mere Condition of Re-transfer Is Not a Mortgage	July 16, 2019

<b>Indian Penal Code, 1860</b>			
<b>S.No.</b>	<b>Case Name</b>	<b>Facts</b>	<b>Date</b>
1.	Mahesh kumar Versus State of Haryana	[Section 304 B Indian Penal Code 1860; Section 113B Of Indian Evidence Act, 1872] A case of death in lieu of demand of dowry can only be made out when it is proved that soon before her death the victim was subjected to cruelty harassment.	7 August, 2019
2.	Pramod Suryabhan Pawar  Versus  The State of Maharashtra &Anr.	When 'Consent Will Be Vitiating By 'Misconception Of Fact' Arising Out Of Promise To Marry?	August 21, 2019

3.	<p>Gargi</p> <p>Versus</p> <p>State of Haryana</p>	<p>[Section 302 r/w Section 120-B of Indian Penal code, 1860 hereinafter referred as 'IPC']</p> <p>[Section 106 of Indian Evidence Act, 1872 hereinafter referred as 'IEA']</p>	<p>19 September, 2019</p>
4.	<p>Kalu alias Laxmi Narayan</p> <p>Versus</p> <p>State of MP</p>	<p>Section 302 IPC</p> <p>The interplay Of circumstantial evidence, last seen theory and section 114,101 read with Section 106 of the, Indian evidence act,</p>	<p>7 November, 2019</p>
5.	<p>Awadhesh Kumar</p> <p>Versus</p> <p>State of u.p and Another</p>	<p>Matter will fall under section 302 IPC OR 304 part 1 (300 exception 4 IPC)</p>	<p>8 November, 2019</p>