

EXAMINATION OF ARTICLED CLERKS**PAPER III****CONVEYANCING**

MONDAY, 21ST NOVEMBER 2016

TIME : 3 HOURS [1-00 P.M. TO 4-00 P.M.]

(TOTAL MARKS—100)

- Notes.*—(1) Answers should be legible, precise and to the point.
 (2) Answers to every question should be on a fresh sheet of paper.
 (3) Do not reproduce the question.
 (4) Please write in neat and clear handwriting.
 (5) Figures to the right indicate full marks.

Marks

1. (a) Raj and Sania were good friends who lived together in a rented flat for three years. They then purchased Prem-Kutir, taking the property as joint tenants. Two years after residing in Prem-Kutir, Sania became pregnant. Raj and Sania then married, and soon after the wedding a son, Karan, was born. Raj and Sania had strong disagreements as to how Karan should be raised. These disagreements led to heated arguments, which led to a divorce. 4

After, the divorce, Sania had custody of Karan. Prem-Kutir, though occupied by Sania, remained in the names of both Raj and Sania. Raj moved out of Mumbai and conveyed all his right, title and interest in Prem-Kutir by deed to Karan. Shortly, thereafter Raj was killed in car accident. Raj died intestate.

Who has title to Prem-Kutir ?

- (i) Sania
 (ii) Sania owns one-half and Raj's heir own one-half.
 (iii) Sania and Karan as joint tenants.
 (iv) Sania and Karan as tenants in common.
- (b) Arun borrowed ₹ 50,00,000/- (Rupees fifty lakhs) from ABCD Bank to help set up a small business against the mortgage of his flat that he had inherited from his parents. The Mortgage was duly registered and there were no other encumbrances on the said flat. 4

Arun's business picked up. In addition, the value of said flat increased. Suresh offered Arun ₹ 1,00,00,000/- (Rupees one crore) for the said flat, and Arun promptly accepted. Arun and Suresh entered into an Agreement for sale and Suresh paid 10% of the consideration amount to Arun. The date of completion was set for 24th May. Suresh agreed to pay the balance consideration amount on that date and Arun agreed to convey "marketable title, free of encumbrances". On 15th May, Suresh's Solicitor took a search in the Sub-Registrar's office. He wrote a letter, which Suresh received on May 18th, informing Suresh that there was a mortgage on the said flat. Suresh immediately called up Arun and asked him about it. Arun told Suresh "Don't worry. I am planning to use the money you give me on the completion date to pay off the mortgage." Suresh found this unacceptable and failed to appear at the appointed time and place to complete the transaction, although Arun was there on time to execute Deed of Transfer.

[Turn over

If Arun files a suit against Suresh for specific performance and wins, it will most likely be because:—

- (i) A mortgage used to secure debt does not constitute a legal "encumbrance".
- (ii) The vendor of real property need not have a marketable title until the time of completion of the transaction.
- (iii) The mortgage was unenforceable *ab intio* because a pre-existing debt is not adequate consideration.
- (iv) A mortgage of the type described does not run with land and Arun would have taken the flat free of the mortgage even if Suresh did not pay.

- (c) Sunny entered into a lease deed of property for a term of 25 years with Bobby, who planned to open a bakery on the property. The parties also agreed to a right of first refusal in favour of Bobby if the said property was offered for sale by Sunny during the term of the lease. The Lease permitted assignment and subleases upon notice to the lessor. Three years later Bobby retired from bakery business and, after notifying Sunny assigned the lease to Monty. Twenty-one years later, Sunny entered into an agreement for sale of said property to Danny. Sunny had informed Danny of the lease but had forgotten about the right of first refusal. When Bobby learned of the sale to Danny, she informed both Sunny and Danny that she wanted to exercise her option and was prepared to purchase the said premises for the agreement price. Can Bobby enforce the option ?

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- (i) Yes, because an option held by a tenant on leased property cannot be separated from the leasehold interest.
- (ii) Yes, because it is a covenant that runs with the land.
- (iii) No, because the assignment to Monty made the option void under the Rule against Perpetuities.
- (iv) No, because the option was not specifically included when the lease was assigned to Monty.

- (d) Which of the following statements is correct and to what extent ?
An easement will be extinguished :—

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- (i) If the owner of the dominant heritage attempts to convey the easement to a third party without conveyance of the dominant heritage itself.
- (ii) If the owner of the easement does not use the easement at all for a period of time exceeding the statutory adverse possession period.
- (iii) By conveyance of the easement to the owner of the servient heritage.
- (iv) Only with the owner of the dominant heritage's express permission.

2. (a) Mrs. X is seized and possessed of residential premises in Mumbai. She wants to gift the said premises to the wife of her deceased son. Please advise on the following:—

- (i) Is attestation of the signature of Mrs. X on the Gift Deed required ?
- (ii) Is the Gift Deed chargeable to stamp duty under the Maharashtra Stamp Act ?
- (iii) Is the Gift Deed required to be registered ?

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- (b) Mr. Producer wants to assign the copyright in a film to a broadcasting company in Mumbai for a consideration of ₹ 11,00,000/- (Rupees eleven lakhs) by Deed of Assignment. Please advise on the following :—
- (i) Is it necessary to attest the signature of Mr. Producer in the Deed of Assignment? 2
- (ii) Is the Deed of Assignment chargeable to stamp duty as per the Maharashtra Stamp Act? 2
- (iii) Is the Deed of Assignment required to be registered? 2
- (c) Mr. X wants to enter into an agreement for sale of an immovable property, but he wants to transfer possession of property prior to or on the execution of the agreement for sale. Mr. X wants to provide in the agreement for sale that possession has been given to the purchaser. Please advise on the following :—
- (i) What stamp duty would be payable on the agreement for sale under the Maharashtra Stamp Act? 2
- (ii) Is an agreement for sale compulsorily required to be registered under Section 17 of the Registration Act, 1908? 2
- (iii) Does an agreement for sale by itself create any interest or charge on the property agreed to be sold? 2
3. Your advice is sought on the following :— 10
- (a) When a person dies intestate leaving behind immovable property, what testamentary proceedings would you advise the beneficiaries to adopt?
- (b) A person dies leaving behind a will, but no executor was appointed by the will. What testamentary proceedings would you advise the beneficiaries to adopt?
- (c) A person dies intestate leaving movable property(ies). What testamentary proceedings would you advise the beneficiaries to adopt?
- (d) If a sole executor dies after probate was obtained but before the administration of the estate was completed, who may be appointed as the executor to complete administration of the estate?
- (e) What happens where the sole executor of a will is under 18 years of age?
4. Draft any *one* of the following :— 10
- Restrictive Covenant.
- OR**
- Covenant for grant of right of way.
5. Draft any *one* of the following :— 5
- Public notice by a co-operative housing society for issuing a duplicate share certificate to its member.
- OR**
- Public notice by a co-operative housing society for transfer of shares in favour of legal heirs of a deceased member.

6. Draft any *one* of the following :— 5
 Notice to partners of a partnership firm by a minor on attaining majority.
- OR**
- Public notice by a retiring partner of a partnership firm.
- OR**
- Accountable Receipt.
7. Explain and illustrate the following (any *three*) :— 15
 (a) A lease and a license.
 (b) A restrictive covenant and an easement.
 (c) Joint tenancy and tenancy-in-common.
 (d) A vested interest and a contingent interest.
8. Enumerate exceptions to the Rule Against Perpetuity. 6
9. New Max Company Private Limited owned and possessed all those pieces or parcels of land, ground, hereditaments and premises admeasuring about 10,000 square meters situate at Lower Parel, Mumbai, and popularly known as New Max Estate ("larger property"). 15
- By an Indenture of Lease dated 23rd September 1971 made between the said New Max Company Private Limited and DWM Co. Pvt. Ltd. the said New Max Company Private Limited leased out to the said DWM Co. Pvt. Ltd. a portion of the said larger property admeasuring about 2000 square meters for a term of 98 (ninety-eight) years computed from 23rd September 1971 at or for the consideration and on the terms, conditions, stipulations and covenants contained in the said duly registered Indenture of Lease.
- New Max Company as such, entitled to the reversionary and all other rights, title and interest into and upon the said property except rights conferred in DWM Co. Pvt. Ltd. under the Indenture of Lease.
- New Max Company, at the request of the DWM Co. Pvt. Ltd., has agreed to sell, transfer and assign unto and in favour of the DWM Co. Pvt. Ltd. the reversionary rights in the said leasehold property.
- You are required to draft the deed of conveyance of reversionary rights with the appropriate covenant.