

**EXAMINATION OF ARTICLED CLERKS**

**PAPER III**

**CONVEYANCING**

**Friday, 3<sup>rd</sup> November, 2017**

**Time: 3 Hours (1:00 PM to 4:00 PM)**

**Total Marks: 100**

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- Notes
- (a) Please read the entire question carefully to reply.
  - (b) Answers will be evaluated for their analytical approach, reasoning and clarity of thoughts.
  - (c) Quote sections and statute in support of your answer whether specifically mentioned in the question or not.
  - (d) Quote case law (if any) in support of your answer.
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**6 Marks**

1. XYZ Co. Ltd. intends to mortgage its Flat and Shares issued by Classic Co-operative Housing Society Ltd. as security in favour of ABC Bank for availing credit facilities. XYZ Co. Ltd. has given the following documents to ABC Bank for enabling it to carry out the due diligence:-
- a. Original registered Agreement for Sale between Riddhi Siddhi Builders and PQR made under Maharashtra Ownership of Flats Act, 1963 in respect of the Flat;
  - b. Duplicate Shares issued by Classic Co-operative Housing Society Ltd. issued to PQR and thereafter mutated in the name of XYZ Co. Ltd.;
  - c. Original Agreement for Sale executed between PQR and XYZ Co. Ltd. executed on stamp paper of Rs. 100/- and not registered; and
  - d. Original Receipts issued by PQR confirming receipt of the full consideration.
- (i) If you were to advise ABC Bank what would be your advice with regard to the marketability of the title of XYZ Co. Ltd. to the Flat.
  - (ii) What safeguards would you suggest ABC Bank if it decides to take security of the Flat?
  - (iii) In case equitable mortgage is to be created what steps would be required to be taken by XYZ Co. Ltd. for protection of the ABC Bank's interest?

**4 Marks**

2. Mr. Abhishek Kapoor executed a Gift Deed on 12<sup>th</sup> January, 2017 in favour of his brother Mr. Abhay Kapoor in respect of Flat at Classic Co-operative Housing Society Ltd. The Gift Deed was lodged for adjudication on 14<sup>th</sup> January, 2017. In the meantime, Mr. Abhishek Kapoor agreed to sell the same Flat to Mrs. Aishwarya Mukherjee for a consideration of Rs. 60 lakhs. An Agreement for Sale is executed between Mr. Abhishek Kapoor and Mrs. Aishwarya Mukherjee on 18<sup>th</sup> January, 2017 and registered on 20<sup>th</sup> January, 2017. Mr. Abhishek Kapoor receives part consideration of Rs. 45 lakhs and also hands over possession of the Flat to Mrs. Aishwarya Mukherjee on 20<sup>th</sup> January, 2017. Mr. Abhishek Kapoor then proceeds to register the Gift Deed on 24<sup>th</sup> January, 2017. When Mr. Abhay Kapoor visits the Flat, he finds Mrs. Aishwarya Mukherjee in possession of the Flat.

Your advice is sought by Mr. Abhay Kapoor in the matter with regards to his title to the Flat. What advice would you give him?

**10 Marks**

3. Mrs. Krishna Goculdas was member of Durga Chambers Co-operative Housing Society Ltd. and incidental to holding Shares issued by the Society, had the right to use and occupy Flat No. 6. Mrs. Krishna Goculdas died intestate leaving behind her sons Mr. Varun Goculdas (settled in USA) and Mr. Arun Goculdas and daughter-in-law Mrs. Vasudha Goculdas (wife of predeceased son Mr. Raja Goculdas) and two granddaughters Sapna and Swati (children of Mr. Raja Goculdas and Mrs. Vasudha Goculdas) (settled in UK).

Mr. Varun Goculdas wishes to become the absolute owner of the Flat at Durga Chambers Co-operative Housing Society Ltd. and approaches you for advice and to prepare the necessary documents.

- (a) Advise him the requisite steps required to be taken for ensuring that he becomes the absolute owner of the Flat.  
(b) Advise him with regard to payment of stamp duty on the document and registration of the same.  
(c) Draft the necessary document.

**4 Marks**

4. Mr. Sachin Manjrekar wishes to gift 10,000 equity shares held by him in Telsa Engineering Pvt. Ltd. to his son Mr. Arjun Manjrekar. The shares are listed on Bombay Stock Exchange. Mr. Sachin Manjrekar approaches you for advice.

- (a) How can the gift be affected?  
(b) If an instrument is to be executed whether such instrument will require stamp duty and registration?

**4 Marks**

5. Discuss the provisions duties payable by financial institutions under the Maharashtra Stamp Act with relevant case laws, if any.

**6 Marks**

6. Shree Mahavir Constructions Pvt. Ltd. is a promoter and constructed a building having two wings 'A' and 'B' known as "Mahavir" at Matunga on Plot No 56. Besides wings 'A' and 'B', there is in existence structure of W.C., Pump Room Suction Tank, Underground Water Tank and old building. When the said Flats were offered for sale it was also represented that an area of 250 sq. mtrs. would be left for recreation ground and there would be space for parking of cars etc. The Promoter entered into agreement for sale for various flats with flat purchasers. The various flat purchasers requested the Promoter to form a co-operative society but the Promoter avoided to do so. The Promoter is now seeking demolition of old building which is standing on the said plot and has decided to construct a new building and has obtained sanctioned plans from Municipal Corporation of Greater Mumbai in this behalf. What advice would you give to the flat purchasers.

**6 Marks**

7. Adira Constructions Pvt. Ltd. is a promoter and has constructed a building known as "Aditya" at Juhu consisting of 2 podiums for car parking and 12 upper floors containing 24 flats. The Promoter has sold 19 flats to various flat purchasers and allotted 28 car parking spaces to flat purchasers and retained with it 5 flats and 10 car parking spaces in the podium. The Promoter has registered a Co-operative Society Housing known as "Aditya Co-operative Housing Society Limited". The Promoter has now started giving its reserved 10 car parking spaces in the podium to residents of neighboring building. The members of Aditya Co-operative Housing Society Limited have objected to such residents parking in their building citing security reasons. Please advise the Promoter.

**4 Marks**

8. Briefly describe the contents of a Declaration under the Maharashtra Apartment Ownership Act, 1970.

**4 Marks**

9. Can apartment owners remove a property from the provisions of Maharashtra Apartment Ownership Act, 1970, if yes how? What would be their rights in the property upon removal?

20 Marks

10. Write short note on any four of the following

- (a) Joint Tenants and Tenants-in-Common
- (b) Actionable Claim
- (c) Election
- (d) Onerous Gift
- (e) Subrogation
- (f) Fraudulent Transfer
- (g) Direction for Accumulation

20 Marks

11. Draft any four of the following :-

- (a) Specific Power of Attorney admitting execution of document before the Sub-Registrar already executed
- (b) Joint Will
- (c) Public Notice by Intending Purchaser of a Flat in a Society
- (d) Deed of Cancellation
- (e) Surrender of Tenancy Rights
- (f) Covenant of Production of Title Deeds

6 Marks

12. By Will and Testament dated 10<sup>th</sup> May, 1998, Manilal Mehta bequeathed his flat in Pali Hill to Sanjay, his flat in Juhu to Jitendra and his entire residuary estate to his 4 sons Jitendra, Anil, Jackie and Sanjay equally for their sole and absolute use and benefit. Sanjay died intestate on 13<sup>th</sup> August, 1998 leaving behind his widow Manisha and two sons Araav and Manaav. Manilal acquired a bungalow in Chembur on 14<sup>th</sup> August, 2012. Manilal Mehta died on 1<sup>st</sup> January, 2014. The legal heirs of Sanjay Mehta are claiming Sanjay's share in the estate of Manilal Mehta. Anil, Jackie and Jitendra are opposing such claim. You are approached by Anil, Jackie and Jitendra. What advice would you give them?.

6 Marks

13. Discuss the mode of making and rules of execution of privileged Will and unprivileged Will.