

EXAMINATION OF ARTICLED CLERKS

Paper III

CONVEYANCING

FRIDAY, 19<sup>th</sup> October, 2018

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

Total Marks: 100

Notes:

1. Please answer to the point.
2. Figures to the right indicate full marks.

1 In following, choose any one answer. No explanation is required.

I. Naveen and Neena were not married but lived together for two years. As they felt that their relationship was stable, they decided to leave their licensed premises and purchased a flat in a co-operative housing society. Naveen and Neena each paid 50% of the down payment on flat. They took the title as tenants-in-common, and each orally promised the other that the survivor should take title to the flat. Naveen and Neena lived at the flat for three years, equitably dividing loan instalments and maintenance expenses. They were then involved in a car accident. Neena was killed almost instantly and Naveen died in the hospital one week later. Neither Naveen nor Neena left a will. Neena was survived only by her mother, Mamta. Naveen was survived only by his brother, Vijay.

4 Marks

- Who owns the flat?
- i. Mamta owns the whole.
  - ii. Vijay owns the whole.
  - iii. Mamta and Vijay each have a one-half interest as tenants-in-common.
  - iv. Mamta and Vijay each have a one-half interest as joint tenants.

II. Thomas included the following provision in his will: "I hereby devise and bequeath all my property, both real and personal, wherever situate to my widow for life, and after her death to any of our children who may survive her.

4 Marks

- The gift to the children is:
- i. A Contingent remainder.
  - ii. A Vested remainder.
  - iii. A shifting executory interest.
  - iv. Void, as violating the Rule against Perpetuities.

III. Jaspreet owned a 4-Acres plot of land in Kalyani Nagar. Jaspreet has inherited 3 Acres and had acquired 1 Acre by adverse possession from Maya. Jaspreet entered into an agreement for sale to convey 4 Acres to Chander. An agreement provided that Jaspreet would convey marketable title. Chander paid the purchase price and Jaspreet executed deed in favour of Chander, which was duly registered with the concerned Sub-registrar. Maya, having learned of the sale, filed a suit for cancellation of the deed and succeeded. Chander realizes for the first time that there was no covenant for the title in

4 Marks

his deed. Chander takes an appropriate action against Jaspreet.

What is the most likely outcome of the suit?

- i. Chander will win because Jaspreet breached the terms of the agreement.
- ii. Chander will win because Jaspreet misrepresented the area of the land.
- iii. Jaspreet will win because the terms of the deed will control his liability.
- iv. Jaspreet will win because Chander was negligent in checking the covenants of the title at the time of closing.

IV. The Owner is seized and possessed of or otherwise well and sufficiently entitled to all that piece or parcel of land admeasuring 20 Acres. He wants to develop 15 Acres for residential bungalows. He wants to hold the remaining 5 Acres for a long period hoping that they will appreciate in value. In the meantime, he plans to use the said 5 Acres as an inducement in marketing residential bungalows. Owner's market analysis leads him to conclude that the greatest inducement he can offer is to hold the said 5 Acres for recreational purposes for purchasers of residential bungalows. Business judgments indicate that he can make the said 5 Acres available for 20 years if he can be assured that after such period he will be free to deal with the said 5 Acres as he chooses. **4 Marks**

The best advice to implement the purpose of Owner with respect to said 5 Acres (assuming that any device chosen will be legally enforceable) is:

- i. Covenant.
- ii. Easement.
- iii. Leasehold.
- iv. The personal Contractual obligation of the Owner.

2 I. Geeky Pvt. Ltd. an Indian company enters into an exclusive manufacturing and marketing Agreement with Orange, Inc. a US corporation. Under the said Agreement Orange Inc. will share their proprietary information to Geeky Pvt. Ltd. who will manufacture cellular phones and market them in India on behalf of Orange, Inc. Geeky Pvt. Ltd. shall pay Orange Inc. a royalty of US\$ 50/- on every phone sold. The Agreement contemplates a minimum target of sales of one lakh phones to be achieved by Geeky Pvt. Ltd. in the first year with an increase of 10% for the subsequent 4 years. What advice would you give the parties in respect of the valuation of Stamp Duty payable on the Agreement. **6 Marks**

II. In a Notice of Motion for interim reliefs in a suit for recovery of a loan, the Defendant raises an objection to the admissibility of the Loan Agreement as it was insufficiently stamped. **6 Marks**

- i. Can the Plaintiff rely on such document for interim reliefs?
- ii. Can the Court call for the document and impound the same?

3 How the following Vendor will be generally described in the Conveyance: **12 Marks**

- i. Individual.
- ii. Joint Hindu Family.
- iii. Partnership firm.
- iv. Company

4 Draft any one of the following: **5 Marks**

Covenant for further Assurance by the Vendor.

OR

Restricted Covenants (if the Vendor are Trustees, Executors and Administrators)

5 Draft any one of the following: **5 Marks**

Public Notice by Advocate & Solicitor revoking the Power of Attorney;

OR

Notice of Lis Pendens.

6 Draft any one of the following: **5 Marks**

Revocation of a will.

OR

Deed of Disclaimer by Beneficiary of a bequest under a will.

7 Explain (any three: ) **15 Marks**

- i. Transfer of property pending suit relating thereto.
- ii. Family settlement or arrangement.
- iii. Benami transactions.
- iv. Part performance.

8 Are the following estate holders authorised to transfer immovable property? **16 Marks**  
How?

- i. Partner.
- ii. A joint tenant.
- iii. Receiver.
- iv. Mortgagee.
- v. Manager of a Hindu family.
- vi. Lunatic.
- vii. Official Assignee.
- viii. Coparcener.

9 By Indenture dated 29 day of April 1994 made by and between Usha Kantilal Shah And Ms. Archana Kantilal Shah (*therein referred to as the Vendors*) of the One Part and Mr. Sam Maneck Mehta (*therein referred to as the Purchaser*) of the Other Part, the Vendors sold, conveyed, transferred and assured unto the Purchaser Residential Unit (Apartment) No. 101 admeasuring about 102.79 square meters of carpet area on the third floor of **14 Marks**

the building known as "Vasundhara" situate at, Malabar Hill, Mumbai 400 006 together with 7.01% undivided interest in the common areas and facilities appurtenant to the said Unit as mentioned (*hereinafter referred to as the "said premises"*);

Mr Sam Maneck Mehta died on or about 23<sup>rd</sup> August 2016 leaving behind him Ms Anita Mehta-Kapoor and Mr Jay Sam Maneck herein as his only legal heirs. Mrs Babita Sam Maneck wife of Mr Sam Maneck Mehta pre-deceased him.

Mr Sam Maneck Mehta left writing dated 29<sup>th</sup> June 2012 as his last will and Testament (*hereinafter referred to as the "said Last Will"*) by which he devised and bequeathed the said premises to his children Ms Anita Mehta-Kapoor and Mr Jay Sam Maneck;

Ms Anita Mehta-Kapoor and Mr Jay Sam Maneck being the Surviving Executors named under the said Last Will of Mr Sam Maneck Mehta filed a Testamentary Petition No. 100 of 2017 in the High Court of Judicature at Bombay seeking the grant of Probate of the said, Last Will.

The said Last Will of Mr Sam Maneck Mehta was proved and registered on 18<sup>th</sup> July 2017 by The High Court of Judicature at Bombay, and Administration of his Property and Credits concerning the said Last Will was granted to Ms Anita Mehta-Kapoor AND Mr Jay Sam Maneck herein both being the Surviving Executors named under the said, Last Will.

You are required to draft DEED OF TRANSFER formally transferring the said premises by Executors of the said Last will to Beneficiaries under the said, Last Will.

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