

## EXAMINATION OF ARTICLED CLERKS

### PAPER III

### CONVEYANCING

**Friday, 18th October 2013**

TIME : 3 HOURS (1.00 P.M. TO 4.00 P.M.)

(Total Marks – 100)

- Notes.* —(1) Illegible handwriting will be PENALISED.  
 (2) Please read the entire question carefully to reply.  
 (3) Please do not reproduce the question.  
 (4) Answer shall be evaluated for analytical approach, reasoning and clarity of thought and not only for its accuracy and answers should be to the point.  
 (5) If any question seeks your advice or opinion, please correctly state the reasons for your advice/opinion although the reason may not be specifically sought.  
 (6) Quote sections and statute in support of your answer whether specifically mentioned in the question or not.  
 (7) Quote case law/authority (if any) in support of your answer.  
 (8) Figures in bracket alongside the questions indicate the marks for the corresponding question.  
 (9) Please answer in order of the sub questions.

**Marks**

1. (a) ABC a private trust owned a building with land at Colaba. The said building was partially tenanted and partially occupied by the beneficiaries. Archie, Betty and Veronica were the beneficiaries under the said Trust being respectively entitled to 50%:25%:25% to the beneficial right, title and interest. Due to some disputes between the beneficiaries, Betty had filed a suit in the Hon'ble High Court of Bombay and a court receiver was appointed of the said property. The suit is pending for over 15 years in court. The building is in a dilapidated condition. Archie has now sent feelers to Betty to settle the ongoing disputes and appoint a developer for redevelopment. Betty has approached you for your advice on the following :—

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- (i) Should she settle the matter and if she does so, what is the next course of action she must adopt {would you advise Betty to settle the dispute ??}  
 (ii) If so, What terms should she seek from the Developers?  
 (iii) How will the tenants be settled?  
 (iv) What if Veronica does not wish to settle, what advice would you then give Betty?  
 (v) What is the risk to Betty if the building were to collapse?  
 (vi) General advice.

(b) Please draft :—

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- (i) The requisitions on behalf of the Developers for the above transaction for investigation of title with specific reference to the trust

(ii) OR

- (iii) Should she settle the matter and if she does so, what is the next Public notice calling for claims in course of the investigation for the above transaction.



## Marks

2. (a) You have approached NO Bank for a loan against the security of mortgage of your duplex flat. What is the requirement under the Registration Act 1908, as amended for creation of Equitable mortgage? Please discuss the amendment to the Registration Act and the process that the Bank has to follow in doing so. Is this process any difference from simply creating a registered mortgage of the security in favour of the Bank. Please also discuss the consequences of non compliance of registration of the Memorandum of Entry for creation of equitable mortgage. 6
- (b) Please draft :— 4
- (i) the Memorandum of Entry at the time of creation of the Equitable mortgage
- (ii) OR
- (iii) Operative part of the English Mortgage.
3. (a) Mr Antony has acquired a flat and a stilt car parking space from OMG Builders under a registered document in 2010. Mr Antony has lost the said registered document. He has now approached you for advice on the same. Please advise Mr Antony on reconstruction of the lost title deeds and his chances on sale of the said flat and garage. 4
- (b) Mr Antony has now found a buyer who is willing to purchase the said flat and garage and the buyer wishes to appoint you as a common solicitor for the transaction. Would you agree to act as a common solicitor. Whether you agree to act or not as a common solicitor, please specify the reasons therefor. What advice would you give the Purchaser and how would you safeguard the buyer's interest. 4
- (c) Please draft an indemnity and declaration for missing title documents. 4
- (d) The Agreement that you have drafted includes the sale of the flat and stilt car parking space. The Registering officer has taken an objection to the transfer of the stilt car parking space. What advice would you then offer to both the parties and why. 4
4. (a) Ram was a member of the ABC Co-operative Housing Society Ltd situate in Khar, Mumbai since prior to 1970 and is occupying flat no 4 on 1<sup>st</sup> floor of the society building. The society has decided to go in for redevelopment. The society has issued share certificates to each of its members. The conveyance deed has been executed in favour of the society and the property card also appears in its name. Some of the members of the society are opposed to the redevelopment. Please advise the society on its rights with regard to the redevelopment and the process that the society needs to adopt for the same and would your advice be any different if the property was not in the name of the society. 6
- (b) Upon redevelopment, Ram has been allotted permanent alternate accommodation of flat no 1404 on the fourteenth floor and has been issued a unregistered allotment letter and his old share certificate is continuing. Your client has now approached you for your advice on acquisition of the said flat no 1404 from Ram. Kindly 4



## Marks

5. (a) XYZ P Ltd, a body corporate was the owner of shares and flat in a society. XYZ P ltd had let out the said flat to Ms Birdie. XYZ P ltd agreed to sell the said flat to Mr Oversmart. Mr Oversmart has approached you for advice on acquisition of the said flat and shares from XYZ P ltd with a specific brief that he does not wish to register the document. Please advise Mr Oversmart on :—
- (i) The nature of the document that you would draft for Mr Oversmart to acquire the said property
- (ii) Stamping and registration on the above document
- (iii) Mr Oversmart's rights vis-à-vis Ms Birdie
- (iv) would your advice differ if Ms Birdie was in possession prior to 1973
- (v) Would it make any difference if the property was originally let out to Mr Oversmart, who was now acquiring the same.
- (b) Would your advice differ if the flat was leased out to Ms Birdie and not simply let out. Please discuss the differences. 4
- (c) Would your answer differ in any way, if instead of the flat in a society it was a unit in a condominium. 2
6. (a) Seeta, a Hindu and Razia, a Muslim, occupy a property as joint tenants. Seeta dies and prior to her death she makes and publishes her Will whereunder she bequeaths her share of the property to her spouse and her children. Razia approaches you suggesting that Seeta could not have bequeathed her right in the said property as per the Will. Please advise Razia on :—
- (i) Is she justified in questioning the bequest and if so, why? 2
- (ii) If Seeta had named her husband as a nominee of her share in the society, what rights would accrue to her husband as such nominee vis-à-vis Razia and would it make any difference to your opinion to Razia above. 2
- (iii) Discuss nominee vs legatee. 3
- (b) Would it make any difference to your answer if Seeta and Razia owned the property as tenants-in-common and if so please discuss the difference between the tenants in common and joint tenants. 4
- (c) What if Razia and Seeta had both approached you to make their respective Wills. What advice would you give them Please discuss the differences between Joint Will and Mutual Will. 6
- (d) Your client has approached you for acquisition of Razia's share of the property on Seeta's demise. Please advice your client with regard to the title of the property. Would discuss what advice you would give your client to additionally safeguard her interest. 4
- (e) Please draft a Will on behalf of Seeta leaving the property to her spouse and children taking into account all eventualities. 4

## Marks

7. (a) Rolex a person of Indian Origin executes a power of Attorney in New York on a plain paper, for sale of his property in Mumbai. Will this Power of Attorney be acceptable here in Mumbai, if not why not. Will it make a difference if any to the stamp duty value of the POA if the donee is not family member of Rolex. What steps will have to be done to validate the same. Would it make any difference if the Power of Attorney was notarized in New York, USA.. 4
- (b) Omega living in New Delhi wishes to give a Power of Attorney for purchase of his property in Mumbai to Patek, his son, who is living in Mumbai. Patek cannot travel to New Delhi and Omega cannot come to Mumbai. Would advice would you give Omega? Will him executing the POA in New Delhi suffice in favour Patek for the execution and registration of the documents? 4
- (c) Draft a Power of Attorney by Omega in favour of Patek for purchase and registration of the said property. 4
8. Discuss any 2 briefly. 5
- (a) Doctrine of Part Performance
- (b) Doctrine of Lis Pendens
- (c) Escrow
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