

EXAMINATION OF ARTICLED CLERKS**Paper VI****GENERAL ACTS****Friday, 28th April, ~~2016~~ 2017****Time: 3 Hours (1:00 PM to 4:00 PM)****(Total Marks: 100)**

- Notes.(1) Figures to the right indicate full marks
(2) Answers should be precise and concise.
(3) Cite relevant case laws where applicable.

1. THE MAHARASHTRA RENT CONTROL ACT, 1999

Answer any five questions

(15 marks)

- a. Which premises are exempted under Section 3 of the Act? Can a co-operative Bank with share capital of over Rs. 1 Crore seek protection as a tenant under the Act?
- b. When would a court decline to entertain an Application for fixing standard rent? What is the remedy, if any, available to a party who seeks to challenge an order fixing standard rent?
- c. Is a landlord entitled to increase in rent on account of payment of any fresh rate, tax, cess etc. and if so to what extent? Is the landlord otherwise entitled to annual increment of rent? What is the landlord's entitlement for increase of rent on account of improvement, etc, special addition, etc, and special or heavy repairs?
- d. (i) Advise your client who is a landlord and wants you to file a suit for recovery of possession of his premise on the ground of *bona fide* requirement. The house is in a cantonment area and is being used as a residence by the family of an army officer posted at the Indo-China border.
(ii) How would you advise another client who is desirous of seeking assignment of decree for eviction in his favour from a landlord who has obtained the same on the ground of *bona-fide* requirement for carrying out repairs which would require the premise to be vacated?
- e. What are various avenues open to a tenant whose essential supply or service has been cut-off or withheld by the landlord without sufficient cause? If the landlord had discontinued lift facility on 31st January, 2016, is any period of limitation recommended within which the tenant should initiate legal action?

- f. Your client who is a licensee seeks to initiate action relying on an unregistered agreement. How would you rate his chances? What punishment can be imposed on a landlord who fails to get registered a tenancy agreement?

2. THE MAHARASHTRA CO-OPERATIVE SOCIETIES ACT, 1960

(A) Write short note on **any two** of the following ; (6 marks)

- (i) Open Membership
- (ii) Expulsion of Members
- (iii) Prior Claim of Society

(B) Answer **any two** of the following : (8 marks)

- (i) Can a Society adopt Bye-Laws which are not in conformity with the Model Bye-Laws? Would such Bye-Laws be illegal or can they be acted upon? Give reasons.
- (ii) What is the procedure for removal of a Secretary of a Society from his office? Does it matter if the Secretary is appointed only two months prior?
- (iii) After issuance of Notice under Sec 164 of the Act, is the permission of the Registrar required to file a Suit? Also would the provisions of Section 164 apply to a dispute raised under Section 91 of the Act? Give reasons.

3. MAHARASHTRA PUBLIC TRUSTS ACT, 1950

Answer **any four** questions

(16 marks)

- A(i) The definition of "Public Trust" is inclusive. Elaborate.
- (ii) Would a Dharamshala constructed on Municipal land with funds provided by a private citizen fall within the definition of a Public Trust as defined under the Act? You may make appropriate assumptions as deemed fit.
- B (i) The Board of Trustees of a Public Trust at that board meeting held on 31st January, 2016 (i) accepted the resignation of one of the Trustees, (ii) Inducted one of the management committee member as a Trustee, and (iii) agreed to acquire a plot adjoining their existing establishment for the purpose of setting up another workshop inconsonance

with the objects of the Trust. What are the obligations of the Trustees of the aforesaid Trust for the purpose of reporting the aforesaid resolutions?

(ii) What are the obligations of an executor when a Public Trust is created by will?

C (i) What action can a Charity Commissioner take in case of breach of scheme and/or the terms and conditions of Section 41 AA by any charitable hospital?

(ii) What is Dharmada? Does it have to be registered?

D Elaborate on powers of a Trustee to apply to court under Section 56A of the Act. Distinguish it from the doctrine of *Cy pres*.

E On what grounds can a Trustee of a Public Trust be dismissed by the Charity Commissioner? Can the aggrieved Trustee challenge the said dismissal?

4. THE INDIAN TRUSTS ACT, 1882

Answer any four questions

(16 marks)

A. (i) Enumerate three (3) instances wherein the Trustee could approach a Principal Civil Court Of Original Jurisdiction and seek permission for its proposed action.

(ii) Enumerate one (1) instance wherein a Beneficiary can approach a Principal Civil Court Of Original Jurisdiction and seek appropriate directions.

B. (i) Enumerate the key ingredients which are necessary for the Author of a Trust to bear in mind for the purpose of creating a valid Trust.

(ii) Enumerate four (4) instances when the purpose of the Trust would be unlawful and the Trust therefore void.

C. (i) Enumerate four (4) instances when a Trustee committing a breach of trust would be liable to pay interest.

(ii) Several liability of co-trustees who jointly commit breach of Trust vis-à-vis the beneficiary and contribution interse between themselves. Discuss.

D. (i) Enumerate the rights of the beneficiary when a Trustee has wrongfully bought Trust property.

(ii) Who has the power to appoint a new Trustee under Section 73 of the Act? Are the powers of the new Trustee wider than those of the original Trustees?

E. (i) When would a Trust under the Indian Trusts Act stand extinguished?

(ii) When would a Trust under the Indian Trusts Act stand revoked? When can the action of revocation of the Trust by the Author be defaulted?

5. **THE ARBITRATION AND CONCILIATION ACT, 1996**

Answer any three questions

(15 marks)

- (a) Briefly discuss the powers of the Hon'ble High Court under Section 9 of the Act and the powers of the Arbitral Tribunal under Section 17 of the Act. Also distinguish the same.
- (b) Your client has approached you with an Application filed under Section 11 of the Act wherein his company is arrayed as a Respondent. The said Application highlights the disputes and differences that have arisen between the parties relating to two work orders containing the following clause. *"In case of any dispute during the execution of the work and if the matter is referred to Arbitration then it will be resolved by dual Arbitrator, one by client and another by contractor"* (emphasis supplied). The total claim against your clients is over Rs. 75 Lacs. On what grounds based on the limited facts as stated aforesaid will you oppose the said Application and defend the interest of your client?
- (c) Briefly discuss the competence of an Arbitral Tribunal to rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the Arbitration Agreement. Would it be open for one of the parties to raise the question of the "existence" of the Arbitration Agreement before any other forum?
- (d) Your client had participated in conciliation proceedings before Mr. X which were terminated. Your client has now learnt that the opposite party has proposed to appoint Mr. X as the Arbitrator in respect of a dispute that was the subject matter of the conciliation proceedings. Your client is specifically concerned about certain admissions he had made and his willingness to settle the matter during the course of the conciliation proceedings. What advice would you give your client so as to allay his concerns.

6. **THE LIMITATION ACT, 1963.**

Answer any four questions

(16 marks)

- (a) Briefly discuss Legal Disability?

- (b) Your client is a nationalized bank which is desirous of filing an Original Application in the Hon'ble Debt Recovery Tribunal against a Company and one of its director who is also a guarantor. The loan was sanctioned on 1st April, 2000 and the bank manager has approached you on 15th May, 2003. The director has signed no other document other than the Deed of Guarantee also on 1st April, 2000. What documents will you call for from the Bank to satisfy the Tribunal that the Original Application is within limitation? Would such documents also save the bar of limitation vis-à-vis the director?
- (c) Your client is a nationalized bank which during the course of internal audit on 31st March, 2017 finds certain irregularities in one of its branches. On further investigation it is revealed that two officers deputed at the branch in collusion with one of the clients of the same branch have caused forex loss to the bank. The investigation further revealed that the said modus operandi was adopted by them since 2010. The Bank is desirous to take legal action against all involved and approaches you. They also seek your advise as to whether they can claim losses as caused way back in 2010. Please advise.
- (d) Briefly discuss acquisition of easement by prescription.
- (e) Your client which is newly set up Private Bank was advised by another lawyer to file a Suit for recovery against one of its borrowers in the Hon'ble Bombay High Court wherein the claim amount inclusive of interest is Rs. 10,05,000/-. The Defendant upon receipt of the summons files an application challenging the jurisdiction of the Hon'ble High Court to entertain the Suit on the ground that the Hon'ble Debt Recovery Tribunal has exclusive jurisdiction to adjudicate the claim of the Bank and prays that the said issue be decided as a preliminary issue. As the last Letter Of Acknowledgement signed by the Borrower was four years prior, please advise whether the Bank would now be able to approach the Hon'ble Debt Recovery Tribunal and file proceedings there against the Borrower.

7. RULES OF ETIQUETTE AND PROFESSIONAL CONDUCT

Answer any two questions

(8 marks)

- A. The Law Commission of India has proposed amendments in the Advocates Act, 1961 by "Amendment Bill, 2017" which are considered as undemocratic and anti-lawyers by a part of the legal fraternity. An appeal is made by the Bar Council of India to the State Bar Councils requesting the Bar Councils and Bar Associations to abstain / refrain from work on a particular date. Would you as an Advocate participate in the said call to abstain from work? Give reasons.
- B. (i) Criminal proceedings have been initiated against Mr. X who claims he is innocent. During the course of trial advocate for the prosecution comes across certain

material/evidence which corroborates Mr. X's version of events though the said information is not in public domain. How would you if you were the advocate for the prosecution approach this situation?

(ii) What is the exception to the rule that an Advocate should not lend money to his clients for the purpose of any action or legal proceedings in which he is engaged by such client.

C. (i) You are an Advocate registered with Bar Council of Maharashtra and Goa and have been offered an option of being a Managing Director or a Chairperson of a Company. While you intend to continue to practice and retain your Sanad, which of the two posts would you opt for and why?

(ii) List four (4) instances of misconduct by an Advocate arising out of breach of duty to court.
