

**Examination of Articled Clerks**

Paper VI

General Acts

**FRIDAY 22<sup>th</sup> MAY, 2015**

**TIME: 3 HOURS (1-00 PM TO 4-00 PM)**

**(Total Marks 100)**

- Note:
1. Candidates are required to give precise and brief answers without unnecessary elaboration.
  2. All questions are compulsory.
  3. Please write in neat and clean handwriting
  4. Marks allotted for each answer is as mentioned in bold and bracket at the end of each question.

**The Maharashtra Rent Control Act 1999**

Q1. Father had purchased residential accommodation in his name and from his money. He allowed his son and his wife to reside therein with him without making any payment. On the death of the son, daughter in law claimed interest in the flat on the ground that it was a family property and being a member of the family she had interest in the flat or she was a Tenant protected under the Law. Father has approached you for advice. What will be your advice? **2**

Q.2 On 2<sup>nd</sup> September 2012 your client has received a Notice from the landlord demanding agreed amount of rent in arrears failing which landlord has threatened to file Suit for recovery of arrears and possession of tenanted premises. Since your client did not make payment within the time prescribed under the Law, the landlord filed a Suit for recovery of arrears and possession of premises. Upon receipt of Summons to Answer Plaint what advice you will give to your client to save his tenancy rights. **3**

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Q 3. Tenant has died. At the time of death with the tenant was residing his son A. His daughter had married and was living with her husband. His another son was living in an accommodation purchased by him. Wife of the tenant had died before him. Who under the law would be entitled to claim the tenancy rights? 2

Q 4. Your client a landlord had granted tenancy to a tenant in the year 1970. The tenant now makes an offer to your client either to accept surrender of tenancy against payment of two third of the market value of the tenanted premises or allow the tenant to transfer his tenancy to a third party and tenant shall pay to the landlord one third of the total consideration received by the tenant. Your client wants to know what options he has as the landlord. 3

Q 5. Your client is a landlord. Your client wants to withheld or cut off essential supply of power and water to the premises in the occupation of a tenant as your client is of the opinion that the tenant is the cause of dispute between the family member of your client, as also Tenant is harassing daughter of your client. What advice would you give to your client? 3

#### **The Maharashtra Co-operative Societies Act, 1960**

Q 6. In a dispute in redevelopment of property of the Housing Society between the Developer, a Member and the Society which Court will have jurisdiction. Will your answer be different if in the object of the Housing Society in the bye laws provision for redevelopment is appearing? 2

Q 7. Nomination Form filed by a member of the Housing Society comes into operation after the death of the member. Signature of the member on Nomination Form is attested by two witnesses. Can this Nomination Form therefore be also treated as a Will of the Member? 4

A Nomination Form is complete in all respect but was not delivered to the Society. Member died. Can this Nomination Form be now delivered to the Society on the ground that it was complete in all respect prior to the death of the Member?

Can Managing Committee act on the Nomination Form. Complete in all respect but filed only after the death.

Q 8. Your client is a member of Housing Society. Your client has received a Notice of expulsion from the membership of the Society. Issue of expulsion of your client would be discussed at a General Body Meeting of the members of the Society to be held 21 days after the date of service of Notice upon your client. A meeting was held and Resolution of expulsion was passed. In challenging the Resolution passed what grounds you will take. 3

Resolution passed at the General Body Meeting expelling a member has been sent to the Registrar for his approval. More than 6 months have passed and the Registrar has yet not returned the procedure and Resolution passed for expulsion duly approved. What is the status of the member in respect of whom Resolution has been passed by the General Body.

Q 9. Your client has purchased a flat in a Co-operative Housing Society and has submitted Transfer Form, Application for membership and other miscellaneous forms as required under the bye laws of the Society. Is your client also required to submit duly stamped and registered Agreement for Sale? Can Society refuse membership if Agreement for Sale is not produced and Transfer Form does not bear evidence of payment of stamp duty and registration? 3

Q 10. Your client is a Housing Society which had appointed a Chowkidar and had provided him with a room in the compound of the property of the Society to reside therein. Chowkidar died. His family continued to live without providing any service to the Society. Society was not charging any amount from Chowkidar. You are approached by the Society to advise. What is the remedy available to the Society to ensure that family of the Chowkidar is evicted and possession of the premises is restored to the Society? 3

#### **The Bombay Public Trust Act 1950**

Q 11. Can a Charity Commissioner in an Application under Section 36 compel the Trust notwithstanding the offer placed before the Charity Commissioner to invite from the members of the public offers and to transfer the Trust property to highest bidder? 2

Q 12. In whom does the Trust property vests, Trustees alone or the General Body of the Trust. 2

Q 13. Trustees of a Public Charitable Trust passed a Resolution to file a Suit against an occupant of a premises belonging to the Trust for possession of the premises and authorizing one of the Trustee to take all steps. In such a Suit should all the Trustees be made party Plaintiff or the Trustee authorized by a Resolution alone can file a Suit? 2

Q 14. Pursuant to an Order under Section 36 of the Bombay Public Trust Act 1950 your client is required to complete the sale transaction of the Trust property within a period of 6 months from the date of the Order. Your client as the Purchaser has made full payment and forwarded draft of the conveyance for the approval of the Trust. The Trust did not approve and return the draft conveyance. Period of 6 months is over. Your client has paid full consideration and is also in physical possession of the property of the Trust. Your client has come to you for an advice. What advice you will give to your client. 4

Q 15. What is a Public Charitable Trust. Does collection of money from public during religious festivals like Ganpathi and Navratri can be said to be a charity? The persons collecting the amount are required to register themselves as a Public Charity? 4

#### **Indian Trusts Act, 1882**

Q 16. There is a Private Family Trust. Your client is one of the trustee appointed under the Trust Deed. Trustees have a power to sell the Trust property. Trustees have decided to sell the property of the Trust. Can they do so on their own or they require consent of the beneficiaries under the Trust who are all major? 3

Q 17. Under the Trust Deed a date for dissolution of Trust is mentioned. Your client is one of the Trustees. All the beneficiaries under the Trust are major. All beneficiaries jointly instruct the Trustees to prepone the date of dissolution of Trust and hand over to the beneficiaries the Trust corpus in accordance with the percentage as mentioned in the Trust Deed. Can Trustees accept the request? If Trustees refuse to accept the request what is the remedy available with the beneficiaries. 4

Q 18. Trustees are appointed in respect of a flat in a Co-operative Housing Society. Trust is to be dissolved upon the beneficiary who is a minor attaining majority and upon dissolution the flat to be transferred to the beneficiary who is now a major. Can Trustee give a flat on Leave and 4

License for a period before the date of dissolution of Trust. Can Trustees create a monthly tenancy in favour of a third party. If on the date of dissolution of Trust the Licensee is still in occupation in breach of terms of Leave and License Agreement or a monthly tenant is claiming tenancy in perpetuity what is the remedy that is available to the beneficiary against the Trustee as also Licensee or tenant as the case may be.

Q 19. Can a Trustee of a Private Family Trust take a tenancy in respect of 2 premises of the Trust at market rate of rent?

Q 20. There are three Trustees of a Private Family Trust The Trust Deed 2 authorizes the Trustees to act by majority. In a decision taken by majority the Trust fund has suffered. Are the Trustees liable for loss to the Trust. Can a descending Trust exempt himself from liability by stating that he never agreed to the action by other two?

#### **Arbitration and Conciliation Act 1996**

Q 21. Pursuant to Petition filed, High Court appointed an Arbitrator. 2 Respondent before the Arbitrator challenged the appointment of the Arbitrator for the reasons that he became aware after the appointment has been made. The Arbitrator rejected the challenge. Can Respondent in the Arbitration now challenge the appointment of the Arbitrator before the High Court or challenge the decision of the Arbitrator before the High Court?

Q 22. There is an Arbitration Clause in an Agreement entered into 2 between the parties. Dispute has arisen between the parties. One of the party files a Suit in the Civil Court for relief. Is this Suit maintainable? The other party to the dispute if wants to raise an issue as to the maintainability of the Suit because of Arbitration Agreement at what stage this objection can be taken. Can this objection be taken in the Written Statement to be filed?

Q 23. Upon dispute between the parties with regard to performance of 4 Agreement arrived at by and between them one of the party appointed an Arbitrator and called upon the other party to concur with the appointment or to appoint another Arbitrator. The other party failed / neglected / refused to appoint another party until that Party was served with a copy of an Application made under Section 11 of Arbitration and Conciliation Act 1996. Will the other party now have a right to insist on the Arbitrator appointed by him or it is only the Court which will have jurisdiction to appoint an Arbitrator to act?

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Upon dispute one of the party to the dispute appointed an Arbitrator and called upon the other party to appoint an Arbitrator. The other party did not appoint an Arbitrator within the time stipulated but did so before an Application was filed under Section 11 (6) of The Arbitration and Conciliation Act, 1996. Can the Chief Justice or his designate now appoint an Arbitrator on the Petition filed in the Court?

Q 24. Your client has a claim which is being adjudicated before Arbitration Tribunal. Your client apprehends that by the time Award is made the Respondent would have dealt with his properties in a manner so as to make the Arbitration Award a paper decree in the hands of your client. What advice would you give to your client?

Q 25. Can a Court force the parties before it to go to Arbitration because according to the Court that would be the right thing to do and that way litigants would save lot of time which otherwise would be spent in the litigation before the Court. If one of the party does not want to go to Arbitration what is the remedy available to that party.

For appointment of an Arbitrator person appointing is required to produce Agreement in writing to refer dispute to Arbitration. There was no such written Agreement or exchange of correspondence to constitute such Agreement. Can Court in such circumstances appoint an Arbitrator because it is just and proper to do so or allow the party to prove a written Agreement by an evidence of its contents by secondary evidence as contemplated under the provisions of Evidence Act.

### **The Limitation Act, 1963**

Q 26. Co-operative Court had passed an Order and Judgment on 11<sup>th</sup> November 1993. On 16<sup>th</sup> October 1997 an Appeal was filed with an Interim Application for Stay of the said Order and Judgment. Ex parte stay was granted. During the course of hearing on the Interim Application Respondent agreed to pay the entire amount that may be found due and payable and not as demanded. President, Appellate Co-operative Court appointed Court Commissioner to look into the accounts. Court Commissioner submitted report on 18<sup>th</sup> December 1997 setting out the amount due. The Respondent produced a statement prepared by his chartered accountant which showed entries not taken cognizance of by

the Court Commissioner. The Appellate Co-operative Court condoned delay of four years in filing Appeal and then set aside the Judgment and Order and remanded the matter to the Co-operative Court with a direction to decide within three months. Please comment on the procedure followed by the President, Appellate Co-operative Court.

Q 27. You are advising a Bank who has recalled the loan from the 3  
Borrower. When Borrower did not make payment the Bank took steps and sold the property and appropriated the sale proceeds against outstanding loan amount. From the date demand was made till appropriation of the sale proceeds period of more than three years has passed. There is still an amount outstanding in the account of the Borrower. Advise Bank as to whether for balance outstanding amount can Bank file proceedings for recovery or claim of the Bank is barred by the Law of Limitation.

Q 28. Your client is the landlord. It appears that in the year 1996 the 3  
tenant has changed without the permission of your client user of the premises. This fact came to the notice of your client only in the year 2005. Advise your client as to whether he can file a Suit after a period of 9 years from the date of breach of terms of tenancy. If this was noticed by your client in the year 2010 would your advice be different.

Q 29. Your client has informed you that during his minority his father in 3  
respect of HUF of his grandfather arrived at a settlement whereby his father released his rights and so far as your client is concerned surrendered all his rights without being compensated in any manner. Your client after 10 years from the date of the said settlement attained majority and wants you to advise what steps he can take for his share in the HUF of his grandfather. If in the settlement provision was made for payment to your client and the said payment was also made but your client is of the opinion that payment made to him was not adequate does he have any remedy now before the Court of law or his claim is barred under Law of Limitation.

Q 30. Court shall for "sufficient cause shown" condone delay. Explain 3  
what is sufficient cause.

**Rules of Etiquette and Professional Conduct**

Q 31. After obtaining Sanad to practice as an Advocate you are now 3 employed with a Partnership firm. As a Law Officer you would be attending to all the legal matters of the Firm. What steps you will take now viz a viz your Sanad. Would your answer be different if you were employed as a Law Officer of the Central Government or the Government of a State or of any Public Corporation of a body constituted by the State.

Q 32. An accused in a rape case has approached you. You are well 3 versed and are practicing in criminal law. Case of the accused is widely discussed in media and citizens are up in arms against the accused. Accused has approached you to defend him and is willing to pay your fees. Will you accept the case. If yes why. If no why.

Q 33. You have started your practice as an Advocate. You have been 3 approached by your colleague asking you to file your Vakalatnama for his client and be an Advocate on record and all other work relating to the litigation would be done by your colleague and you would not be responsible or answerable to the client. Would you agree to this arrangement.

Q 34. There is a dispute between the family members which has resulted 3 in two of the brothers deciding to file a Suit against the other family members. Two brothers who want to file a Suit though they want to jointly prosecute and their point of view is not in contradiction but for their own personal satisfaction each one wants their Solicitor who normally attends to all their other matters to represent them. Is this possible? Can two different Solicitors be appointed as the Solicitors for the Plaintiffs?

Q 35. Please explain "a Solicitor should live like a hermit and work like a 3 donkey"

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