

## EXAMINATION OF ARTICLED CLERKS

## PAPER VI

## GENERAL ACTS

Friday, 24th May, 2013

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

(Total Marks – 100)

Marks

- Notes.*— (1) The questions are required to be given precise and brief answers with appropriate reasoning for the answers and without unnecessary elaborations; Please do mention specific case laws wherever applicable. Cryptic answers in “yes” or “not” will not be accepted.
- (2) All questions are **compulsory**.
- (3) Please write in neat and clean handwriting.
- (4) The marks allotted for each answer is as mentioned on the left side or at the end of each question of which please take note.

## 1. THE MAHARASHTRA RENT CONTROL ACT, 1999 :—

(a) Answer the following :

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A wholly tenanted building is in a dilapidated condition. The landlord desires to demolish the building and redevelop the property. For the said purpose he intends to recover possession of all the flats from the tenants in the building. Kindly explain the procedure applicable for the same along with reference to the applicable sections. Please include details such as reference to timelines for commencement and completion of the redevelopment work to be undertaken by the Landlord. Also, will the Landlord be entitled to any extension and how? What will happen if the landlord defaults in complying with the undertakings provided by him with reference to the redevelopment?

(b) Answer any ONE of the following questions :

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Explain whether tenants occupying premises owned by a Public Sector Undertaking such as LIC are protected under the provisions of the Maharashtra Rent Control Act, 1999. Explain in detail with reference to case law and the facts stated therein,

OR

Is there a separate procedure to be undertaken by a landlord who is a member of the armed forces of our country for recovering possession of his premises from a tenant? Also, if the member of the armed forces dies while in service, can his successor-in-interest also follow the same procedure to recover possession of the tenanted premises? What happens in case the member of armed forces has retired from service and three years later he dies, is his successor-in-interest still able to use the provisions available for a member of the armed forces? Is there an exception to the rule in case the landlord who is a member of the armed forces has purchased the said premises subject to the existing tenancy in the said flat, can the tenant still be evicted by following the same procedure?

## 2. THE MAHARASHTRA CO-OP SOC. ACT, 1960 :

Answer any THREE of the following :—

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- (i) Law relating to expulsion of a member.
- (ii) Can the Secretary of a Society be removed from office and what is the procedure to be followed? Can the Secretary be removed within two months of his appointment ?
- (iii) Rules relating to reservation of seats on committees of societies for women members. What is the procedure to be undertaken if no woman member is elected by the society?
- (iv) Discuss provisions relating to calling a Special General Meeting. What can a member do if the meeting is not called for by the procedure laid down in the Act? What will be the penalty imposed on a defaulting officer ?

## 3. THE BOMBAY PUBLIC TRUSTS ACT, 1950 :—

- (a) Explain the Doctrine of Cy pres under section 55 of the Act. 4
- (b) Answer any TWO of the following 4
  - (i) Is a suit for enforcement of private right of the Trustee maintainable under Section 50 of the Act ?
  - (ii) Can the Civil Court authorize alienation of any property of the trust without sanction of the Charity Commissioner ?
  - (iii) Discuss briefly the salient provisions of section 36 of the Act relating to alienation of land by the Trust.
- (c) What is a change report? Discuss the procedure for filing change report and the inquiry held by the Deputy or Assistant Charity Commissioner. 4
- (d) Write short Notes on the Effect of fraud or mistake. 3

## 4. THE INDIAN TRUST ACT, 1882 :—

- (a) Explain the provisions regarding right to apply to court for option in management of trust property. 2
- (b) Explain the provisions regarding the disabilities of the trustee under sections 46, 47 and 48 of the Act. 2
- (c) Explain the provisions regarding to the revocation of a trust under Section 78 of the Act. 2
- (d) Explain in detail the essentials for creating a trust in respect of immovable property and movable properties. Can the Karta of HUF create a trust of HUF property, and if so under what circumstances? Explain with illustration. 3
- (e) Answer any THREE of the following— 6
  - (i) X, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, Y, then in credit. The rents are accordingly paid to Y, and X leaves the money with Y only till wanted. Before the money is drawn out, Y becomes insolvent. X having had no reason to believe that Y was in insolvent circumstances. In such a case will X be liable to make good the loss?
  - (ii) L, a trustee directed to sell the trust- property by auction, sells the same, but does not advertise the sale and otherwise fails in reasonable diligence in inviting competition. Is L bound to make good the loss caused thereby to the beneficiary ?

- (iii) D bequeaths certain moneys to E and F as trustees, and authorizes them to continue trust- moneys upon the personal security of a certain firm in which D had himself invested them. D dies, and a change takes place in the firm. Should E and F permit the moneys to remain upon the personal security of the new firm ?
- (iv) XX, a trustee for YY, allows the trust to be executed solely by his co-trustee, ZZ. ZZ misapplies the trust- property. Is XX personally answerable for the loss resulting to YY ?

5. THE ARBITRATION AND CONCILIATION ACT, 1996 :

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Answer any FIVE of the following :—

- (a) In domestic arbitration proceedings, your client desires to apply for interim measures of protection from the Tribunal. Please advise your client as to the nature of such an application and also advise your client, in case the Tribunal does not grant such an application.
- (b) Discuss the procedure for challenge of an Arbitrator, in case justifiable doubts has arisen as to the impartiality of one of the members of the Arbitral Tribunal.
- (c) In an arbitration proceedings, what happens in case:-
- (i) The Claimant fails to communicate his statement of Claim ?
  - (ii) The Respondent fails to communicate his statement of Defence ?
  - (iii) A party fails to appear at an oral hearing or produce documentary evidence ?
- (d) Discuss the meaning and nature of an "Arbitration Agreement".
- (e) Discuss very briefly as whether Part I of the Act, would apply to arbitrations held outside India.
- (f) Briefly discuss the competence of the Arbitral Tribunal to rule on its Jurisdiction ?
- (g) How do conciliation proceedings between two parties commence ?
- (h) What are the conditions required for the Court to refer parties to arbitration where there is an arbitration agreement ?

6. THE LIMITATION ACT, 1963 :

- (a) Explain briefly the provisions relating to acquisition of easement by prescription ? 4
- (b) Write a short note of fraud or mistake. 4
- (c) Discuss the provisions of Effect of acknowledgement in writing. 4
- (d) Write brief notes on Exclusion of time of proceeding bona fide in Court without jurisdiction. 3

7. RULES OF ETIQUETTE AND PROFESSIONAL CONDUCT.

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- (a) A, a solicitor represents B in a suit for specific performance of Agreement for sale filed against C. A has also signed the agreement of sale executed between B and C as a witness. Contentious issues arise in the suit questioning the validity of the agreement where recording the evidence of A as the witness become imperative. Can A continue to represent B as a Solicitor and Advocate on record and also be a witness in the said suit ?

Marks

- (b) X, a Solicitor representing the Defendant B in a suit for partition filed by A against B enters into a contract with B that he should be paid 25% of the total consideration from the outcome of the litigation. Can such Agreement between Solicitor and his client be enforced in the event his client B backs out from the agreement? Has the Solicitor conducted any professional misconduct in that regard? Discuss with reference to the relevant provisions of the Advocates Act and the Indian Contract Act.
- (c) Your client wants to take away the papers. You are seeking a lawyer's lien thereon under the provisions of the contract Act. Are u justified in doing so? If not, why not ?
- (d) Will you act for a company in litigation where you are also a Director of the Company ?
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