

EXAMINATION OF ARTICLED CLERKS**PAPER VI****GENERAL ACTS****Friday, 25th October 2013**

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

(Total Marks – 100)

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| <u>Maharashtra Rent Control Act, 1999</u> | |
| 1. Does the Act apply to premises owned by Standard Chartered Bank ?
Explain | 2 |
| 2. Does the Act apply to premises owned by Birla Family Trust, having corpus of more than oneCrore Rupees? Explain | 2 |
| 3. Does the Act apply to premises let or sub-let to Municipal Corporation of Greater Bombay? Explain. | 2 |
| 4. Which is the ground of eviction where the tenant has to do no wrong and still can be evicted? | 1 |
| <i>OR</i> | |
| Is it legitimate for the tenant to receive consideration from Landlord for surrendering his tenancy. Explain | |
| 5. Landlord sends notice for recovery of tenants' share of enhanced property tax levied by BMC. The tenants refuses to pay the share and continues to pay their share as per old property assessment. Landlord fails to pay the enhanced property tax within stipulated time. BMC levies penalty and interest. Can the Landlord recover the same from the tenants as permitted increases? Explain. | 4 |
| 6. Bank of India is landlord of a building and decides to enhance the rent of tenant Mr.X from Rs.9000 to Rs.25,000 per month on the ground that rateable value has been raised by BMC. The tenant challenges the increase as not permissible under the Act. Landlord raises preliminary objection that provision of the Act are not applicable, and provisions of Public Premises (Eviction of Unauthorised) Act apply. Please discuss the outcome of the matter in light of Judgment of Apex Court of Banatwala & Co. V/S. L.I.C. of India. | 4 |
| <u>Maharashtra Co-operative Society Act</u> | |
| 7. Registered Housing Society has by laws which states that the members can only be hindus. Your client, who is Parsi, is very keen on buying a flat in such a Society. Will you be able to take any legal steps for your client to buy a flat in such a society? Give reasons. | 4 |
| 8. Registered Housing Society has bye laws which states that no member shall cook or eat non-vegetarian food in any part of Society building. Your client cooks and eats non vegetarian food. Will your client be able to buy a flat in such a Society? Give reasons. | 4 |
| 9. Registered Housing Society has bye laws which prevent any member from giving their flat on leave and licence basis. Your client, who is a retired person, cannot afford to pay the society's monthly outgoings and wants to give a portion of the flat on leave and licence basis. Is it possible to do so? Give reasons. | 4 |

Marks

10. The bye-laws of the society are not in conformity with the model bye laws. Does it mean that the Society's bye-laws are illegal and cannot be operated? Give reasons. 3

BOMBAY PUBLIC TRUST ACT

11. Trustee of a public trust goes into coma and therefore unable to attend the meetings of the Board of Trustees for more than 6 months. Can such a trustee be removed? If so how? 4
12. Trustee of a public trust, and fails to attend the meetings of board of trustees without seeking any leave of absence for more than 3 years. Can such a trustee be removed? If so, how? 4
13. Trustee of a public trust migrates to USA and becomes USA national but expresses his willingness to attend at least 6 monthly meetings of the board of trustees. Can such a trustee be permissible in law to continue as a trustee? Give reasons. 4
14. Two separate public trusts claim ownership of an immovable property as their own. Can such a dispute be brought before the Charity Commissioner? Give reasons. 3

OR

One of the member of public, claiming to be interested in the trust, applies to the Charity Commissioner for restraining the trustees from wasting the trust property. Will such an application be maintainable?

The Indian Trust Act

15. One out of four trustees was managing the trust property and in good faith the other three trustees endorsed all the steps taken by the managing trustee. The sole beneficiary commenced litigation against all the trustees for mismanaging the trust property. If mismanagement is proved, will the three trustees be equally liable as the managing trustee? Explain. 4
16. The sole beneficiary is of the opinion that trustees are not acting in his best interest. What steps the beneficiary will have to take for their removal and before which forum? Can he nominate his own trustees in place of existing trustees? Explain. 4
17. What is the difference between public trust and private trust? 2

OR

Is the trust required to be registered before it can be acted upon?

18. Can trust be created for the benefit of a minor, person of unsound mind, settlor himself, pet animal, and an unborn person? Please answer yes or no. 5

Arbitration & Conciliation Act

19. Can an arbitral tribunal appoint expert on its own without request from litigating parties? Explain in brief 2
20. Will the provisions of Arbitration & Conciliation Act, 1996 apply if the arbitration clause provides for arbitrator, who is a citizen of Singapore and the venue of arbitration is also Singapore. Explain in brief. 2
21. On application by a party, to arbitration proceedings, can the arbitral tribunal grant interim injunction or appoint a receiver for protection of property, which is subject matter of arbitration proceedings. Explain in brief. 2

22. Can the sole arbitrator decide the question of his own jurisdiction or he has to refer it to the Court, which appointed him. 2
23. Are provisions of Civil Procedure Code and Indian Evidence Act applicable to arbitral proceedings. Explain. 2
24. If the claimant fails to appear at the oral hearing, can the arbitral tribunal dismiss the application or proceed ex parte and give its award on the basis of evidence recorded. 2
25. Can the arbitrator direct payment of interest of 20% p.a. from the date of award till payment or he is bound by the provisions of Indian Interest Act. Explain. 3

OR

If the interest of stranger is adversely affected by the award, can the stranger apply before the arbitrator for setting aside the award? Explain.

The Limitation Act

26. The Plaintiff in a High Court Suit comes to know that the sole Defendant died 6 years ago in USA. The Plaintiff takes one more year to find out the name and address of his son, who is the sole heir of the Defendant and applies for bringing the heir of deceased Defendant on record. Has the suit abated? If so, since when? What are the steps required to be taken for setting aside abatement. Explain. 4
27. A supplies goods to B on 1.1.1998 and also sends Bill No.1 on the same day to B in respect of the goods supplied. A again supplies goods to B on 1.1.2000 and also sends Bill No.2 on the same day to B in respect of the goods supplied. B makes payment of Bill No.2 in full on 25.12.2000 by specifically mentioning that it was in payment of Bill No.2 but does not pay any amount of Bill No.1. A files a suit against B for non payment of Bill No.1 on 21.1.2001 and claims that amount paid towards Bill No.2 was appropriated towards full amount of Bill No.1. Can B object to the same and say that the claim of A in respect of Bill No.1 has time barred? Explain. 3
28. A, the land owner, files a suit for eviction against a trespasser, who had admittedly trespassed 15 years ago. Will the trespasser succeed, if he takes defence that the Suit is time-barred as the same is filed beyond the period of limitation. Give reasons. 3
29. Single Judge of High Court passes interim Order on 1.1.2010. The losing Defendant applies for certified copy on 30.1.2010. The certified copy is ready on 5.2.2010. The Defendant collects the certified copy from Court on 8.2.2010. Defendant hands over certified copy to his Advocate for drafting memo of appeal on 10.2.2010. The Defendant's Advocate lodges appeal in the High Court Office on 20.2.2010 and the same is numbered and filed on 22.2.2010. The Defendant's Advocate takes out Notice of Motion for condonation delay on 23.2.2010. Please state the quantum of delay in filing the Appeal, with brief explanation. 3
30. While filing a Suit against Government will the Plaintiff be entitled to exclude period of notice under Sec.80 of C.P.C. while computing period of limitation 2

OR

A commits breach of contract on 1.1.2009 by non-supply of goods to B and disposes of the goods to C on 2.2.2009. In the event of B filing a suit against A and C from which date the cause of action is supposed to have arisen?

Rules of etiquette and professional conduct

31. Purchaser of immoveable property introduces his Solicitor to the Vendor and Vendor agrees to appoint him as common Solicitor for sale of immoveable property. Is it proper on the part of Solicitor to act for both the sellor and purchaser, since he has been retained Solicitor in all the transactions of the Purchaser. Give reasons. 3
32. The Plaintiffs' Solicitor advises the Plaintiff to file a Suit against the Defendant. The Plaintiff is aware that he does not have good chances of success in the Suit. He wants to enter into an understanding with his Solicitor that if he succeeds in the suit then he will share 50% of the amount, that he receives from the Defendant, with his Solicitor. Is it permissible for the Solicitor to accept such amount in lieu of his fees. Give reasons. 4
33. Title documents of the property of the Vendor are lying with his Solicitor, pending the completion of sale. The sale gets cancelled and Vendor avoids paying Solicitor's fees for work done upto the date of cancellation and demands title documents back. Can the Solicitor claim lien on the title documents, till payment of his fees 3
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