

EXAMINATION OF ARTICLED CLERKS

Paper VI

GENERAL ACTS

Friday, 6th November 2015

Time : 3 Hours (1-00 p.m. to 4-00 p.m.)

(Total Marks—100)

Note.— Marks are indicated in brackets *i.e.* [] at the end of each question.

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| A. THE ARBITRATION AND CONCILIATION ACT, 1996. | |
| 1. An Agreement expressly prohibits settlement of disputes of claims by arbitration. Subsequently, there was novation of contract by mutual consent of the parties <i>inter alia</i> adding an arbitration clause. Can the matter now be referred to arbitration? Give reasons with supporting case law. | 3 |
| 2. Arbitration clause in a 'Pre-Balco Agreement' expressly stipulates the juridical seat of arbitration as New York and governing law of Arbitration Agreement as Laws of U.S.A., while making laws of India as governing law of the contract. State which is the proper law of arbitration agreement-whether the laws of India or laws of U.S.A. will apply? Whether the enforcement of final award can be challenged before the Indian Courts or in U.S.A. Courts? And what would be the ground of challenge? Give reasons with case law. | 4 |
| 3. What are the powers of judicial authority to refer parties to arbitration under the Geneva Convention Awards ? | 2 |
| 4. A and B during the pendency of arbitration proceedings were referred to conciliation. During conciliation proceedings, A made certain admissions affecting his own case. The conciliation fails. B wants to use the admissions made by A before the Conciliator in the arbitration proceedings. Can B be permitted to do so ? | 3 |
| 5. What are the remedies available to a third party <i>i.e.</i> not being a party to the arbitration agreement, under the Arbitration and Conciliation Act? Can he invoke Section 9 for interim measures ? | 3 |
| 6. What do you mean by UNCITRAL? When this was adopted in India? Briefly state the reasons and purpose for adoption ? | 3 |
| 7. List the earlier Arbitration Acts which were in force in India, and which stood repealed by the Arbitration and Conciliation Act, 1996. | 3 |
| B. THE MAHARASHTRA RENT CONTROL ACT, 1999. | |
| 1. A Suit for eviction of a tenant was filed by landlord under the ground of default in payment of rent. The tenant did not tender amount demanded in suit notice, nor did he raise any dispute regarding standard rent within specified period of 90 days, but instead started questioning the title of the landlord. In such a situation, does the court have jurisdiction to pass a decree against the tenant? Give reasons with supporting case law. | 3 |
| 2. Mr. X, a scientist holding a post in the Department of Atomic Energy, Government of India, purchased a residential premises in February, | 3 |

- 2010 and thereafter let out the said premises to Mr. Y, Mr. X has taken a premature retirement from services from April, 2015. Mr. X is now desirous of evicting his tenant Mr. Y from his premises. What is the remedy available to Mr. X for recovery of possession of his premises from Mr. Y and which is the forum he has to approach for seeking eviction? State the relevant provisions of the law.
3. Mr. A has granted his commercial premises on leave and licence basis for a period of 5 years to Mr. B. The Leave and Licence Agreement is expired by efflux of time and there is no renewal clause. The Licensee Mr. B refuses to vacate the premises. What are the remedies available to Mr. A to obtain possession? Briefly enumerate the provisions of the Act which he has to invoke and the forum for redressal. 3
4. Mrs. Desai who is the owner of a commercial premises gives her premises on leave and license basis to Company for the purpose of running their restaurant therefrom for a period of 9 years for license fee of Rs.1,00,000/- per month. The Company is having share capital of Rs.75,00,000/- . The Leave and License Agreement expired by efflux of time however the Company does not vacate. What are the remedies available to Mrs. Desai for evicting the Company? What are the defenses available to the Company? Can the Company file a Suit against Mrs. Desai? If so on what grounds ? 4
5. A landlord filed a suit for eviction against his tenant on the ground of *bonafide* requirement. The premises were occupied by the tenant for the purpose of residence and the Landlord required the same for starting a photography business. Can a decree of eviction be passed in the above matter? What are the defenses available to the Tenant? Please give reasons with reference to case law and relevant provisions of the law. 3
6. A tenant at sufferance and even a trespasser cannot be dispossessed from the premises, even by the true owner/landlord, without the due process of the law. Give reasons with case laws and relevant provisions of the law. 3
7. A tenant in a Declaratory Suit took out an Application for amendment of the Plaint to place on record certain subsequent facts. The application came to be rejected by the Ld. Trial Judge of the Court of Small Causes, Mumbai. Can the tenant move the Appellate Bench of the Small Causes Court challenging the impugned order? What is the remedy available to the Tenant ? 3

C. THE MAHARASHTRA CO-OPERATIVE SOCIETIES ACT, 1960.

1. A member of a Society is a persistent defaulter in payment of Society maintenance dues and also insults and abuses the Committee Members when asked to pay the arrears of dues, which are over Rs.5,00,000/- . The Society has approached you for advice for obtaining substantive reliefs against the member. What advice would you give the Society and what are the various remedies available under the Maharashtra Co-operative Societies Act, 1960 ? 4
2. A member of a Society has created a leave and licence in respect of his residential premises in favour of B in the year 2010 without obtaining the permission of the Society. The Society has filed proceedings u/s. 91 of the Maharashtra Co-operative Societies Act, 1960 against the member as well as the licensee for eviction. Can the Society succeed? 4

The licensee in turn has taken a stand that he is a tenant of the member and has filed a Declaratory Suit in the Court of Small Causes to that effect. Will the licensee succeed in the Small Causes Court? What advise would you give the member for obtaining peaceful possession of the premises from the licensee and from which court/forum should the member seek his remedy ?

3. (a) What should be the constitution of the Managing Committee of a Co-operative Society in the light of the 97th Amendment of the Constitution of India ? 6
- (b) Who is responsible for holding elections to the Managing Committee? Can the Society members inter se hold elections ?
- (c) Briefly enumerate the Election rules as per the current Model bye-laws.

D. THE LIMITATION ACT, 1963.

1. Whether the limitation for filing appeal commences from the date of the judgment or the date of signing of the decree? Cite the relevant provisions of the Limitation Act, 1963 and case law. 3
2. A was prosecuting B in the Bombay City Civil Court, by filing a suit for specific performance on the last date of limitation. The said Suit came to be disposed of holding that has no jurisdiction to try the said suit, after a lengthy trial of 5 years. What is the course now open to A the Plaintiff to sue B in a court having jurisdiction and how will he save limitation? What are the provisions under the Limitation Act, 1963 that A must invoke to bring the Suit within limitation? Give reasons with case law. 3
3. The Plaintiff in a Suit before the High Court comes to know that the sole Defendant died 3 years ago in England. The Plaintiff takes one more year to find out the names and addresses of the Defendant's legal heirs and applies to the High Court for bringing the heirs of the deceased Defendant on record. Has the suit abated? If so, since when ? What are the steps required to be taken for setting aside the abatement ? 3
4. Write Short Notes on any *two* of the following :— 6
- (a) Disability of one of several persons being parties to a Suit
- (b) Exclusion of time in cases where leave to sue or appeal as a pauper is applied for
- (c) Exclusion of time in favour of Reversioner of Servient tenement.

E. MAHARASHTRA PUBLIC TRUSTS ACT, 1950.

1. Discuss briefly the salient provisions of Section 36 of the Maharashtra Public Trusts Act, 1950 relating to alienation of land by a Trust. 3
2. (a) Whether a Society formed for religious or charitable purposes and registered under the Societies Registration Act, 1860 gets the status of a 'Public trust' ? 3
- (b) Whether under the Maharashtra Public Trusts Act, 1950, a public trust is required to be registered under the Societies Registration Act, 1860 ?

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| 3. | A person is appointed as a Trustee of a public trust. Change Report is filed but no hearing has taken place thereon for a period of 3 years. Can such person be considered a trustee? If after a period of 5 years, change report is dismissed after hearing the parties, then in such an event what happens to the acts already performed by such person from the date of change report was filed until it was dismissed ? | 3 |
| 4. | Is a suit for enforcement of a private right of a Trustee maintainable under Section 50 of the Maharashtra Public Trusts Act, 1950 ? | 4 |

F. THE INDIAN TRUSTS ACT, 1882

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| 1. | (a) State briefly when a Private Trust may be extinguished ?
(b) When Private Trust may be revoked ? | 3 |
| 2. | Trustees appointed under a Will are directed to sell property of the testator within 6 months from the grant of probate. The trustees fail to do so. Can the trustees sell the property after 6 months? Give Reasons. | 3 |
| 3. | A trustee commits breach of his obligations in respect of immovable properties of the Trust. What are the remedies available to the beneficiaries ? | 3 |

G. RULES OF ETIQUETTE AND PROFESSIONAL CONDUCT

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| 1. | Mr. A an Advocate purchased property which was subject of litigation from his client at a throw away price and subsequently sold the property to a third person. What is the implication of the above? Cite the relevant case law. | 2 |
| 2. | Mr. X, a Solicitor representing the Defendant Mr. B in a Suit for partition filed by A against B, enters into a contract with B that he should be paid 10% of the total consideration from the outcome of the litigation. Subsequently, Mr. B backs out of the contract with Mr.X. What remedy does Mr. X have to recover the amount as agreed under the contract? Discuss the implication of the above contract with reference to the relevant provisions of law. | 2 |
| 3. | Can a Solicitor have a website? Does the development of a website infringe the standards of professional conduct and etiquette ? | 2 |