

## EXAMINATION OF ARTICLED CLERKS

### Paper VI

#### GENERAL ACTS

Friday, 29th April 2016

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

(Total Marks—100)

- Notes.*— (1) Answers should be legible, precise and to the point.  
 (2) Answers to every question should be on a fresh sheet of paper.  
 (3) Do not reproduce the question.  
 (4) Please write in neat and clear handwriting.  
 (5) Figures to the right indicate *full* marks.

|  | <b>Marks</b> |
|--|--------------|
| <b>The Arbitration and Conciliation Act, 1996</b>  |              |
| 1. What is a perverse decision ?   | 3            |
| 2. A party to an arbitration refuses to appear or file any papers or respond to the papers filed. In such circumstances what is the recourse available to the other party and / or the Arbitrator ?  | 3            |
| 3. The claimant in the Arbitration is of the opinion that in the event an award is passed in favour of the Claimant he would not be able to recover the sum awarded as the respondent does not have any property from which recovery can be made. What steps may the claimant take ?   | 3            |
| 4. In a pending suit can a Judge compel the parties to go for Arbitration as that would resolve the issues between the parties much faster ?   | 3            |
| 5. Parties to the contract had agreed in clear words that neither party shall be entitled to claim interest on any amount that may be due from one to the other. Disputes arose and matter was referred to Arbitration. The claimant also claimed interest. The other party objected. The Arbitrator awarded interest. Is the Award for interest enforceable ?   | 3            |
| <b>The Indian Trusts Act, 1882</b>   |              |
| 6. Discuss— a Trustee is bound to deal with the trust property as carefully as a man of ordinary prudence would deal with such property.   | 3            |
| 7. Discuss— liability of a trustee for breach of trust.  | 3            |
| 8. Discuss – A trustee is not liable for the acts of his co-trustee.   | 3            |
| 9. Can a trustee, after accepting the trust, renounce Trusteeship ?  | 3            |
| 10. When is a trustee discharged from his office ?   | 3            |
| <b>The Limitation Act, 1963</b>  |              |
| 11. In a land acquisition matter there is a delay in challenging the award of compensation. The challenge is filed in court along with an application to condone the delay. In the application for condonation of delay no sufficient ground is shown. During the course of arguments the land owner agreed not to claim interest for the delayed period. On this ground the challenge to the award was admitted by condoning the delay. Is the order of the Court condoning delay correct ? | 3            |

- |  | Marks |
|--|-------|
| 12. A spouse filed an Appeal challenging the judgment and decree of divorce after a delay of 1306 days. This delay was condoned by the Court. After hearing the Appeal on merits the Court passed an Order dismissing the Appeal on the ground of delay. Is the Order of dismissal correct ?   | 3     |
| 13. An award delivered by the Arbitrator to the parties. 15 months after the award was received, the party aggrieved filed an appeal under Section 34 of the Arbitration and Conciliation Act, 1996 with an application for condonation of delay under Section 5 of the Limitation Act, 1963. Can this delay of 15 months be condoned ?  | 3     |
| 14. Give examples of "sufficient cause" under Section 5 of the Act.  | 3     |
| 15. Discuss – a claim, though barred by limitation, is still a claim due.  | 3     |
| <b>The Maharashtra Rent Control Act, 1999</b>  |       |
| 16. A landlord has sent a notice demanding amount as rent which amount was in excess of the rent due. Acting for tenant, what advice would you give ?  | 2     |
| 17. A landlord mortgaged a tenanted property to a Bank. Upon default, the Bank invoked the SARFAESI Act 2002. Would the tenant be protected under The Maharashtra Rent Control Act, 1999? Would your answer be different if the tenancy was created after the property was mortgaged ?   | 4     |
| 18. A landlord filed a suit for eviction on the ground of <i>bonafide</i> requirement for personal use of the property for his business. A decree for eviction passed. The landlord died. The tenant appealed against the decree for eviction making the legal heir of the deceased landlord as the respondent. Would the legal heir of the landlord be entitled to benefit of decree for eviction ?               | 3     |
| 19. Differentiate between joint tenants and a statutory tenants.   | 3     |
| 20. Certain premises were let to a partnership to carry on business of sale of motor spare parts. From the same premises a person, is not being a partner of the tenant firm, was found to be carrying on a similar business. Would you advise landlord to file a suit for eviction against the tenant firm ?  | 3     |
| <b>The Maharashtra Co-Operative Societies Act, 1960</b>  |       |
| 21. Can a Co-operative Housing Society enter into a transaction of redevelopment when in the object clause of the bye laws of the Society there is no provision for redevelopment of the property of the Society? If a Society enters into a development agreement and a dispute arises between a member and the Society or the Developer and the Society which Court will have jurisdiction to try such dispute ? | 3     |
| 22. In a suit for specific performance filed by a builder against a Society whose bye laws do not refer to redevelopment as one of its object, is a notice under Section 164 of the Act a pre-condition to maintain the suit ?   | 3     |
| 23. At the hearing of proceedings under Section 101 of the Act, the advocate appearing for the member in default applies for withdrawal of his appearance. Permission to withdraw appearance was granted and the hearing continued in the absence of the member in default. An order for recovery was passed against the member. Can this order be challenged by the member? If so, on what grounds ?              | 3     |

## EXAMINATION OF ARTICLED CLERKS

## Marks

24. An Application for transfer was received by Society with payment of Rs.25,000 as transfer fee as per directions issued by the State Government under Section 79 A. The Society wants to refuse permission to transfer unless 2% of the consideration is paid as a voluntary contribution to the Society. Can the Society do so ? 3
25. Who decides the validity of a resolution passed by a Society expelling a member? What is the date from which the resolution shall come into effect ? 3
- The Maharashtra Public Trusts Act, 1950**
26. The Charity Commissioner passed an order sanctioning sale of immovable property of a Trust, the sale to be completed within a period of 6 months from the date of the order. The purchaser fulfilled all his obligations and the trustees put the purchaser in possession of the property but the conveyance was not executed within 6 months from the date of the Charity Commissioner's order as the Solicitors representing the parties disagreed on the language of the draft conveyance. How would the Purchaser then complete his title ? 3
27. The term of office of the Board of Trustees expired. Before announcing the election of new Trustees the Board of Trustees took policy decisions pertaining to the affairs of the Trust. Are these decisions binding upon the new Trustees who were subsequently elected ? 3
28. A Trust owns a fully tenanted property. The Trustees want to file a suit for eviction against a tenant who has breached the terms of the tenancy. Are all the Trustees required to sign the Complaint or can any one Trustee be authorized to file and sign the suit for eviction ? 3
29. Can a person collect money for religious and / or charitable purpose without informing the Charity Commissioner? At what point of time information is required to be given to the Charity Commissioner? Can the Charity Commissioner stop such collection ? 3
30. What are the grounds for suspension, removal and dismissal of Trustees of a Public Charitable Trust ? 3

**Rules of Etiquette And Professional Conduct**

31. Explain the Rules of Etiquette. 3
32. Give examples of professional misconduct. 3
33. You are practicing civil law. Would you advise a client on criminal law ? 2
34. In your opinion settlement of a suit is in the interests of your client. You have advised your client to settle the matter but the client refuses and wants you to continue the suit. Would you, in such circumstances, nevertheless settle suit based on your implied authority to settle ? 2