

**EXAMINATION OF ARTICLED CLERKS****PAPER I****PRACTICE AND PROCEDURE**

WEDNESDAY, 16TH NOVEMBER 2016

TIME : 3 HOURS [1-00 P.M. TO 4-00 P.M.]

(TOTAL MARKS—100)

- Notes.**— (1) Read the questions carefully and answer neatly, briefly and to the point.
- (2) Question Nos. 2, 3, 4, 7 & 9 are **compulsory**, and answer **any 4 questions** from the remaining questions.
- (3) Answer to every question should be on a fresh sheet of paper.
- (4) Cite relevant case Law.
- (5) Figures to the right indicate **full** marks.
- (6) For the benefit of the student / examinee,
- (a) The time within which each question should be answered is mentioned against each Question ; and
- (b) The timing of 3 hours has been so adjusted that the candidates would be able to read the entire question paper for 10 minutes before starting, and after completion, have 10 minutes for reviewing what they have written.

**Marks**

1. Write short notes, in brief, on **any four** of the following :— **10**  
**(Time within which this question is to be answered - 20 minutes)**
- (a) Caveat under Section 148A of the Code of Civil Procedure, 1908.
- (b) Caveat under Rule 401 of Bombay High Court Rules in Testamentary Proceedings.
- (c) What are the nature of the civil suits as contemplated under Section 9 of the Code of Civil Procedure, 1908.
- (d) Under what circumstances can a High Court exercise Revision Jurisdiction under Section 115 of the Code of Civil Procedure, 1908.
- (e) Precepts.
- (f) Inherent powers of the Court.
- (g) Name 3 instances in which a Notice of Motion can be taken out.
- (h) Name 3 instances in which a Chamber Summons can be taken out.
2. Answer **any ten** of the following as *True* or *False* (**answer should be either True or False**) and no explanation is required :— **(10)**  
 E.G. (i) The present examination is not the examination conducted for articulated clerks. **Answer : 2 (i) False**  
**(Time within which this question is to be answered- 10 minutes)**
- (a) Writ of Summons can be served at the office of the Advocate upto 6 p.m. on week days. **1**
- (b) Caveat in a Testamentary Petition can be filed within 30 days. **1**
- (c) Copy of the Order appealed from need not accompany the Memorandum of Appeal. **1**

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	<b>Marks</b>
(d) Writ of Summons can be served on Saturdays even without leave of the Court.	1
(e) Application for probate is to be made within 3 years from the date of death of the deceased.	1
(f) Letters of Administration includes Letters of Administration with the will annexed.	1
(g) Order II Rule 2 of the Code of Civil Procedure, 1908 would apply to a Complaint filed in support of an Originating Summons.	1
(h) Suit under Section 6 of the Specific Relief Act should be filed within 6 months from the date of dispossession.	1
(i) A judgment of an appeal Bench of the Small Causes Court can be challenged before the High Court under Article 226 of the Constitution of India.	1
(j) Notice under Section 80 of the Code of Civil Procedure, 1908, is not to be given to the Government before the filing of a suit.	1
(k) Notice of Motion is normally made returnable on Mondays.	1
(l) Any person intending to oppose the grant of Probate has to file a Caveat within 14 days from the date of service of citation upon him.	1
3. A client approaches you with a request that he would like to appoint you as his Advocate on record since he is not happy with the current Advocate on record.	(15)
<b>(Time within which this question is to be answered: 20 minutes)</b>	
Your advice is sought on the following issues :-	
(a) When the current Advocate on record refuses to sign his consent on the Vakalatnama in your favour, what provision of Law (Bombay High Court Rules) would you advise your client to adopt, to have the Advocate discharged.	3
(b) When the current Advocate on record refuses to part with the papers and proceedings in the matter on the ground that his fees have not been paid, would the current Advocate be justified in refusing to sign his consent on the Vakalatnama ? <b>Answer Yes or No.</b>	1
(c) (i) Would the current Advocate on record have a lien on the papers on the ground that his fees have not been paid ? <b>Answer Yes or No.</b>	1
(ii) Is there any supporting judgment in support of your answer to (i) above. <b>Answer Yes or No.</b>	1
(d) Would the above provisions be applicable if the client wanted to appoint another Advocate in your place. <b>Answer Yes or No.</b>	1
(e) Upon your refusal to sign the Consent Vakalatnama in favour of the other Advocate, then what provision of Law (Bombay High Court Rules) would your client adopt to have you discharged.	4
(f) If the client did not want to appoint another Advocate in your place, but is not paying your fees, then what provision of Law (Bombay High Court Rules) would you adopt to be able to take a discharge in the matter.	4

4. Summary Suit (Answer briefly) :- (15)  
**(Time within which this question is to be answered-15 minutes)**
- (a) Under which provision of the CPC, 1908, will it lie ; 1  
 (b) When can a Summary Suit be filed ; 3  
 (c) What are the essential averment/s that a Plaintiff in a Summary Suit should contain ; 2  
 (d) Within how much time should the Defendant file his Vakalatnama after being served with the copy of the Plaintiff ; 1  
 (e) After the filing of the Vakalatnama, what is the next step the Plaintiff is supposed to take and what is the time within which it is to be taken ; 4  
 (f) Answer either, *True or False (Answer True or False)* :—
- (i) At the hearing of the Summons for Judgment, leave will be granted to the Defendant as a matter of course ; 1  
 (ii) Conditional leave may be granted and the Defendant may be asked to deposit an amount in court ; 1  
 (iii) Unconditional leave may also be granted on the facts and circumstances of the case ; 1  
 (iv) If the Defendant does not file his Vakalatnama then the Plaintiff must apply for the decree within 6 months. 1
5. Originating Summons :- (10)  
**(Time within which this question is to be answered - 20 minutes)**
- (a) What is an Originating Summons ;  
 (b) Who can apply for the issue of an Originating Summons ;  
 (c) What questions are capable of being decided on an Originating Summons.
6. Briefly explain :- (10)  
**(Time within which this question is to be answered - 20 minutes)**
- (a) The Writs that a High Court can issue under Article 226 of the Constitution of India ;  
 (b) What are the salient features of Article 227 of the Constitution of India ?  
 (c) What is Rule Nisi and when is it required to be served on the Respondent ?
- OR**
6. Discuss the nature and scope of the Supreme Court's jurisdiction under Article 136 of the Constitution of India. (10)  
**(Time within which this question is to be answered - 20 minutes)**
7. Clause 15 of the Letters Patent :- (10)  
**(Time within which this question is to be answered- 15 minutes)**
- (a) Briefly explain what constitutes a 'Judgment' in terms of Clause 15 of the Letters Patent. How would you distinguish the definition of 'Judgment' contained in Section 2 (9) of the Code of Civil Procedure, 1908, with that contained in Clause 15 of the Letters Patent ? 6

- (b) Would the following constitute a '**Judgment**' for the purposes of Clause 15 of the Letters Patent, (Answer Yes or No) :-  
(Time within which this question is to be answered-5 minutes)
- (i) An order granting leave to amend the Plaint by introducing a new cause of action altering the nature of the suit and taking away the vested right of limitation or any other right which has accrued to the Defendant. 1
- (ii) An order refusing leave to defend the suit in an action under Order 37 of the Code of Civil Procedure, 1908. 1
- (iii) An order deciding a preliminary objection to the maintainability of the suit on the ground of limitation. 1
- (iv) An order rejecting an application for a judgment under Order 12 Rule 6 of the Code of Civil Procedure, 1908. 1
8. (Time within which this question is to be answered- 15 minutes) (10)
- (a) In what circumstances, leave of the court is required to be taken under :- 5
- (i) Clause 12 of the Letters Patent ;
- (ii) Order II Rule 2 of the Code of Civil Procedure, 1908 ; and
- (iii) Order I Rule 8 of the Code of Civil Procedure, 1908.
- (b) How and upon whom a Writ of Summons will be served if the Defendant is :-
- (i) A Corporation ; 1
- (ii) A Partnership Firm ; 1
- (c) In what cases :-
- (i)  $\frac{2}{3}$ <sup>rd</sup> of the court fees are refunded ; 1
- (ii)  $\frac{1}{2}$  the court fees are refunded ; 1
- (iii)  $\frac{3}{4}$ <sup>th</sup> of the court fees are refunded. 1
9. (Time within which this question is to be answered- 10 minutes) (10)
- Res Judicata :-
- (a) Briefly state, the Doctrine of Res Judicata alongwith the Explanations. 5
- (b) Please answer the following by stating Yes or No :-  
(Time within which this question is to be answered-5 minutes)
- (i) The bar of *res judicata* is an issue of Law ; 1
- (ii) The decision of a court or tribunal which is without jurisdiction cannot operate as *res judicata* in subsequent proceedings. 1
- (iii) The issue of *res judicata* should not ordinarily be tried as a preliminary issue. 1
- (iv) The plea of *res judicata* must be specifically raised in the pleadings. 1
- (v) The 'matter in issue' and the 'subject matter' of the suit does not form the essential part of *res judicata*. 1

10. Briefly explain, any *four* of the following :- 10  
(Time within which this question is to be answered-20 minutes)
- (a) When can Ad-interim or Interim Reliefs be granted in commercial suits ;
  - (b) What is the Notice under Order XXI Rule 22 of the Code of Civil Procedure, 1908, and under what circumstances is the same issued ;
  - (c) If, by granting Ad-interim reliefs the entire suit is disposed off, can such reliefs be granted. Cite case law on the subject.
  - (d) What are the circumstances under which a Court would pass an order appointing the Court Receiver as Receiver.
  - (e) When can a plaint be rejected and under which provision of Law ?
11. What is the main difference between the provisions of Order 14 Rule 2 (dealing with issues) and Section 9A of the Code of Civil Procedure Code, 1908 (objections to jurisdiction), and when can they be raised ? 10  
(Time within which this question is to be answered-20 minutes)
12. (Time within which this question is to be answered-20 minutes) 10  
Abatement of a Suit :-
- (a) When does a suit abate ?
  - (b) On the death of the plaintiff or the defendant/s, as the case may be, what is the application that is to be taken out for bringing the heirs of such deceased plaintiff or the defendant/s (as the case may be) on record.
  - (c) What is the time limit within which such application is to be taken out ?
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