

EXAMINATION OF ARTICLED CLERKS**Paper I****PRACTICE AND PROCEDURE****Monday, 22nd April, 2019****Time: 3 Hours (1:00 PM to 4:00 PM)****(Total Marks: 100)**

- Notes:**
- i. Read the questions carefully and answer neatly and to the point.**
 - ii. Cite relevant case law.**
 - iii. Answer to every question should be on a fresh sheet.**

- 1. Explain what constitutes an 'appealable order'. Discuss whether the provisions of Order XLIII of the Code of Civil Procedure are applicable to appeals under Clause XV of the Letters Patent and Appeals under Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015? 16 Marks**

- 2. i. Under what grounds can a court grant summary judgement under the provisions of Order XIII A of the Code of Civil Procedure? 12 Marks**

ii. At what stage must such an Application be made?

iii. Can an Application for Summary Judgement be made only for a part and not the whole claim?

iv. Do the provisions of this Order apply to commercial disputes originally filed under Order XXXVII of the Code?

- 3. Under what circumstances can an Appellate Court entertain objections as to the territorial or pecuniary jurisdiction of the trial court? 7 Marks**

- 4. Which of the following Applications for amendment of pleadings can be 12 Marks**

allowed? Provide reasons for your answers in not more than three bullet points.

- i. Mr. X files a suit against Mr. B for prohibitory injunction. However, before the commencement of the trial, he was dispossessed of the property. After eleven years of being ispossessed, Mr. X moves an application seeking amendment of the plaint claiming possession.
 - ii. Mr A in his Written Statement raises 2 defences :- (a) Some of the Properties had already been partitioned and (b) Some of the properties were self -acquired. Mr. A now seeks to amend his Written Statement so as to furnish more details of his defence and to clarify his defence.
 - iii. Mr. W in his Suit for Specific Performance fails to aver readiness and willingness to perform the Contract as required under Section 16(c) . Mr. W makes an Application for amendment seeking to rectify this error.
5. What is meant by the term 'substituted performance'? What is the procedure to be followed by a party suffering breach before it can make a claim for substituted performance? 9 Marks
6. Write short notes on any three of the following: 12 Marks
- i. Guardian-ad-litem.
 - ii. Third Party Procedure.
 - iii. Arrest and attachment before judgment.
 - iv. Procedure on Affidavit in support of caveat being filed under Rule 401 of the Bombay High Court (Original Side) Rules.

7. Write short notes on any three of the following: 12 Marks

- i. Can a Writ of Mandamus be issued against the Governor of a State?
- ii. When is a Writ of Certiorari issued?
- iii. Scope of Article 226 of the Constitution of India.
- iv. Appellate Jurisdiction of the Supreme Court of India

8. Draft an Application for the grant of summary judgement. 20 Marks

OR

Draft any four of the following prayers:

- i. For appointment of the Court Receiver.
- ii. An ex-parte injunction in a quia timet action.
- iii. Interpleader Suit.
- iv. Writ of Prohibition.
- v. Clause XII of the Letters Patent.