

EXAMINATION OF ARTICLED CLERKS

Paper I

PRACTICE AND PROCEDURE

Monday, 16th April, 2018

Time: 3 Hours (1:00 PM to 4:00 PM)

(Total Marks: 100)

- 1. Explain any three of the following : (15 marks)**
- a.** Section 41 of Specific Relief Act, 1963.
 - b.** when instruments may be rectified under Section 26 of the Specific Relief Act, 1963.
 - c.** Temporary and Perpetual Injunctions.
 - d.** Who may obtain specific performance.
- 2. Explain the following. (10 marks)**
- a)** Conditions for exercise of power under Article 134 (1)(c).
 - b)** Quo Warranto.
- 3. Please answer any three under the Bombay High Court (Original Side) Rules. (15 marks)**
- a)** Commercial Causes.
 - b)** Summons for Judgment.
 - c)** Third Party Notice and rights of the third party and of each successive third party to apply for third party notice against other persons.
 - d)** Service of Summons on guardian-ad-litem.
- 4. When should leave under Clause XII of the Letters Patent be applied for and at what stage? Please draft a Petition for obtaining leave under Clause XII of the Letters Patent. (10 marks)**

5. Write short notes on any three. **(8 marks)**
- a) Doctrine of *cy pres*
 - b) Meaning of Garnishee Order.
 - c) Three conditions before Restitution can be ordered.
 - d) Who may file Caveat and what is the time limit the caveat will remain in force and from which date?
6. Explain any two of the following under the Code of Civil Procedure. **(12 marks)**
- a) The object and rules of Interrogatories. Which Interrogatories may and may not be allowed.
 - b) Section 11 of the Code of Civil Procedure.
 - c) Meaning of Review Order. Who may apply for review and on what grounds.
7. Explain in brief about written statement under Order VIII of the Commercial Court, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. **(5 marks)**
8. Draft prayers for any three of the following: **(15 marks)**
- a) Petition for divorce by Mutual Consent under Section 28 of the Special Marriage Act, 1954.
 - b) Prayers in the Suit by a Co-parcener for partition of joint family property and for accounts.
 - c) Main prayers in a partition suit.
 - d) Prayers in a Notice of Motion for stay of execution of a Decree pending its appeal in the Higher Court.
 - e) Prayers in the suit by partner for dissolution and accounts of a partnership firm.

9. Answer the following as True or False. No explanation is required:

(10 marks)

- a) A contract which is in its nature determinable can be specifically enforceable.
- b) Under Section 41 of the Specific Relief Act, 1963, an injunction can be granted to restrain any person from applying to any legislative body.
- c) Rule 10 (1) of Order 1 deals with striking out, addition and substitution of parties.
- d) The period of limitation for the execution of a decree (other than a decree granting a mandatory injunction) is 15 years from the date of the decree.
- e) An appeal shall not lie from an order refusing to restore an appeal.
- f) Section 89 deals with Settlement of Dispute outside Court.
- g) Section 148 provides that where any period is fixed or granted by the Court for the doing of any Act, the Court has power to enlarge the period even if the original period fixed has expired.
- h) An application for restitution lies to the court which has passed the decree or made the order.
- i) Whether a person is or is not a party to the Suit should be decided not on the basis whether he is a party to the decree but whether he is a party to the suit in which the decree is passed.
- j) At the hearing of a Summons for Judgment in a Summary Suit, the Judge may, if he/she grants leave to the defendant to defend, transfer the suit to the list of Commercial Suit.