

EXAMINATION OF ARTICLED CLERKS

PAPER 1

PRACTICE & PROCEDURE

Monday, 30<sup>th</sup> October. 2017

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

Total Marks: 100

Notes:

1. Read the question carefully.
2. Kindly try and answer the question neatly. If one can't understand your writing it is your loss.
3. Marks will be awarded for quality and not quantity, so kindly keep your answers precise and that of a standard expected of someone advising a client.
4. Kindly do not repeat the question (You are just wasting precious time).
5. Figures to the right indicate full marks. The Total Marks of all 8 questions is 100.
6. You can answer questions in any order, but you must answer all sub questions in the order set out in the question.
7. If you go blank, trust in the hard work you have put in, start with the answer you know first and unlock your mind, the rest will follow.
8. Good Luck.

Question No.	Question	Marks
1.	<p><b>Discuss any Five of the following Nine:</b></p> <ol style="list-style-type: none"><li>i. Foreign Judgement and circumstances when it is not conclusive.</li><li>ii. Originating Summons.</li><li>iii. Circumstances pursuant which you would advise your Client to file a petition for Leave under Clause XII</li><li>iv. Notice under S.80 of the CPC.</li><li>v. Interest.</li><li>vi. Distinguish between Judgement, Order, and Decree.</li><li>vii. Distinguish between Misjoinder and Non joinder of a Party.</li><li>viii. Interpleader Suit.</li><li>ix. Service of Summons pursuant to Order 5 Rule 15 of the CPC.</li></ol>	(25)
2.	<p><b>Answer ALL of the following:</b></p> <ol style="list-style-type: none"><li>i. What are the essential averments which a summary suit must contain? <b>(4 Marks)</b></li></ol>	(10)

	<ul style="list-style-type: none"> <li>ii. When would you advise your Client to file a summary suit? <b>(4 Marks)</b></li> <li>iii. What is the time limit specified within which a defendant to a summary suit must enter appearance? <b>(1 Mark)</b></li> <li>iv. What is the minimum time period specified for a summons for judgement to be made returnable? <b>(1 Mark)</b></li> </ul>	
3.	<p>Answer <b>ALL</b> the following Questions:</p> <ul style="list-style-type: none"> <li>i. State briefly the various kinds of writs that the High Court is empowered to issue under Article 226 of the Constitution of India. <b>(4 Marks)</b></li> <li>ii. What are the limitations on the power conferred on the High Court under Article 226 of the Constitution of India to entertain writs where there is an alternative remedy available to the Petitioner? <b>(3 Marks)</b></li> <li>iii. What is a Rule Nisi? When do you have to serve it upon the Respondent? <b>(3 Marks)</b></li> </ul>	<b>(10)</b>
4.	<p>Answer <b>ALL</b> of the following:</p> <ul style="list-style-type: none"> <li>i. In what circumstances can a defendant apply to issue a Third Party Notice under the Bombay High Court Rules? <b>(3 Marks)</b></li> <li>ii. Can such an application be made <i>ex-parte</i>? <b>(Answer Yes or No.) (1 Mark)</b></li> <li>iii. Would you need to apply for Leave under Clause 12 with respect to a Third Party Notice? Give reasons for your answer. <b>(2 Marks)</b></li> <li>iv. What are the essential ingredients one must ensure that a Third Party Notice contains? <b>(3 Marks)</b></li> <li>v. In what manner must a Third Party Notice be served? <b>(1 Mark)</b></li> </ul>	<b>(10)</b>
5.	<p>Answer <b>5</b> of the following <b>6</b>, with a simple Yes or No. Furthermore provide a succinct reason why you think the answer is Yes or No:</p> <ul style="list-style-type: none"> <li>i. A obtained a decree for possession against X. Pending execution, A died. B was brought on record as a representative of A. C contended that during his lifetime</li> </ul>	<b>(10)</b>

	<p>A gifted his property to C and X put him in possession and the decree stood satisfied. Would the questions arising between B and C fall under S.47 of the CPC.</p> <p>ii. A files a petition in the Bombay High Court under Article 226 of the Constitution of India, for reinstatement in service and consequential benefits contending that an order for dismissal passed against him is illegal. The petition is dismissed. Can A thereafter file a fresh petition under Article 32 of the Constitution in the Supreme Court of India?</p> <p>iii. A sues B for possession of property contending that he is a tenant of C. C is joined as a pro forma defendant and no relief is claimed against him. The suit is dismissed as the court finds B to be the owner of the property. C then sues B for possession on the basis of title. B raises a contention that the issue of ownership of property was decided in the former suit. Would his contention succeed?</p> <p>iv. A, a partnership firm filed a suit against B to recover a sum of Rs. 20 Crores in the Bombay High Court. The suit was dismissed on the ground that it was not maintainable since the partnership was not registered as required under the provisions of the Indian Partnership Act, 1932. The firm was thereafter registered. It approaches you and requests you to advise it if it can once again file a suit in the Bombay High Court on the same cause of action.</p> <p>v. A lets a house out to B at a yearly rent of Rs. 40 lakhs. The rent for the whole of the years for 2005, 2006 and 2007 is due and unpaid. A sues B in the year 2008 for the rent due in 2006. Can A thereafter sue B for the rent due in 2005 and 2007?</p> <p>vi. A sues B for Rs. 2 Crores. Against this claim B claims a set-off for Rs. 2 Crores being part of the Rs. 10 Crores due to B by A. Can B subsequently file a suit against A for the balance R. 8 Crores?</p>	
6.	Explain in detail with examples as to which Contracts are not specifically enforceable.	(5)
7.	<b>Answer any FIVE of the following SEVEN.</b> You need to identify the appropriate legal proceeding that you would need to draft and file in the Bombay High Court, with respect to each of the	(15)

	<p>following and draft the main prayers with respect to each such legal proceeding identified:</p> <ol style="list-style-type: none"> <li>i. To appoint a receiver after a suit has been decreed;</li> <li>ii. Amend a summary suit;</li> <li>iii. Obtain a probate of a will;</li> <li>iv. Permit substituted service;</li> <li>v. Obtain an order for attachment before judgement;</li> <li>vi. Obtain an order for discovery.</li> <li>vii. Obtain a temporary injunction.</li> </ol>	
8.	<p><b>Answer ALL of the Following as TRUE or FALSE. Do NOT give Reasons.</b></p> <p>Eg. Q. (i) The present examination is to become a medical doctor. Answer (i) <i>FALSE</i></p> <ol style="list-style-type: none"> <li>(i) For the purposes of the Commercial Court, if there is any conflict between any provision or rule under the Bombay High Court Rules and the provisions of the Civil Procedure Code 1908 as amended by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act 2015, the Bombay High Court Rules will prevail.</li> <li>(ii) Where immovable property is sold in execution of a decree and such sale has become absolute, the property vests in the purchaser from the time the sale becomes absolute.</li> <li>(iii) No appeal shall lie from a decree passed by the Court with consent of the parties.</li> <li>(iv) A Court cannot order the arrest or detention (in the civil prison) of a woman in execution of a decree for the payment of money.</li> <li>(v) Interrogatories in a suit before the Commercial Court should be filed with a period of 10 days or such other period as may be specified by the Court.</li> <li>(vi) An application may be made to the Commercial Court for summary judgement at any time after summons has been served upon the defendant.</li> <li>(vii) The doctrine of resjudicata is a matter of procedure. The plea of resjudicata is thus one which may be waived.</li> <li>(viii) In proceedings before the Commercial Court, an</li> </ol>	(15)

application for summary judgement may be made by a defendant against the plaintiff.

- (ix) A defendant can take out an application under Order 39 Rule 1 (a) for interim reliefs in a suit filed by Plaintiff.
- (x) A plaintiff who knows that one of the defendants is a minor is required to present a petition for the appointment of guardian for such defendant for the suit.
- (xi) A Caveat filed under S.148-A expires within a period of 90 days from the date it was served, unless the application contemplated/apprehended has been made.
- (xii) An appellate Court cannot take additional evidence on record.
- (xiii) With respect to a Plaint, first amendments are to be made in Red, second amendments are to be made in green third amendments are to be made in blue and fourth amendments are to be made in yellow.
- (xiv) In case any Appeal filed on the Original Side of the Bombay High Court fails to come to a hearing on the merits, any cross objections filed under Order XLI Rule 22 will not be treated as a cross appeal even if the Respondent makes an application to the Court.
- (xv) An application for review may be made when there is a discovery of new and important evidence.