

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

**Monday, 17th April, 2019
Time: 3 Hours (1:00 PM to 4:00 PM)
(Total Marks: 100)**

Notes: **i. Read the questions carefully and answer to the point.
ii. Cite relevant provisions of law and case law in support of your answers.**

1. Answer whether True or False. Give 1 bullet point reason for **20 Marks** your answer.

i. A preliminary decree is one which determines the rights of the parties with regard to some or one of the matters in controversy in the suit, which may have the effect of final disposal of the suit.

ii. A contract made by a trustee in excess of his powers or in breach of trust can be specifically enforced.

iii. A review is said to take place when the High Court calls for the record of any case decided by a subordinate court and passes an appropriate order.

iv. An inter pleader suit is one where the real dispute is between the Defendants only.

v. Article 142 of the constitution enacts that the law declared by the supreme court shall be binding on all courts in India.

vi. An order under Section 47 of the Code may be reversed on account of an irregularity in a proceeding relating to such order.

vii. A civil revision application under Section 115 of the Code is maintainable against an order of the commercial court finding that it has jurisdiction to hear the dispute.

viii. An appeal shall lie against an order or decree passed in a suit instituted under section 6 of the Specific Relief act, 1963.

ix. If a right or a liability is created by a statute and no machinery is provided for enforcement therein, a civil court can entertain a suit brought in respect of such right or liability.

x. The object of discovery is to expedite disposal.

2. Can an Application for leave under Clause XII of the letters patent be made when the matter is listed before the Hon'ble Court for hearing on an interim application when the suit is still bearing the "Lodging" number and not entered in the Register of Suits? Discuss in detail. **10 Marks**

3. Draft the main prayers in any three of the following: **12 Marks**
 - i. Interpleader suit.
 - ii. Garnishee Proceedings.
 - iii. Application to intervene.
 - iv. Application for a Mareva Injunction.

4. Briefly discuss the procedure for execution of a decree. **8 Marks**

5. What are the guiding principles that a Court must follow while exercising its discretion to grant or refuse specific performance of a contract? **5 Marks**

6. Can the following be specifically enforced? Give reasons for your answer in not more than 2 bullet points. **6 Marks**
 - i. A contract for sale of property which is under attachment by a court's order.
 - ii. An agreement to enter into a contract.
 - iii. X contracts to compose music for R. R writes the music but refuses to assign the copyright to X.

7. Write short notes on any 3 of the following: **12 Marks**
- i. Writ of Mandamus.
 - ii. Judicial discipline in respect of orders passed by the Supreme Court.
 - iii. Power of the High Court under Article 226.
 - iv. Special leave to appeal.
8. Write short notes on any 3 of the following: **12 Marks**
- i. Commercial dispute.
 - ii. Process of mediation of commercial disputes.
 - iii. Summary Judgement.
 - iv. Jurisdiction of Commercial Courts.
9. Write Short notes on any 3 of the following: **9 Marks**
- i. Mesne profits.
 - ii. Issues in a Suit.
 - iii. Verification of pleadings.
 - iv. Inherent powers of the Court.
10. Which of the following are decrees? Give your answer in 2 bullet **6 Marks** points.
- i. The determination of a question in an Application for Restitution.
 - ii. An order rejecting a memorandum of appeal as barred by limitation.
 - iii. An order of dismissal of suit for default.
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