

EXAMINATION OF ARTICLED CLERKS

Paper I

PRACTICE AND PROCEDURE

Monday, 17th April, 2017

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

(Total Marks: 100)

Notes: 1. Read the questions carefully and answer neatly, briefly and to the point.

2. 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**.

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

(10 marks)

- a) A caveat filed under Section 148-A of the Code of Civil Procedure, 1908 can remain in force only upto 60 days from the date on which it is lodged.
- b) Under Section 41 of the Specific Relief Act, 1963, an injunction cannot be granted to prevent a continuing breach in which the plaintiff has acquiesced.
- c) An adjudication will operate as *res judicata* between co-defendants if the co-defendants were necessary or proper parties in former suit.
- d) Under Section 60 of the Code of Civil Procedure, 1908, books of account are liable to be attached and sale in execution of decree.
- e) A suit can be instituted to set aside a compromise decree on the ground that such compromise is not lawful.
- f) Under Order XXXVII of the Code of Civil Procedure, 1908, while presenting a plaint the plaintiff is required to make a specific averment to the effect that the suit is filed under this Order.
- g) A Ruler of a foreign State may sue in the name of his State.

- h) Under Order XI of the Code of Civil Procedure, 1908, Interrogatories must be as to questions of fact and not as to conclusions of law.
- i) Under Order XXXVIII of the Code of Civil Procedure, 1908, an Order of attachment will be withdrawn if the defendant furnishes security or the suit is dismissed.
- j) An application for review may be made when there is a discovery of new and important matter or evidence.

2. Write short notes on any three. (15 marks)

- a) Powers of Supreme Court to transfer suit.
- b) Section 60 of the Code of Civil Procedure, 1908.
- c) Garnishee Notice
- d) Order XXXV under the Code of Civil Procedure, 1908.

3. Please answer any three. (15 marks)

- a) Which are the contracts which can be specifically enforced.
- b) Which are the contracts which cannot be specifically enforced.
- c) Temporary and Perpetual injunctions.
- d) Section 41 of the Specific Relief Act, 1963.

4. Write short notes on any five. (10 marks)

- a) Mense Profits.
- b) Under Order XXXIX, against whom temporary injunction may be granted.
- c) Suit by minor.
- d) Death of Defendant.
- e) Compensatory cost.
- f) Define Restitution and who may apply.

5. Please answer any two. **(10 marks)**

- a) Grounds on which Mandamus may be refused.
- b) Rule Nisi.
- c) Ground for refusing relief under Article 226 of the Constitution.

6. Please answer all three. **(12 marks)**

- a) What is Third party notice and when is third party required to file affidavit in reply ?
- b) Who may apply for the issue of Originating Summons and in respect of what matter ?
- c) What are commercial causes ?

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. **(3 marks).**

8. Draft any three of the following prayers: **(15 marks)**

- a) For appointment of the Court Receiver.
- b) Main prayers in a partition suit.
- c) Main prayers in a declaratory suit.
- d) Main prayers in the suit by partner for dissolution and accounts of a partnership firm.

9. Explain Clause XII of Letters Patent and draft a petition under Clause XII of the Letters Patent. **(10 marks).**
