

EXAMINATION OF ARTICLED CLERKS

PAPER I

PRACTICE AND PROCEDURE

MONDAY, 19TH APRIL 2010

TIME : 3 HOURS [1-00 P.M. TO 4-00 P.M.]

(Total Marks—100)

General Instructions :—

1. Answer shall be evaluated for analytical approach, reasoning and clarity of thought and not only for its accuracy.
2. If any question seeks your advice or opinion, please correctly state the reasons for your advice/opinion although the reason may not be specifically sought.
3. Substantiate your answer, wherever possible, with reference to relevant provisions of law.
4. Keep your answers to the point. The length is immaterial.
5. Figures to the right indicate full marks.

- | | Marks |
|--|--------------|
| 1. Draft any <i>two</i> :— | 10 |
| (a) Main prayers for suit for specific performance of a contract for sale of an immovable property. | |
| (b) Main prayers in the suit by partner for dissolution and accounts of a partnership firm. | |
| (c) Prayers in a Notice of Motion for appointment of Court Receiver and injunction in an Administration Suit. | |
| 2. In what circumstances leave of the Court is required to be taken under :— | 9 |
| (a) Clause XII of Letters Patent Act | |
| (b) Order II Rule 2 | |
| (c) Order I Rule 8. | |
| 3. (a) What procedure would you adopt to get the error rectified which is apparent on the face of the record in an Order passed by the Court as taken down by the stenographer ? | 2 |
| (b) When does the Court issue a Letter of Request in substitution for a summons ? | 3 |
| (c) How and upon whom a Writ of Summons will be served if the Defendant is :— | 6 |
| (i) A Corporation ; | |
| (ii) A Co-operative Society ; | |
| (iii) Absent from the residence. | |
| (d) In what cases :— | 6 |
| (i) 2/3rd of the institution fees are refunded ; | |
| (ii) 1/2 of the institution fees are refunded ; | |
| (iii) 3/4th of the institution fees are refunded. | |

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- (e) What are the commercial causes ? In regard to what matters Judge may pass orders for speedy determination of suit and avoidance of multiple procedure ? 6
4. (a) What powers does the High Court exercise under Article 226 of the Constitution of India ? 9
- (b) What powers does the High Court exercise under Article 227 of the Constitution of India ?
- (c) Name 5 writs which can be issued by the High Court and discuss one such writ.
5. (a) A was in possession of a flat owned by B as a Tenant. B dispossess A without following due procedure of law. Advise A. 9
- (b) A is the owner of an immovable property. A agrees to sale the same to B. Before completion of sale, the said property of A is acquired by the Government. Please advise B about his rights ?
- (c) A is the owner of the property and agrees to sale the same to B. Subsequently A refuses to complete the sale. B files a suit for specific performance. A raises a defense that his title to the said property is defective. Advise B.
6. Answer any ten :— 40
- (i) An Ex-parte decree is passed under Order 37 Rule 3 passed for non compliance of conditional order granting leave to defend the suit on deposit of amount. No Appeal/Revision was preferred by the Defendant against the said conditional order. In Appeal against the Ex-parte Decree will the Defendant be entitled to challenge the correctness of the said conditional order.
- (ii) In a Review Petition and before deciding its maintainability, can the Court grant interim relief pending such petition which may virtually amount to grant of relief prayed for in Review.
- (iii) Whether a witness who has filed affidavit evidence and is examined, will be recalled for giving further evidence regarding facts not mentioned in his affidavit evidence.
- (iv) There is a clear pronouncement by Supreme Court or by the concerned High Court on a question of law. This has been ignored or misinterpreted or misapplied by the Lower Courts. Can it be said, in the said Second Appeal under Section 100 of C.P.C. that it involves a "Substantial question of law" ?
- (v) In Civil suit under Order 37 Rule 1 for recovery of amount due under a dishonoured cheque, will the Court take into account the amount received by the Plaintiff as compensation awarded to him u/s. 357 of Criminal Procedure Code in Criminal trial for offence under Section 138 of Negotiable Instruments Act.
- (vi) An immovable property is attached and sold by public auction which awaits confirmation by the Court. Will a Claimant be entitled to raise an objection under Order 21 Rule 58 of C.P.C. to such attachment of his property notwithstanding the auction sale having taken place, and only confirmation to such sale remain to be granted by the Court.

- (vii) The trial of a suit has begun, issues have been framed and the Plaintiff has filed his affidavit evidence. At this stage, Defendant wants to amend his written statement. Will he be permitted to do so. If so, on what grounds?
- (viii) Under Section 9 of C.P.C. the Courts have power to entertain all suits of Civil nature unless its cognizance is either expressly or impliedly barred. Please give illustrations of cases/instances in which such jurisdiction of a Civil Court will stand barred. Also give instances of cases in which the same will not be barred.
- (ix) State the procedure required to be followed by a Court when a contention is taken by the Defendant that the said Court has no jurisdiction and/or that the claim in suit was barred by limitation.
- (x) Set out the principles of Res-Judicata u/s. 11 of C.P.C. and the suits to which they are applicable and when the said principles are inapplicable.
- (xi) Set out the manner in which a Court would exercise its power to award interest u/s. 34 of C.P.C. and at what rate for the period prior to the filing of the suit, after the date of the suit till the date of the decree and from the date of decree till realization.
- (xii) A party to an Appeal desires to adduce additional evidence touching the question of jurisdiction of the Court passing the decree. Will he be permitted to do so at the appeal stage?
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EXAMINATION OF ARTICLED CLERKS**PAPER II****CORPORATE LAWS**WEDNESDAY, 21ST APRIL 2010

TIME : 3 HOURS [1-00 P.M. TO 4-00 P.M.]

(Total Marks—100)

Note.—(1) Please read the paper carefully before attempting to answer.

(2) The answers should be well reasoned but precise.

(3) Cite case law if it covers the situation.

Marks

1. Please write short notes on any *four* of the following :— 20
- (a) Appointment and Removal of a Managing Director ;
- (b) Private, Public and Government Companies ;
- (c) Memorandum and Articles of Association ;
- (d) Annual General Meeting and Extra-Ordinary General Meeting ;
- (e) Sweat Equity ;
- (f) Transfer and Transmission of Shares ;
- (g) Lifting of the corporate veil ;
- (h) An Alternate Director and An Additional Director.
2. (a) Who is entitled to file a winding up petition in Court ? 15
- (b) Please set out the grounds on which a Company may be wound up ?
- (c) Please set out the grounds on which a winding up petition filed on the ground of its inability to pay the debt can be opposed by the Company.
- (d) A Company has its administrative office at Mumbai. The factory of the Company is situated at Bhopal. The Registered Office of the Company is at Surat. In which Court is a creditor of the Company is required to file a petition for winding up of the Company.
- (e) Explain the different modes of winding up of a Company. Will a person who ceased to be a shareholder six months prior to the commencement of winding-up be liable to contribute to the assets of the Company for payment of its debts and liabilities and for costs, charges and expenses of winding-up ?
3. Answer any *two* of the following :— 10
- (a) When are the Directors of a Company personally liable for the affairs of the Company ?
- (b) Would an Agreement by a Director with a third party to vote in accordance with the instructions of such third party be a breach of his fiduciary obligations? Please explain the reasons for your answer.

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- (c) Enumerate and explain the powers of the Board of Directors :—
- (i) Which cannot be exercised by a circular resolution ?
 - (ii) Which cannot be exercised without consent of the Company in a general meeting ?
- (d) Remuneration to Non-Whole time Directors.
- (e) Changing the Maximum number of Directors of a Company.
4. Discuss any *two* of the following :— 10
- (a) Issuance of Shares at a Discount or at a Premium;
 - (b) Effective date of Amalgamation and Court's Duties in sanctioning a Scheme of Amalgamation;
 - (c) Red herring Prospectus and Statement in lieu of Prospectus.
5. Please give your opinion on the case mentioned below :— 5
- The Company allots one of its residential premises to its employee. The legal representatives of the deceased employee wrongfully withheld the premises. Proceedings are initiated by the Company against the legal representatives to recover possession of the premises. Whether the proceedings filed by the Company can be stayed on the ground that the Legal representatives have filed a suit in respect of the said premises against the Company which is pending hearing and final disposal.
6. SECURITIES CONTRACTS (REGULATION) ACT 1956. 10
- (a) What remedy is available to an investor in respect of an order passed by a recognized stock exchange for delisting of securities in a recognized stock exchange?
 - (b) A, an individual applies for allotment of shares in a Company whose shares are to be listed on a recognized stock exchange and makes payment of the share application money. For some justifiable reason, the listing has been refused by that stock exchange. Please advise A about his rights in respect of the share application money paid by him to the company, under the provisions of the SCRA 1956.
 - (c) What remedy is available to a Company against an order of refusal by a Stock Exchange to list its securities?.
 - (d) Discuss the Applicability of the provisions of the Civil Procedure Code, 1908 and Limitation Act, 1963 to proceedings before the SAT.
 - (e) What are Spot Delivery Contracts ?
7. SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKE OVER) REGULATIONS, 1997. 10
- Mr. and Mrs. Das, the promoters of a Company limited by shares incorporated under the Companies Act, 1956 and listed with more than one stock exchange in the country, propose to enhance their shareholding by acquiring further equity shares in the Company to the extent of 55% of the paid up capital of the Company through preferential allotment. This increase in shareholding exceeds the permitted thresholds for increase in shareholding contained in the

Sebi (Substantial Acquisition of Shares and Takeover Regulations) 1997. The Company had also availed of term loans and credit facilities from various financial institutions and is unable to repay these loans. The Company has also sought to reduce its capital by 30%. Subsequently, the Company receives an offer for settlement from the financial Institutions provided that Mr. and Mrs. Das bring in substantial funds towards repayment of the previous outstanding loan amounts by subscribing to further shares in the company. As Mr and Mrs. Das have utilized their funds for subscribing to further shares in the company in order to enable a settlement between the company and the financial institutions, they do not have funds to duly complete the public offer that they will be required to make on account of their increasing their shareholding beyond the permitted thresholds under the Sebi (Substantial Acquisition of Shares and Takeover Regulations) 1997. You are required to advise Mr. and Mrs. Das as to the possible options available to them under the Sebi (Substantial Acquisition of Shares and Takeover Regulations) 1997.

8. SEBI (Buy Back of Securities) REGULATIONS, 1997.

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- (a) A Company is seeking to buy-back its shares. Is it mandatory for the Company to pass a Special Resolution?
- (b) After the Security holders have accepted the offer and if the SEBI comes to the conclusion that the Company has not fulfilled its obligations under the Regulations. Can the SEBI forfeit the amounts deposited by the Company in Escrow? If yes, then what happens to the amount so forfeited ?
- (c) Can a Company, through the stock-exchange, buy-back its shares from persons in control of the Company or from its promoters?
- (d) What duty is cast on a Company when an additional five per cent of the buy-back has been completed?
- (e) In a buy-back through book building, who determines the buy-back price ?

Private Limited Company and Unlisted Public Limited Company (Buy-Back of Securities) Rules, 1999

- (f) Is it permissible for a Pvt. Ltd. Company to reject an offer of a shareholder? If yes, within what time should the rejection be made ?

9. Depositories Act, 1996

SEBI passes an order against a Depository to furnish information in respect of certain securities held in the Depository. The Depository being aggrieved by such order wishes to challenge the aforesaid order in a Civil Court. Kindly advise the Depository on its remedies under the Depositories Act, 1996 and the consequences of not complying with the aforesaid order of SEBI, under the Depositories Act, 1996 ?

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EXAMINATION OF ARTICLED CLERKS

PAPER III

CONVEYANCING

FRIDAY, 23RD APRIL 2010

TIME : 3 HOURS [1-00 P.M. TO 4-00 P.M.]

(Total Marks—100)

- Notes.*—(a) Answer should be legible and precise.
 (b) Please read the entire question carefully to reply. Don't reproduce the question.
 (c) Quote statute and sections in support of your answer.
 (d) If you rely on a case law/authority, cite it fully – not just the counterparties or year.

- | | Marks |
|---|-------|
| 1. Write Short Notes on the following (any five) :— | 20 |
| (a) Actionable claims | |
| (b) Attornment of tenancy | |
| (c) “Attestation” of documents | |
| (d) Determination of Lease | |
| (e) Equitable Mortgage | |
| (f) Marketable title | |
| (g) “Declaration” under Maharashtra Apartment Ownership Act, 1970 | |
| (h) “Adjudication” under Bombay Stamp Act, 1958. | |
| 2. Draft the following (any five) :— | 20 |
| (a) Lessee's covenants in a Lease Deed | |
| (d) Testimonium clause in a Will | |
| (c) Covenant in an English Mortgage under which Mortgagee is entitled to sell mortgaged property without intervention of Court. | |
| (d) Forfeiture Clause in a Lease Deed | |
| (e) Arbitration Clause in a Development Agreement | |
| (f) Surrender of Tenancy Rights. | |
| 3. Please attempt the following (any five) :— | 25 |
| (a) “Once a mortgage, always a mortgage”. | |
| (b) Steps that a Solicitor should take between parties executing an Agreement to Sell, and the Deed of Conveyance. | |
| (c) Five characteristics of a “Gift”. Can an individual give a gift of immovable property to a company? | |
| (d) Fraudulent Transfer. | |
| (e) Concept of “market value” under Bombay Stamp Act, 1958. | |
| (f) Promoter's liabilities under Maharashtra Ownership Flats Act, 1963 | |
| (g) “Open Contract”. | |

[Turn over

4. Mr. Bernum sold his property at Colaba to Mr. Marcus Chown. The Deed of Conveyance was stamped and registered. After some time, Mr. Chown noticed some errors in the Deed :— 11
- (a) Survey No. 727, Colaba Division was described as Survey No. 277, Colaba Division;
 - (b) Mr. Chown was named as Mr. Marcellus Chowning;
 - (c) The operative clause read “..... And in consideration of the balance sum of Rs. 2 crores payable by Mr. Marcellus Chowning to Mr. Bernum” though the entire consideration was paid under the Deed ;
 - (d) The Plan attached to the Deed wrongly delineated the boundaries of the property, correctly described in the Schedule.
- In this regard,
1. Draft the document to deal with Mr. Chown’s problem;
 2. Would you advise registration ?
 3. If you had drafted the Deed, would you agree to Mr. Chown’s allegation that you were negligent ?
5. Distinguish between the following (any *three*) :— 9
- (a) Sale and Assignment
 - (b) Lease and License
 - (c) Probate and Letters of Administration
 - (d) Part performance and Specific performance.
6. Mr. Derrida died at Mumbai, leaving his last Will. Explain the following clauses to his Executor in the context of Indian Succession Act, 1925 (any *four*) :— 10
- (a) (For this question, assume that Mr. Derrida was a Parsi)
Mr. Derrida bequeathed his properties to religious uses by his Will dated 30 December 2009 and died on 31st March 2010. He is survived by his one nephew and one niece. Who will receive the legacy ?
 - (b) Mr. Derrida bequeathed to Dr. Salk, “ all my moneys invested in 6% Debentures of Goldman Sachs Limited ”. The 6% Debentures were converted to 7½% Debentures in Mr. Derrida’s lifetime. Is the legacy to Dr. Salk adeemed ?
 - (c) Mr. Derrida bequeathed to Mr. Fuld, “ 5000 shares of Rs. 10 each of Lehmann Brothers Limited ”. At the time of Mr. Derrida’s death, the shares were partly paid up and the company had made a call of Rs. 5 per share, which remained unpaid. After Mr. Derrida’s death, the company has made the final call for further Rs. 2.5 per share.
Between Mr. Fuld and Mr. Derrida’s estate, who will pay what?
 - (d) Mr. Derrida owed Rs. 1 crore to Mr. Tata. In his Will, Mr. Derrida bequeathed to Mr. Tata, Rs. 2 crore. Mr. Tata now claims from the Executor, Rs. 3 crores. The Executor argues that Mr. Tata is more than paid up. Advise.
 - (e) Mr. Derrida bequeathed Rs. 1 crore to Mr. Murthy. At the time of making his Will, Mr. Derrida was a minor, but had attained majority before his death. Will the bequest to Mr. Murthy prevail ?

7. Mr. Aczel executed a Deed of Conveyance for sale of land at Khar in favour of Mr. Avicenna on 31st January 2010. Parties agreed to execute the Deed as stipulated. Due to personal circumstances, Mr. Aczel is required to travel overseas and will be unable to admit execution and complete registration. He has come to you, anxious to complete the formalities. Advise the best steps. 5
- (a) Within what time should parties complete registration ?
- (b) What document should Mr. Aczel execute to complete registration while he is away ?
- (c) What will be the consequences for Mr. Avicenna if the Deed remains unregistered ?
-