

**EXAMINATION OF ARTICLED CLERKS**

**PAPER I**

**PRACTICE AND PROCEDURE**

**MONDAY, 27<sup>th</sup> OCTOBER, 2014**

**TIME : 3 HOURS (1.00 P.M TO 4.00 P.M.)**

**(TOTAL MARKS – 100)**

1. Discuss the provisions of Third Party Procedure under Chapter VIII of the Bombay High Court Rules (Original Side). [10]
2. While Public Interest Litigation is an effective remedy, care should be taken that the same is not abused. Discuss. [10]
3. What powers does the High Court exercise under Article 227 of the Constitution of India? [7]
4. What are the limitations on the powers conferred on the High Court under Article 226 of the Constitution of India to entertain proceedings where: [3]
  - a) There is an alternate remedy available?
  - b) The Writ Petition involves disputed facts which require evidence to establish its veracity?
  - c) The essence of the relief sought by the Petitioner is a money claim?
5. Explain in detail, with examples, which contracts are not specifically enforceable. [6]
6. Discuss the elements of and distinguish between: [9]
  - a) Decree
  - b) Judgment
  - c) Order
7. Discuss the following:
  - a) Under what circumstances will a Court pass an ex-parte Decree? What steps are to be taken for setting aside an ex-parte Decree? [5]
  - b) What are the principles permitting a Court to strike out a pleading? [5]
  - c) Does Order VII Rule 7 of the Code of Civil Procedure, 1908 permit the Plaintiff to seek alternate pleas? Would the Plaintiff be permitted to seek alternate pleas, which are contrary and mutually destructive? If the plaint contains contradictory and mutually destructive pleas, set out in the alternative, what remedy is open to the Defendant? [5]

8. Write short notes on any **four** of the following: [20]

- a) Attachment before Judgment
- b) Garnishee Notice
- c) Substituted Service
- d) Further and better particulars
- e) Precept
- f) Powers of court to issue Commissions
- g) Order II Rule 2 of the Code of Civil Procedure

9. Are the following statements True or False? Justify briefly with reasons: [8]

- a) For claiming damages in respect of a defamatory article published against your client, a Summary Suit would lie for expeditious hearing.
- b) Under Order 39 Rule 1 (a) of the Code of Civil Procedure, 1908, even the Defendant can take out an Application for Interim Reliefs in a suit filed by the Plaintiff.
- c) Any person intending to oppose the grant of probate shall file a Caveat within 90 days from service of citation upon him.
- d) Order II Rule 2 of the Code of Civil Procedure, 1908 shall apply to plaints filed in support of an Originating Summons.
- e) Notice under Section 80 of the Code of Civil Procedure, 1908 is required to be given before instituting a suit in respect of a property which is in possession of the Court Receiver.
- f) No appeal shall lie from a decree passed by the Court with the consent of the parties.
- g) No compromise can be entered in a representative suit without leave of the Court.
- h) Notice of any application to the Attorney General shall be issued by the office of Prothonotary and Senior Master.

10. Draft the following: [12]

- a) Prayer for appointment of a Receiver
  - b) Prayer seeking temporary injunction
  - c) Prayers in the plaint of an Interpleader Suit.
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