

**EXAMINATION OF ARTICLED CLERKS**

**PAPER VI**

**GENERAL ACTS**

**Friday, 22<sup>nd</sup> November, 2024**

**Time : 3 Hours [1.00 PM to 4.00 PM]**

**Total Marks: 100**

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**General Instructions :**

- (1) Please answer all questions to the point**
- (2) Cite provisions of law and relevant case law where applicable**

**The Indian Trusts Act, 1882**

1. a) Explain the creation of trusts. **4 Marks**
- b) Once a trust is created, can a trustee continue to act as a trustee if there are no beneficiaries available? **4 Marks**
- c) Explain the role of trustees in case of pending legal proceedings initiated for the benefit of beneficiaries once there are no beneficiaries available. **4 Marks**

**Maharashtra Co-operative Societies Act, 1960 and  
Maharashtra Apartment Ownership Act, 1970**

2. Your client is a private limited company and is the owner of 4 commercial units in a building of which construction was completed in 2012. The builder/developer has sold 8 units out of the total constructed 14 units in the buildings. 6 units are retained by the builder/developer. All units in the building are let-out by the respective owners including the units owned by your client. The builder/developer is not maintaining the common amenities and facilities. The unit ownership document/deed provides for creation of a Society or a Condominium once the building is complete. The builder/developer has not created or registered either a Society or Condominium for 12 years. The builder/developer is not

paying/maintaining his share of the common areas/amenities/facilities. As per the new Development Rules in the city, further FSI is now available, and the builder/developer may develop/construct further.

What would you advise your client, whether to form a Society or a Condominium? Please elaborate with reasons.

**10 Marks**

Can a private limited company be a member of a Society or a Condominium? Explain “persons” entitled to become a member of a Co-operative Society.

**4 Marks**

### **The Arbitration and Conciliation Act, 1996**

3. Can a Holding Company, who is a non-signatory party to an arbitration agreement which forms part of a contract entered into by its subsidiary invoke the arbitration agreement? Explain with particular reference to the Group of Companies doctrine.

**12 Marks**

4. Can a conveyance contain an arbitration agreement? Explain in detail matters that are non-arbitrable/which cannot be referred to arbitration.

**8 Marks**

### **Maharashtra Public Trusts Act, 1950**

5. An educational institution registered as a Public Charitable Trust, wants to purchase immovable property for setting up a larger campus for its students. Does it require to take permission from the Charity Commissioner for acquisition of immovable property?

**10 Marks**

After entering a Memorandum of Understanding (MoU) for purchase of immovable property and paying a deposit of Rs. 10 crores, the Public Charitable Trust is advised not to proceed further in the transaction due to defects in title of the seller. The MoU has a clause which allows the Public Charitable Trust to assign its rights to another purchaser. Another purchaser is willing to step into the shoes of the Public Charitable Trust and complete the transaction by purchasing the property. For assignment of its rights under the MoU and to take over the deposit provided by the Public Charitable Trust to the seller, the new purchaser is paying the Public Charitable Trust Rs. 12 crores. Is the Charity Commissioner’s permission required for such assignment of rights under the MoU? Explain with particular reference to alienation of immovable property by a public trust.

### **Prevention of Money Laundering Act, 2002**

6. Your client is the seller of immovable property. The purchaser is not represented by an advocate in the transaction. Your client has informed you that there is a First Information Report (FIR) registered against the purchaser for cheating and breach of trust and that the purchaser believes he is innocent and is in the process of seeking a quashing of the FIR. Please explain the safeguards you would take on behalf of your client in the said transaction, specially while dealing with the consideration money to be received on sale of the property. If the purchaser requests you to keep the money/sale consideration with you in escrow till completion of the transaction, would you agree?
- 10 Marks**

### **Rules of Etiquette and Professional Conduct**

7. Pearson & Specter partnership firm has 6 partners. Mr. Harvey as a partner successfully represented the client of the Firm, Insolvent Limited, in a bankruptcy proceeding before the National Company Law Tribunal (NCLT). Mr. Harvey has confidential information regarding Insolvent Limited's financial position during the course of the proceedings. Mr. Ross, another partner in the Firm is representing his client Solvent Limited for sale of an immovable property at a price much higher than the market price. Insolvent Limited is shortlisted for purchase of the property. Insolvent Limited approaches you to act on their behalf. They do not want Pearson & Specter to act for Solvent Limited since the Firm represented them in the NCLT proceedings and Mr. Harvey has confidential information regarding their financial position which would be critical during the course of transaction negotiation. Is Insolvent Limited correct in raising such an objection? Can Pearson & Specter, acting through another partner, continue to act despite Insolvent Limited's objection? Explain with particular reference to the Rules of Advocates Duties towards Clients, Attorney-Client Privilege, Waiver of Conflict and Professional Misconduct.
- 12 Marks**

### **Maharashtra Rent Control Act, 1999**

8. The landlord is a lessee of the State Government. All units in the building are let out on tenancy to several tenants. The State Government has increased the lease rent as a percentage to the market value of the property thereby increasing the annual lease rent payable by the landlord as lessee to the Government by 1000 times per annum
- 6 Marks**

for a period of 30 years. Landlord seeks your advice whether he is entitled to recover the increased lease rent charged by the State Government from his tenants? If yes, to what extent? If no, what should the landlord do?

9. A and B are joint tenants of a commercial premise. A bequeaths by Will his tenancy to C. A predeceases B. Can C apply to substitute his name in place of A as a joint tenant with B? Is the landlord bound to accept C as a tenant?

**6 Marks**

### **The Limitation Act, 1963**

10. A property tax demand was raised on your client for Rs. 50 crores. Under the statute under which the demand is raised there is a provision for filing an appeal before the Small Causes Court but requires a deposit of 100 percent of the property tax demanded. You advised your client to file a Writ Petition before the High Court with the bonafide belief that there is a violation of principles of natural justice. However, the High Court dismissed the Writ Petition on the basis that alternative remedy of appeal is available under the statute. On the date of dismissal of the petition the period for filing the statutory appeal stood expired. Can your client file the statutory appeal? Can the delay be condoned by the court? Explain exclusion of time in legal proceedings.

**10 Marks**