

DRAFTING, APPEARANCES AND PLEADINGS

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Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 8

Total number of printed pages : 4

NOTE : Answer SIX questions including Question No.1 which is compulsory.

1. (a) "Drafting of petitions, deeds and documents is an art. Even acquiring working knowledge in this demands application of skills of higher order." Discuss pin-pointing the skills and tasks involved in such an exercise.
(10 marks)
 - (b) In the present litigational corporate scenario, what are the role expectations from a Company Secretary with regard to drafting and conveyancing ?
(5 marks)
 - (c) What is meant by 'recitals' as a component in a deed ? What is its evidentiary value ?
(5 mark)
2. (a) Explain the following :
 - (i) Consent order
 - (ii) Testimonium
 - (iii) Counter affidavit
 - (iv) Deed escrow
 - (v) Author of the trust.

(2 marks each)
 - (b) Konzept Ltd. was under liquidation. The official liquidator sold 4.68 acres of its land to Affluent Ltd. by auction. Possession of the land was handed over to Affluent Ltd., but without any conveyance deed in their favour. Affluent Ltd. served legal notice on the official liquidator demanding conveyance deed, but in vain. After the expiry of the period prescribed under section 80 of the Code of Civil Procedure, 1908, Affluent Ltd. instituted a civil suit seeking a decree of specific performance. After due hearings, the civil court decreed the suit and directed defendant official liquidator to convey 4.68 acres of land to plaintiff Affluent Ltd. after considering any objections in response to a notice to be published in newspapers.
The official liquidator complied with the decree and published notices in newspapers. No objections were received. Still the official liquidator did not execute conveyance deed, on the pretext that along with Konzept Ltd., Kite Co. was also under liquidation

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and had common boundary wall with Affluent Ltd. Kite Co.'s land had already been sold. Therefore, the official liquidator was willing to execute conveyance for 3.16 acres of land only and not 4.68 acres of land as claimed by Affluent Ltd., the judgment creditor. This plea was not pressed in written statement or hearings in the court of civil judge.

Decide the official liquidator's liability to execute conveyance deed for the entire area. Cite case law, if any.

(6 marks)

3. (a) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

(i) A will is _____.

(ii) Hypothecation is _____ form of pledge.

(iii) A power of attorney can be executed only in favour of a _____.

(iv) Registration and stamp duty is compulsory in case of mortgage value of Rs. _____ and above.

(v) Outsourcing is the contracting out of a company's non-core, non-revenue producing activities to _____.

(vi) Mortgage by deposit of title deeds is called _____ mortgage in English law.

(1 mark each)

(b) State, with reasons in brief, whether the following statements are true or false :

(i) A proxy lodged with a company under section 176 is a power of attorney.

(ii) All deeds are documents and *vice-versa*.

(iii) *Habeas corpus* is a remedy available to a person who is detained with legal justification.

(iv) An assignment is a form of transfer of property.

(v) Non-putting of seal on an agreement may not invalidate the agreement, if it has otherwise been properly executed.

(2 marks each)

4. (a) Yuvi Ltd., in a litigation, was levied a penalty by the Company Law Board on 1st February, 2009. It submitted an appeal to the High Court impugning the penalty order but after the stipulated period. Can the High Court condone the delay and allow the appeal ? Cite case law, if any.

(6 marks)

(b) Desire Ltd. proposed to increase its share capital. A notice calling for general meeting for considering and approving increase in share capital was issued to the shareholders. Questioning the validity of the notice, a shareholder objected that the amount of proposed increase was not specified in the notice. Is this objection legally valid ? Justify your answer.

(5 marks)

- (c) Three partners, Aman, Bhuvan and Chaman, decided to dissolve their firm named ABC & Co., by mutual consent. However, Aman agreed to continue the business in his own name, as a sole proprietor, and all the other partners agreed to this. Draft a notice of dissolution of ABC & Co. for insertion in a national newspaper.

(5 marks)

5. Write notes on **any four** of the following :

- (i) *Habendum*
- (ii) Replication
- (iii) Necessary clauses in a sub-lease deed
- (iv) *Del credere* agency
- (v) Arbitration award.

(4 marks each)

6. (a) Define the term 'deed'. Explain any seven usual clauses in a deed.

(8 marks)

- (b) Whether an unburnt fresh hard disk in a computer is a 'document' within the meaning of section 3 read with section 65B of the Indian Evidence Act, 1872 ? Discuss with reference to case law.

(4 marks)

- (c) What is the difference between 'mortgage' and 'lease' from the point of view of drafting of an agreement ?

(4 marks)

7. (a) "Practising of good professional etiquettes is necessary for professional success in the emerging business scenario." Discuss.

(6 marks)

- (b) Write a note on 'covenants and undertakings'.

(5 marks)

- (c) What is meant by 'pleadings' ? Explain the fundamental rules of pleadings.

(5 marks)

8. (a) Draft a specimen deed of sale of a business and assignment of goodwill.

(8 marks)

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(b) Make the most appropriate pairs from the following :

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|------------------------|-------------------|
| (i) Company | (a) Prohibition |
| (ii) Firm | (b) Application |
| (iii) Trust | (c) Relief sought |
| (iv) Deed | (d) Defense |
| (v) Appeal | (e) Promoter |
| (vi) Written statement | (f) Beneficiary |
| (vii) Petition | (g) Document |
| (viii) Writ | (h) Partner |

(4 marks)

(c) Select the odd term out and briefly justify your answer :

- (i) Mandamus; certiorari; prohibition; cyrographum.
- (ii) Petitioner; plaintiff; rejoinder; defendant.
- (iii) Dilatory pleas; memorandum of appeal; grounds of appeal; relief sought for.
- (iv) Call on shares; liability of members; common seal; transfer of shares.

(1 mark each)

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