

परीक्षा दि. ०१-१२-२०१३

FUNDAMENTAL LAWS AND PROCEDURAL LAWS

Time : 3 Hours

Max. Marks : 100

Note :

- (1) Figure mentioned in the bracket on the extreme right indicates the marks carried for that question or sub-question.
- (2) For objective type question in Part - I candidate has to indicate his choice on the answer book by pointing out the relevant clause against each question (e.g. Q1 : Ans : (a) or (b) likewise)
- (3) Number of optional sub-questions upto the prescribed number in the order in which they have been solved will ONLY be assessed. Excess answers will NOT be assessed.
- (4) Candidates are expected to answer all the sub-questions of a question together. If sub-question of a question is attempted elsewhere (after leaving a few pages or after attempting another question) the later sub-question shall be overlooked.
- (5) Candidate should not write roll number, any name (including one's own), signature, address or any indication of one's identity anywhere inside the answer book otherwise he/she will be penalised.
- (6) Candidates should answer the question in Marathi language wherever noted.

PART - I

OBJECTIVE QUESTIONS [30 Marks] [2 Marks each]

1. What may be transferred ?
 - (a) An Easement apart from dominant heritage
 - (b) Property of any kind except as otherwise provided by Transfer of Property Act, 1882
 - (c) A right to future maintenance
 - (d) A mere right to sue
2. 'Instrument' as defined under Section 3 of Transfer of Property Act, 1882 is
 - (a) Testamentary instrument
 - (b) Non-testamentary instrument
 - (c) Any document
 - (d) None of these

P.T.O.

3. Which of the following is not a decree ?
- (a) Rejection of plaint
 - (b) Determination of any question within Section 144
 - (c) Award of Lok-Adalat
 - (d) Any adjudication from which an appeal lies as an appeal from an order
4. Compensatory cost is awarded
- (a) for causing delay
 - (b) in cases of false or vexatious claims and defences
 - (c) if claim involves complicated questions calling for elaborate consideration
 - (d) in claim untenable
5. Precepts means
- (a) security for payment of decretal amount
 - (b) stay of execution
 - (c) command given by the Court which passed decree to any other Court to attach any property as specified belonging to judgement debtor
 - (d) transfer of decree for execution
6. Inherent powers can be exercised
- (a) for the furtherance of justice
 - (b) to prevent the abuse of process of the Court
 - (c) when there is no clear provision in the Code
 - (d) all of the above
7. By way of transfer of property any interest therein is created absolutely but restricting its enjoyment in certain manner then
- (a) Restriction repugnant to the interest created is void
 - (b) Transferee shall not be entitled to receive and dispose of such interest
 - (c) Subject to such restrictions
 - (d) none of these

8. If, on transfer of property, interest is created for the benefit of class of persons, but such interest fails by reason of the rules contained in Sections 13 and 14 therein, with regard to some persons then:
- such interest fails in regard to those persons only and not to the whole class
 - such interest fails with regard to whole class
 - subject to certain conditions
 - none of the above
9. Section 152 of the Civil Procedure Code allows the Court
- to re-consider the matter on merit
 - to amend the decree of the appellate court
 - to correct errors in judgements, decrees or orders from any accidental slip or omission
 - all of the above
10. Presumption under Section 113A of Evidence Act applies when suicide is committed
- within 3 years of marriage
 - within 8 years of marriage
 - within 7 years of marriage
 - within 10 years of marriage
11. The Burden of Proof in Civil cases is discharged
- by preponderance of probability
 - by proving beyond reasonable doubt
 - by proving sufficiently
 - none of the above
12. Which of the following is correct ?
- Statement made to a police officer in the course of an investigation shall be signed by the person making it.
 - Such statement can be used for corroboration of the evidence of a witness in Court.
 - Such statements are admissible in trial.
 - Such statements may be used to contradict such witness in the manner provided in Section 145 of the Evidence Act.

13. The provisions of plea bargaining chapter shall not apply to
- (a) where such offence affects the socio-economic conditions of the country
 - (b) such offence has been committed against a woman.
 - (c) such offence has been committed against a child below the age of 14 years
 - (d) all of the above
14. Who can proceed under Section 340 of Criminal Procedure Code as to the offences affecting administration of justice and hold preliminary enquiry ?
- (a) State
 - (b) Public servant
 - (c) Criminal Court only
 - (d) Civil, Revenue or Criminal Court
15. Every judgement of a Criminal Court shall contain
- (a) discussion on facts only
 - (b) legal issues only
 - (c) decision only
 - (d) points for determination, the decisions and reasons thereof

PART - II

SUBJECTIVE QUESTIONS

[70 Marks]

16. (a) What objects shall be considered to be charitable objects ? (4)
 (b) (i) Explain the meaning and scope of the expression 'Any other object of general public utility'. (2)
 (ii) What are the Charity Commissioner's duties, functions and powers ? (2)
 (iii) Explain the term 'Person having interest'. (2)
17. (a) What are the general essential requirements to accord sanction under Section 36(1) of the Maharashtra Public Trusts Act, 1950 ? (5)
 (b) What are the tests to be applied when the Charity Commissioner sanctions alienation of Trust Property ? (Discuss with case-laws) (5)
18. Answer (a) and (b) **or** (c) and (d).
 (a) State the powers of the Charity Commissioner under Section 41(D) of the Maharashtra Public Trusts Act, 1950. (4)
 (b) Under what circumstances can such powers be exercised and in what manner ? (6)
- OR**
- (c) State the powers of Charity Commissioner under Section 47 of the Maharashtra Public Trusts Act, 1950 and under what circumstances such powers can be exercised. (5)
 (d) (i) What are the prescribed guidelines in appointing new trustees under Section 47(3) of the Maharashtra Public Trusts Act, 1950 ? (2)
 (ii) What is the scope of inquiry under Section 47 of the Act ? (1)
 (iii) What is the effect of the order passed under Section 47 of the Act ? (1)
 (iv) What is meant by vesting of trust properties ? (1)
19. (a) Discuss the scope, manner and restrictions of the powers of the Charity Commissioner to issue directions in respect of the Hospitals. (5)
 (b) State the salient features of the scheme framed by the honourable High Court of Bombay in respect of Charitable Hospitals ? (5)
- NOTE : To be answered in MARATHI [Only Q. 19(b)]*
20. Write short notes on the following : (2×5=10)
 (i) Burden of proof and Onus of proof
 (ii) Double jeopardy
 (iii) Fraudulent Transfer
 (iv) Difference between lease and licence
 (v) Caveat

21. Write summary of the following passage with title.

(10)

It is said that the difficulties of a litigant often begin, not when he files a case but when he obtains a decree. The process of execution or enforcement is more arduous and time consuming than the main litigation. Pendency of executions for periods exceeding the time spent for obtaining the decree, are quite common. Many a time, a decision obtained by a plaintiff remains a paper decree and he never sees the real fruits of such decree. Because of the artificial division of suits into preliminary decree proceedings final decree proceedings and execution proceedings, many Trial Judges tend to concentrate only upon the adjudication of the right (which is considered as a judicial function) and do not give importance to the final decree proceedings and execution proceedings (which are considered to be ministerial functions). The focus is on disposing of cases, rather than ensuring that the litigant gets the relief. Even among lawyers, importance is given only to securing of a decree not securing of relief. Many lawyers handle suits only till preliminary decree, then make it over to their juniors to conduct the final decree proceedings and then to their clerks for conducting the execution proceedings. Many a time, a party exhausts his finances and energy by the time he secures the preliminary decree and has neither the capacity nor the energy to pursue the matter to get the final relief. As a consequence, we have cases where the suits are decreed or preliminary decrees are granted within two or three years but the final decree proceeding and/or execution takes decades for conclusion. This is an area which contributes to the loss of credibility of the civil justice system.

The litigants find Court's atmosphere intimidating and unfriendly. They find the procedures, complicated; the Judges, lawyers and the staff, discourteous; and the infrastructure, wholly inadequate with little or no facilities or amenities for them. They feel that no one in Courts (Judges, lawyers or staff) understands their difficulties, tensions, worries and no attempt is made to make the procedures and formalities user-friendly. The entire litigation process is structured in a manner where the litigant is required to adjust himself to the convenience of the Judges and lawyers rather than the Courts and lawyers adjusting themselves to serve the common man. Therefore, there is an urgent need to introduce quicker alternative dispute resolution processes and also improve the adversarial adjudicatory process by giving speedy, satisfactory and cost-effective justice.

22. Translate the following passage in English :

(10)

सार्वजनिक विश्वस्तव्यवस्थांच्या नोंदणी पुस्तकातील बदल.

- (1) सार्वजनिक विश्वस्तव्यवस्थेच्या नोंदणीपुस्तकात नमूद केलेल्या तपशीलापैकी कोणत्याही तपशीलातील कोणताही बदल किंवा योजिलेला बदल हा, संबंधित विश्वस्तव्यवस्थेच्या विश्वस्त या सोबतच्या अनुसूची 3 च्या नमुन्यात कलम 22 पोट कलम (2) अन्वये धर्मादाय उप आयुक्ताला किंवा सहायक धर्मादाय आयुक्ताला कळवील व अशा प्रतिवेदनाची नियम 6 पोट नियम (4) मध्ये तरतूद केलेल्या रीतीने पडताळून पाहण्यात येईल.
- (2) सार्वजनिक विश्वस्तव्यवस्थांच्या नोंदणी पुस्तकातील नोंदीत करावयाच्या सुधारणा ह्या, मुळ नोंद किंवा नोंदी तांबड्या शाईने खोडून आणि जादा मजकुराच्या किंवा फेरफाराच्या जागी किंवा धर्मादाय आयुक्तातर्फे आपली आद्याक्षरी नोंदवून करण्यात येतील.
- (3) धर्मादाय उप आयुक्त किंवा सहायक धर्मादाय आयुक्तास, स्वतः होवून सार्वजनिक विश्वस्तव्यवस्थांच्या नोंदणी पुस्तकातील नोंदीपैकी कोणत्याही नोंदीतील लेखनदोष किंवा अभावित (नकळत) झालेल्या चुका सुधारता येतील.