

Drafting, Appearances and Pleadings 372

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) "Hypothecation is an extended form of pledge." Explain the statement and make suggestions for improvement in the law of hypothecation citing case law(s).

(10 marks)

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

- (i) Drafting may be defined as the synthesis of _____ and _____ in a language form.
- (ii) According to section 128 of the Indian Contract Act, 1872, the liability of the surety is _____ with that of the _____ unless it is otherwise provided by the contract.
- (iii) In a leave and license agreement, the _____ possession of the premises is deemed to remain with the licensor and the licensee is said to be in _____ possession of the said premises.
- (iv) A debtor cannot _____ or take advantage of non-payment of _____ for assignment.
- (v) Articles of association being _____ document of the company, have _____ in matters which involve dealing of the company with its own members or third parties.

(2 marks each)

2. (a) Explain the following :

- (i) Preliminary submissions/objections in legal pleadings.
- (ii) Special advantages of 'mortgage by deposit of title deeds'.

(4 marks each)

(b) What are the different forms of defence that may be adopted by a defendant while replying to opponent's pleadings ?

(8 marks)

3. (a) In the context of court rulings on merger, discuss and decide the following issues :
- (i) Can the exchange ratio approved by shareholders of the merging company be questioned by a small group of dissenting shareholders ?
 - (ii) Is the transferring company justified in excluding assets held on lease and license arrangement from those transferred to the transferee company ?
 - (iii) Whether there was contravention of section 393(1)(a) of the Companies Act, 1956 inasmuch as the fact that the Chartered Accountant entrusted with the valuation of the shares was a director of the amalgamating company had not been disclosed ?

(4 marks each)

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

- (i) Under section 17 of the Telecom Regulatory Authority of India Act, 1997 (TRAI), as amended in 2002, a Company Secretary can appear and plead for his company's case before the TRAI Appellate Tribunal without obtaining a certificate of practice from the Institute of Company Secretaries of India.
- (ii) Recitals in a deed, if ambiguous, can operate as estoppel.

(2 marks each)

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

- (i) Irrevocable power of attorney
- (ii) Amendment of the pleadings with reference to the general rule 'no pleadings, no evidence'
- (iii) Extinction of a trust
- (iv) Letters of authority
- (v) Mode of transfer of actionable claims.

(4 marks each)

5. (a) Drafting of a sale deed of immovable property requires comprehensive coverage of technicalities like offer, transfer, *etc.* Mention eight important covenants of sale deed of ABC Company's factory premises.

(8 marks)

: 3 :

(b) Match the following :

- | | |
|-------------------------|-----------------------|
| (i) Principal debtor | (a) Meetings |
| (ii) <i>Del credere</i> | (b) Arbitration |
| (iii) Award | (c) Written statement |
| (iv) Notice | (d) Guarantee |
| (v) Dilatory pleas | (e) Agency |
| (vi) Declaration | (f) Application |
| (vii) Petition | (g) Testatum |
| (viii) Deed | (h) Affidavit. |

(1 mark each)

6. (a) Draft a deed of sub-lease with the permission of Vijay, the original lessor between Amar (sub-lessor) and Binod (the sub-lessee) in respect of Survey No. 786, Part I, being used as agricultural land admeasuring 50 acres situated on the eastern bank of Varuna river in Varanasi District (UP) demised to the original lessor, Vijay, for a period of 30 years w.e.f. 1st January, 2012 and covenanted for renewal for three consecutive periods of 30 years each; though the sub-lease has to be initially valid for 30 years only.

(12 marks)

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

- (i) (a) Deed pool; (b) deed poll; (c) indenture; (d) cyrographum.
(ii) (a) Compromise; (b) amalgamation; (c) merger; (d) takeover.

(2 marks each)

7. (a) State the ten essential ingredients of an affidavit conforming to the provisions of Order XIX, Rule 1 of the Code of Civil Procedure, 1908.

(10 marks)

(b) Distinguish between the following :

- (i) 'Performance guarantee' and 'fidelity guarantee'.

(3 marks)

- (ii) 'Set-off' and 'counter claim' in the light of case law on counter claim.

(3 marks)

8. Examine and comment on the following :

- (a) Applicant company's request to convene an extraordinary general meeting was rejected by the respondent company on the ground that the Company Secretary is not authorised to sign the request. The Company Law Board upheld the ground. In the light of decided case law, critically evaluate the correctness or otherwise of the decision of the Company Law Board.

(10 marks)

- (b) No special skills except a good knowledge of language is necessary for drafting a good legal document.

(6 marks)

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