

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. The plaintiff, ABC, had entered into a contract with Mass Global Investment Co. (MGI), defendant No.1, for the execution of a turnkey project in Jordan. Three bank guarantees (BGs) issued by XYZ Bank, defendant No.2 were furnished by plaintiff. During the execution of the contract, disputes arose between the parties as to the completion of the project. MGI threatened to encash the BGs. ABC filed a suit against MGI and moved an injunction application (IA) restraining MGI from encashing the BGs, pleading breach of faith, failure of consideration, lack of *bona fides*, fraud of defendants, *etc.*, in the original contract.

After due hearings, the court dismissed the IA, holding that defendant is restrainable only if the plaintiff succeeds in establishing that :

- (a) It has a *prima facie* cause;
- (b) It will suffer irreparable injury if injunction is not granted; and
- (c) Balance of convenience is in its favour.

The learned Judge also held that "it is well settled that the bank guarantee is an independent contract, the invocation of which, especially if it is unconditional guarantee, ought not and cannot be stayed by Court except in case of fraud and irretrievable injury."

The plaintiff, ABC, being an aggrieved party intends to appeal in the High Court against the dismissal order on following main grounds :

- (i) The bank guarantee is consequential and collateral to the main contract of execution of turnkey project. As per clause XX in both the contract agreements, it was specifically recorded; and also that the guarantee is conditionally valid only against intentional or unreasonable, legal and practical defaults. *Vis major*, Act of God, *etc.*, are excluded. In this case, the default and dispute arose due to internal commotion in Jordan that caused frustration of contract. Hence, plaintiff is not liable.
- (ii) Plaintiff suffers irreparable loss of goodwill for no fault on its part. This causes balance of convenience in its favour too.

Draft an appeal from order of trial Judge keeping principles of drafting in view. Assume supplementary data, if necessary.

(20 marks)

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

- (i) Where neither the ownership nor the possession is transferred to the _____, it is called in English law as _____ .
- (ii) "Agency coupled with interest cannot be terminated without the consent of the other party", is the underlying principle behind an _____ as per section _____ of the Indian Contract Act, 1872.
- (iii) Evidence as defined under section 3 of the Indian Evidence Act, 1872 means and includes all documents including _____ produced for the inspection of the court; such documents are called _____ .

(2 marks each)

(b) Explain and comment on the following :

- (i) Patent refers to the right granted under the Patents Act, 1970 to the grantee providing exclusive privileges of making or selling his invention, innovation or process; so it has little value in pleadings.
- (ii) Etiquette is the art of behaving in front of others.

(3 marks each)

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

- (i) (a) promoter's contract; (b) underwriting contract; (c) brokerage agreement; (d) agreement for amalgamation.
- (ii) (a) petitioner; (b) plaintiff; (c) counter; (d) respondent.

(2 marks each)

3. (a) Draft a specimen deed of usufructuary mortgage.

(8 marks)

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

- (i) All licences are revocable at the sweet will of the licensor.
- (ii) A simple deed of license need not be registered.
- (iii) A partnership-at-will can be dissolved by a plain notice in writing to this effect.
- (iv) A trust deed must contain the purpose of the trust, names of trustees and beneficiaries only. No other details are necessary.

(2 marks each)

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

- (i) *Habendum* and *reddendum*
- (ii) Factors/considerations that a Judge looks for in the pleadings of parties in the cause
- (iii) Arguments on merits
- (iv) Irrevocable power of attorney
- (v) Debenture trust deed.

(4 marks each)

5. (a) "Drafting may be defined as the synthesis of law and fact in a language form." Explain.

(8 marks)

(b) Match the following :

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| (i) Special leave to appeal before the Supreme court | (a) Section 320 of the Code of Criminal Procedure, 1973 |
| (ii) Compounding of offences under the Indian Penal Code, 1860 | (b) Section 115 and 114 of the Code of Civil Procedure, 1908 |
| (iii) Revision and review applications before the High Court | (c) Article 32 of the Constitution of India |
| (iv) Writs for enforcement of fundamental rights by the Supreme Court. | (d) Article 136 of the Constitution of India. |

(2 marks each)

6. (a) Briefly list the guidelines for entering into foreign collaboration agreements.

(10 marks)

(b) What are the essential elements of a dealership contract to be kept in mind while drafting it ?

(6 marks)

7. (a) Discuss the general guidelines to be followed while issuing notice for a general meeting of ABC Ltd.
(10 marks)
- (b) Distinguish between the following :
- (i) 'Legal document' and 'instrument'.
 - (ii) 'Writ of *certiorari*' and 'writ of prohibition'.
- (3 marks each)*
8. (a) Define 'appeal'. Discuss various kinds of appeal provided under the Code of Civil Procedure, 1908.
(8 marks)
- (b) Draft a deed of sale of joint family property for legal necessity by Manager (*Karta*) of a Hindu Mitakshara Undivided Family.
(8 marks)