Maharashtra Civil Judge (Mains) 2014

Paper I: Civil Laws · compulsory paper

Civil Procedure Code, Transfer of Property Act, Specific Relief Act, Law of Contracts, Sale of Goods Act and Partnership Act. Time: 3 Hours · Maximum Marks: 100

Instructions to the candidates

1. All questions are compulsory.
2. Question No. 1 carries 20 marks. All other questions carry equal marks, i.e. 16 marks each.
3. Your answers must be to the point, wherever possible quoting the specific provision of law.
4. Do not reproduce any question. Write only the question's number against the answer.
5. Wherever an option has been given, only the required number of responses in the serial order attempted shall be assessed. Excess responses shall be ignored.
6. Other than cited cases, the candidate should not write roll number, any names (including their own), signature, address or any indication of their identity anywhere inside the answer book, otherwise he will be penalised.
7. The English version of the question shall be held to be authentic in case of any ambiguity.
8. All the questions should be attempted in one and the same language, either in English or in Marathi.
9. Candidates are expected to answer all the sub-questions of a question together. If a 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.

Question No. 1 [20 marks]

Write a judgment on the basis of the facts narrated below. While writing the judgment: (a) adhere to the contents of a judgment as required under the Code of Civil Procedure; (b) frame and answer the issues properly; (c) whenever necessary, fill up the details from your imagination; (d) give legal, logical and proper reasons for your findings; (e) conclude the judgment with a proper operative order.

Averments in the plaint. Plaintiff and Defendant No. 1 start business in partnership, investing 1/2 share each in the capital of the business. Defendant No. 2 is the brother of Defendant No. 1. He gives his premises for running the business without charging any rent. Subsequently Defendant No. 1 retires and his minor son is accepted as partner. After some period, the plaintiff files a suit for dissolution of the partnership firm, claiming half share in capital and profit and requesting the court for settlement of accounts.

Averments in the written statement. Defendants request for dismissal of the suit on the following grounds:

(1) As the partnership firm is not registered, the suit itself is not tenable.

(2) The plaintiff alone cannot take a decision of dissolution of the partnership. Defendants want to continue with the business.

(3) The plaintiff does not have half the share in capital and profit. Defendant No. 2 is also a silent partner and entitled to a 1/3rd share as the partnership premises belong to him.

(4) As the son of Defendant No. 1 is a minor, a suit is not tenable against him and his share cannot be liable for the loss, if any, in the business.

Question No. 2 [16 marks]

Answer any two of the following sub-questions:

(a) Discuss the statement "Exclusion of Civil Court's jurisdiction is not to be readily inferred".

(b) Discuss in detail provisions relating to execution of money decree from garnishee.

(c) "If one suit is disposed of, second suit in respect of the same property between the same parties cannot be tenable". Discuss this statement.

Question No. 3 [16 marks]

Write short notes on any four of the following:

(a) Suits by or against corporations

(b) Rights and liabilities of mortgagee

(c) Execution of decree for specific performance of contract

(d) Performance of reciprocal promises

(e) Suit for possession of immovable property based on previous possession

Question No. 4 [16 marks]

Answer any two of the following sub-questions:

(a) Discuss the relevant provisions of injunction under the Code of Civil Procedure and injunction under the Specific Relief Act.

(b) Elaborate the correctness of the statement, "lease and licence are two different transactions".

(c) Discuss under which circumstances specific performance cannot be granted.

Question No. 5 [16 marks]

Answer any two of the following sub-questions:

(a) Discuss the terms "ostensible owner and fraudulent owner".

(b) Discuss whether the powers of the Court Commissioner and the Court Receiver are the same or different.

(c) "Once goods are sold, the seller ceases to have any rights and liabilities". Discuss the statement.

Question No. 6 [16 marks]

Answer any two of the following sub-questions:

(a) Discuss the statement, "Once the trial starts, amendment in pleadings cannot be permitted".

(b) Discuss "onerous gifts" and "universal donee".

(c) Discuss provisions relating to cancellation of instruments.

(d) Free consent.