

DJ : MW

CE-101/

**HIGH COURT OF JUDICATURE AT BOMBAY**

**(APPELLATE SIDE)**

**WRITTEN EXAMINATION**

**FOR THE POST OF DISTRICT JUDGE**

**PAPER I - CIVIL LAW**

**Date: 21 February, 2015**

**Total Marks : 100**

**Time : 2.00 p.m. to 5.00 p.m.**

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**INSTRUCTIONS**

1. All questions are compulsory.
  2. Figures to the right indicate marks.
  3. Answers to optional questions, in excess of prescribed number, will not be assessed.
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1. Write a Judgment on the following facts after mentioning bare necessary facts and presuming that necessary witnesses were examined and relevant documents have been produced. 20

The plaintiff/appellant, has been arrested in connection with a murder of one Avinash Ashturkar, which took place in Beed on 2nd of August, 2009. The plaint seeks to censure Defendant No.3 and Defendant No.4 for the action which they have taken against the plaintiff, described hereinafter in greater details. Defendant No.1 is the Director General of Police, while Defendant No.2 is the State of Maharashtra. Defendant No.3 is the Superintendent of Police. According to the plaintiff/appellant, the acts complained of by the plaintiff/appellant against defendant No.4 were at the instance of Defendant No.3. Defendant No.4 is the Inspector of Police, who was at the relevant time in charge of Shaniwar Peth Police Station, Beed.

One Avinash Ashturkar was murdered on 2 August, 2009. First Information Report in connection with that murder did not include the name of the plaintiff as one of the suspects. However, during the course of the

investigation, the police suspected that the plaintiff was a party to the said murder and naturally he was to be arrested. The plaintiff was in fact arrested later at a place called Indore in Madhya Pradesh State and was brought to Beed in the early hours of 17 August, 2009. A paper called 'Beed Newslines', published from Beed, carried in its issue of 17 August, 2009 a news item submitted by its correspondent which said that the plaintiff would be taken in a procession or a parade from Shaniwar Peth Police Station through the main squares of the city for the purpose of investigation. On 17 August, 2009, as provided by the paper, 'Beed Newslines', the Plaintiff/appellant was handcuffed and both his arms were tied by a rope and he was taken through the streets and squares of Beed. Based on this the plaintiff/appellant averred in the plaint that there is a clear violation at the hands of the defendants, of the directions of the Hon'ble Supreme Court of India given in the case of D.K.Basu. It is further averred that the defendants have breached the basic human rights of the plaintiff/appellant and also violated the settled norms of arrest as mentioned in the Code of Criminal procedure. Thus, Plaintiff has claimed the compensation of Rs.5,00,000/- from defendants for their conduct of indignity and humiliation towards the plaintiff/appellant.

In the Written Statement, defendants denied that there was violation of any provision of law or direction of The Hon'ble Supreme Court of India.

In addition, Defendant No.4 says that the Plaintiff/appellant was so taken through the streets and squares of Beed for the purpose of investigation. He also denied that there was violation of any provision of law or direction of The Hon'ble Supreme Court of India. He insists that the Plaintiff/appellant was not paraded. However, it was necessary to subject him to the restraints of handcuffs and ropes for the purpose of preventing his escape if the Plaintiff/appellant intended. It has also been mentioned by him that in some of the areas through which the Plaintiff/appellant was to be taken, there were members of the gang to which the Plaintiff/appellant belonged and there was apprehension that the said members of the gang could

make an attempt to secure the release of the Plaintiff/appellant. The police allege that the murder of Avinash Ashturkar was a culmination of a warfare between two gangs in Beed. One Prakash Narote had already been arrested in connection with the said murder of Avinash Ashturkar. Defendant No.4 has mentioned that the Plaintiff/appellant has a long criminal record. Several cases in which the Plaintiff/appellant is alleged to be an accused have been referred to in his Written Statement.

The trial court Dismissed the suit. The plaintiff appealed. Write a judgment in appeal.

2. Answer any **two(2)** of the following with reasons : **10**

A. There was a joint Hindu family consisting of the father and his three sons, 'B','C' and 'D'. The family was governed by Mitakshara law. The joint family had ancestral land. In the year 1982, the father ('A') sold the ancestral land to 'E'. The possession of the land was handed over to 'E' under the deed of sale. On the day of the execution of the deed of sale, 'C' and 'D' were six and five years old respectively. 'B' was 19 years old.

In the year 1996, the brothers 'B','C' and 'D' filed a suit against 'E' for partition and setting aside the alienation of the land on the ground that there was no legal necessity.

'E' (Defendant No.1) contested the suit on the ground that the alienation of the land made by the father of the plaintiffs was for legal necessity. Exception to the suit on the ground of the suit being barred by limitation was also raised. The father (Defendant No.2) did not contest the suit.

Decide the issue of limitation and pass appropriate order assuming that there was no legal necessity for alienating the ancestral land.

B. 'X' has a well endowed with water in his agricultural field. The adjacent

land holder commenced work of digging a well in his field at a distance of 75 ft. from X's well. 'X' intends to take legal recourse on the ground that the water supply in his well may diminish. Whether 'X' has a remedy in law? If yes, under what circumstances?

- C. 'A' lets a house to 'B' at yearly rent of Rs. 1200/-. The rent for the whole of the years 2005, 2006 and 2007 was due and unpaid. 'A' sued 'B' in the year 2008 only for the rent due for 2006. The suit was decreed. The decree attained finality.

Afterwards, 'A' sues 'B' for the rent due for 2005 and 2007.

Will 'A' succeed?

- D. 'A' was in possession of residential premises as a tenant. 'B', a neighbour dispossessed 'A' without his consent of the tenanted premises otherwise than in due course of law.

'C', the owner/landlord of the residential premises brings a suit within six months from the date of dispossession, against B for possession of the premises.

'B' contested the suit inter alia on the ground that 'C' was not in actual possession of the suit premises and therefore has no locus to file the suit under Section 6 of the Specific Relief Act. 'A' is not a party to the suit.

Will 'C' succeed?.

3. Explain the procedure of recording of evidence under Order XVIII, Rule 4 of the Code of Civil Procedure. State the procedure to be followed by the Court Commissioner appointed for recording of evidence, for marking document/s as Exhibits. 10

OR

State the provisions as to counter claim and set off, with special reference to the difference between counter claim and set off.

4. Explain the provisions relating to resistance to execution of a decree for delivery of possession of immovable property. 10

OR

State the law relating to part performance under the Transfer of Property Act and the Indian Registration Act.

5. Discuss any two of the following: 10
- Compensation for breach of contract where penalty stipulated for.
  - Inheritance of property of a female Hindu who died intestate.
  - Right of redemption and foreclosure.
  - Approach of the court while dealing with cases of custody of minor children.
6. State the grounds on which decree of divorce may be granted under Hindu Marriage Act. Whether ground of irretrievable breakdown of a marriage is available as a ground for divorce. 10

OR

What is primary evidence? State the circumstances as to when reception of secondary evidence is permissible?

7. Write short notes on any two(2): 10
- Lis pendens
  - Garnishee
  - Rights of an unpaid seller under the Sale of Goods Act.
  - Conditions for execution of a valid unprivileged will.
  - Difference between Succession certificate and Letters of Administration.

- 8-A. State the relevant provisions of Hindu Succession Act relating to rights of a daughter in coparcenary property. 10

OR

State the concept of personal liberty under Article 21 of the Constitution of India.

8-B. Choose correct answer from the given options: 10

**[Instructions for writing answers:**

There are four alternatives for the answers to every question denoted by options (a), (b), (c) and (d). The candidate shall answer the question as given in the illustration.

**Illustration:**

Q.No.15:(1) The term “Lex-Loci” means \_\_\_\_\_.

- (a) Law of Property                      (b) Law of the land  
(c) Law of Marriages                    (d) Personal Law of parties

The correct answer of this question is “Law of the Land” which is indicated by option (b). Therefore, the correct answer should be written in the Answer booklet as follows:-

**Q.No.15(1)**

**Answer :- (b)]**

1. The maxim “Ex nudo pacto actio non oritur” means \_\_\_\_\_.
  - a. No action arises on a contract without a consideration.
  - b. The best interpretation is made from things preceding and following.
  - c. No action arises on an immoral contract.
  - d. private contracts cannot derogate from public.
  
2. Continuous easement is one whose enjoyment is \_\_\_\_\_.
  - a. one that needs the act of man for its enjoyment
  - b. continuous without the act of man.
  - c. one the existence of which is shown by some permanent signs.
  - d. one which requires no signs as mentioned in option ‘c’.
  
3. An order of the court rejecting an application for review, under the Code of Civil Procedure, is \_\_\_\_\_.
  - a. appealable.
  - b. not appealable.

- c. appealable by opposite party.
  - d. appealable with the permission of the Court.
4. The period of limitation for a suit for compensation for injury caused by an injunction wrongfully obtained begins to run from the time \_\_\_\_\_.
- a. the injunction is obtained.
  - b. the injunction ceases.
  - c. the injury complained of is caused.
  - d. the defendant refuses to pay compensation on demand.
5. The, "Precautionary Principle", relates to \_\_\_\_\_
- a. determining liability in collision on high-seas.
  - b. determining liability in motor accident cases.
  - c. Environmental Law.
  - d. Piracy Law.

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