

ICSI



Previous Year Questions Papers

DRAFTING

APPEARANCES

AND PLEADINGS



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. Attempt **any four** of the following :

- (i) Define 'document'. Explain various kinds of deeds.
- (ii) What are the important points that should be taken into consideration while drafting contracts ?
- (iii) What are the pre-requisites of 'arbitration' ? Draft the specimen of an arbitration agreement to refer dispute to an arbitral tribunal.
- (iv) Define the following :
 - (a) Contract of guarantee
 - (b) Hypothecation agreement
 - (c) Lease
 - (d) Licence
 - (e) Mortgage.
- (v) Draft a specimen of memorandum of mortgage by deposit of title deeds.

(5 marks each)

2. (a) Write short notes on **any two** the following :

- (i) *Del credere* agency
- (ii) Usufructuary mortgage
- (iii) Power of attorney and letter of authority.

(3 marks each)

(b) Choose the most appropriate answer from the given options in respect of the following :

- (i) A deed kept for twenty years or more in man's escritoire or strong box is called –
 - (a) Pretended deed
 - (b) Lawful deed
 - (c) Warranty deed
 - (d) Latent deed.

- (ii) A 'guarantee' guaranteeing an employer against the misconduct of an employee or to answer for the debt or default of another is called –
- (a) Performance guarantee
 - (b) Bank guarantee
 - (c) Counter guarantee
 - (d) Fidelity guarantee.
- (iii) In English law, mortgage by deposit of title deed is called as –
- (a) Usufructuary mortgage
 - (b) English mortgage
 - (c) Equitable mortgage
 - (d) Anomalous mortgage.
- (iv) Power of attorney executed for the purpose of generally representing another person or for performing more than one act is called –
- (a) General power of attorney
 - (b) Special power of attorney
 - (c) Particular power of attorney
 - (d) Revocable power of attorney.
- (v) In case of a company, mortgage of the property should be duly authorised –
- (a) By objects clause of the memorandum of association and approved by a resolution of the Board
 - (b) Only by objects clause of the memorandum of association
 - (c) Only by a resolution passed in the meeting of the Board
 - (d) By articles of association.

(1 mark each)

- (c) Mention the procedure to be followed for carrying through a compromise or arrangement under section 391 of the Companies Act, 1956.

(5 marks)

3. (a) Distinguish between the following :

- (i) 'Conveyance' and 'contract'.
- (ii) 'Instrument' and 'deed'.
- (iii) 'Partnership' and 'trust'.

(4 marks each)

- (b) Write a short note on 'retirement and expulsion of partners'.

(4 marks)

4. (a) State, with reasons in brief, whether the following statements are correct or incorrect :
- (i) Drafting is first thinking and second composing.
 - (ii) If a document is not properly stamped, it is rendered inadmissible in evidence.
 - (iii) Testimonium is the clause in the first part of the deed.
- (2 marks each)*
- (b) "Practising of good professional etiquettes is necessary for professional success in the emerging business scenario." Discuss.
- (4 marks)*
- (c) Bharat requests Ajay to sell and deliver to him goods on credit. Ajay agrees to do so, provided Chandan guarantees the payment of the price of the goods. Is this a sufficient consideration for Chandan's promise and is this arrangement a valid contract of guarantee ? Discuss.
- (6 marks)*
5. (a) Explain in detail the general principles of drafting and conveyancing and other writings.
- (12 marks)*
- (b) Write a short note on 'covenants and undertakings'.
- (4 marks)*
6. Attempt **any four** of the following :
- (i) What is meant by 'pre-incorporation contracts' ? Can a company ratify a contract entered into by the promoters on its behalf before its incorporation ? Explain with reasons.

(4 marks)
- (ii) Mention important guidelines which are required to be followed while entering into a foreign collaboration agreement.

(4 marks)
- (iii) Draft an affidavit of creditor in proof of his debt in proceeding for the liquidation of a company.

(4 marks)
- (iv) Define the following :
 - (a) Appeal
 - (b) Affidavit
 - (c) Articles of Association
 - (d) Rejoinder.

(1 mark each)

- (v) What is 'compounding of offences' ? How does compounding of offences take place under the Code of Criminal Procedure, 1973 ?

(4 marks)

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

- (i) Outsourcing is the contracting out of a company's non-core, non-revenue producing activities to a _____.
- (ii) The present day system of pleadings in our country is based on the provisions of the _____ supplemented from time to time by rules in that behalf by the High Courts of the States.
- (iii) _____ is an application by any party to an appellate court asking it to set aside or revise a decision of a subordinate court.
- (iv) _____ compels courts to act within their jurisdiction when a tribunal acts without or in excess of jurisdiction or in violation of the rules or law.
- (v) In compounding of offences, _____ make a joint application to the court that the parties have come to terms and the case may not be proceeded with.

(1 mark each)

- (b) State the general guidelines of drafting notices under the Companies Act, 1956.

(5 marks)

- (c) What is meant by a 'consent order' ? What remedies are available with the Securities and Exchange Board of India if the consent order is violated by a party ?

(6 marks)

8. (a) Explain the guidelines for professional dress of Company Secretaries.

(6 marks)

- (b) Why is art of advocacy important ? What are the important factors which Company Secretaries should keep in mind while making written pleadings ?

(10 marks)

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Drafting Appearances and Pleadings

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 8

Total number of printed pages : 3

NOTE : Answer SIX questions including Question No.1 which is compulsory.

1. (a) Hurry Burry Ltd. went into liquidation and its assets were put to sale by the court. The terms and conditions of the sale stated that the sale would be of the assets on 'as is where is and whatever there is' basis and the bidders had to satisfy themselves as to any encumbrance on the property. On 15th September, 2006, the company judge confirmed the sale of an immovable property in an auction in favour of Ravi. Later on, Ravi received a notice from the municipal corporation authorities claiming the payment of arrears of property tax for the period prior to 15th September, 2006 with interest. The municipal corporation had not filed its claim before the official liquidator. It was argued by the municipal corporation authorities that the sale was made on 'as is where is and whatever there is' basis and the buyer was deemed to have full knowledge as to the defects in the description, quality and quantity of the assets sold. Decide whether Ravi is liable to pay the arrears of property tax with interest. Support your answer with decided case law.
- (5 marks)
- (b) What are the do's and don'ts which should be considered while drafting documents?
- (5 marks)
- (c) Explain the following :
- (i) Deed pool
 - (ii) Deed poll
 - (iii) Indenture
 - (iv) Cyrographum
 - (v) Deed escrow.
- (2 marks each)
2. (a) Mention important aspects which should be kept in mind while drafting a sale deed of an immovable property by a limited company.
- (5 marks)
- (b) Alpha Industries Ltd. wishes to appoint Ram Avtar & Co., Advocates as their legal consultant on an annual retainership basis. Draft a suitable agreement assuming facts, wherever necessary.
- (5 marks)

- (c) Explain the following types of guarantee :
- (i) Contract of guarantee
 - (ii) Continuing guarantee
 - (iii) Bank guarantee.
- (2 marks each)*
3. (a) What are the statutory provisions for appeals to the Securities Appellate Tribunal (SAT) under the Securities and Exchange Board of India Act, 1992 ?
- (4 marks)*
- (b) Distinguish between 'lease agreement' and 'licence agreement'.
- (4 marks)*
- (c) Draft a specimen arbitration agreement to refer a dispute to two arbitrators.
- (8 marks)*
4. (a) "Articles of association of a company are public documents and have evidentiary value in matters which involve dealings of a company with its own members or third parties." Discuss the statement and also state the important aspects to be kept in view while drafting the articles of association of a company.
- (8 marks)*
- (b) Write notes on the following :
- (i) Rule of adverse inference
 - (ii) Representative suit.
- (4 marks each)*
5. (a) "It is incumbent upon the defendant to file his defence in writing, else the court may pronounce judgment against him or make such order as it deems fit." Examine the statement and enumerate important points while drafting the reply or a written statement.
- (6 marks)*
- (b) Discuss the contents of a trust deed.
- (6 marks)*
- (c) Explain any two types of mortgage.
- (4 marks)*
6. (a) Ultra Vision Textiles Ltd. is entering into a foreign collaboration with Omega Inc., USA for technical know-how and assistance for the proposed textile machinery manufacturing project. Draft a suitable foreign collaboration agreement.
- (10 marks)*

- (b) A contract existed between Rahul and Sahil. Sahil went to the court of law for non-performance of the contract by Rahul. During the pendency of the suit, Rahul and Sahil arrived at certain compromise and reduced the terms of compromise by signing a 'memorandum of understanding' (MOU). Whether such an MOU amounts to novation of the contract ?
(6 marks)
7. (a) What is meant by 'compromise' and 'arrangement' ? What is the procedure to be followed for carrying through a compromise or arrangement under the Companies Act, 1956 ?
(6 marks)
- (b) Mention the important considerations while drafting an affidavit in evidence.
(5 marks)
- (c) What is meant by 'etiquette' ? What are the invitation etiquettes to be observed by a Company Secretary ?
(5 marks)
8. (a) Explain the following :
(i) *Habeas corpus*
(ii) *Mandamus*.
(3 marks each)
- (b) What are the advocacy tips to be borne in mind by a Practising Company Secretary while appearing before a tribunal ?
(5 marks)
- (c) What is the meaning of the term 'compounding' ? What factors are to be taken into consideration for the purpose of compounding of offences under the respective statutes ?
(5 marks)

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Roll No.

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 8

Total number of printed pages : 3

NOTE : Answer SIX questions including Question No.1 which is compulsory.

1. (a) In India, there is no law on conveyancing or interpretation of documents. Explain how disputed ambiguous formal deeds can be judicially decided then.

(8 marks)
- (b) What is meant by 'outsourcing' ? Draft a specimen of an outsourcing agreement.

(7 marks)
- (c) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :
 - (i) In the case where the mortgagor without delivering possession of the mortgaged property binds himself personally to pay the mortgaged money, and agrees expressly or impliedly that if he fails to pay the debt and interest in terms of the mortgage deed, the property will be sold and the proceeds applied in payment of the mortgaged money, such a mortgage is called _____ .
 - (ii) Equitable mortgage is _____ by the lenders/banks/creditors as well as the commercial enterprises because of the inherent advantages.
 - (iii) The term 'deed' normally refers to all the instruments by which two or more persons agree to effect any _____ or _____ .
 - (iv) The general requisites of an arbitration award must be consistent with the submission, certain, fair to the parties, _____ and its implementation must be possible.
 - (v) The general rule, with reference to Mrs. Om Prabha Jain vs. Abnash Chand Jain, AIR 1968 SC 1083, is that no pleadings, no _____ .

(1 mark each)

2. (a) Explain the following :
- (i) *Force majeure*
 - (ii) Debenture trust deeds.
- (4 marks each)
- (b) Discuss how section 8 of the Transfer of Property Act, 1882 regarding operation of transfer has simplified 'parcels clause' in a deed.
- (8 marks)
3. (a) In what respect, if any, pleadings in the memorandum of appeals under sections 96 to 99, Order XLI, sections 100 to 103, 104 to 106, Order XLIII, Rules 1 and 2 and Appeals to Supreme Court under the Code of Civil Procedure, 1908, differ from the pleadings in appeals under Articles 132(1), 133 and 134 of the Constitution of India ?
- (6 marks)
- (b) State, with reasons in brief, whether the following statements are true or false :
- (i) Drafting is first thinking and second composing.
 - (ii) Registration of partnership means registration under the Income-tax Act, 1961.
 - (iii) In practice, 'applications' and 'petitions' are interchangeable terms.
 - (iv) A right of appeal is not a natural or inherent right but a creature of the statute.
 - (v) Dress code prescribed by the Institute of Company Secretaries of India for its members appearing before Tribunals is a bunch of guidelines only.
- (2 marks each)
4. Write notes on *any four* of the following :
- (i) Underwriting contracts
 - (ii) Compounding of offences under the Companies Act, 1956
 - (iii) Rejoinder
 - (iv) Art of pleadings
 - (v) Rule of adverse inference.
- (4 marks each)
5. (a) Draft a specimen deed of guarantee to be provided by a bank on behalf of its client company for the execution of a contract in favour of State government.
- (10 marks)
- (b) In the light of case law on the subject, distinguish in what respects should a lease deed be different from leave and license agreement.
- (6 marks)

6. (a) A suit for specific performance was instituted in the civil court at Delhi against Positive Energy Ltd. The managing director asked the Company Secretary to file written statement under his own signature as if he had implied authority to do so. This was done, but the plaintiff sought dismissal of the written statement for want of proper legal authority for verifying written statement. In the meantime, the company granted *ex post facto* sanction and ratification of the authority of the Company Secretary to sign pleadings on behalf of the company. Yet, the court dismissed the written statement.

On what legal grounds, should the aggrieved company prefer an appeal impugning civil court's order ? Cite case law, if any.

(8 marks)

- (b) "A Company Secretary representing his company in court proceedings is not an advocate even though he is a law graduate performing advocacy functions." Comment, highlighting conceptual distinction between Company Secretary and Advocate as professionals.

(8 marks)

7. (a) Complying with the provisions of section 76 of the Companies Act, 1956, draft an underwriting agreement in a letter form between Prosperity Ltd. proposing public issue of one lakh equity shares of ₹100 face value each, on the one side, and Desire Company who are registered brokers.

(8 marks)

- (b) Distinguish between the following :

- (i) 'Endorsements' and 'supplemental deed'.
- (ii) 'Revision' and 'review' applications in a High Court.

(4 marks each)

8. Examine and comment on *any four* of the following statements :

- (i) Where the amendment changes the character of the suit, it cannot be allowed.
- (ii) Pleadings cannot be construed too technically.
- (iii) Rejection of plaint will amount to decree.
- (iv) Institution of a suit in a court of higher grade is only an irregularity.
- (v) Where the defendant pleads set-off, he will be in the position of plaintiff.

(4 marks each)

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.

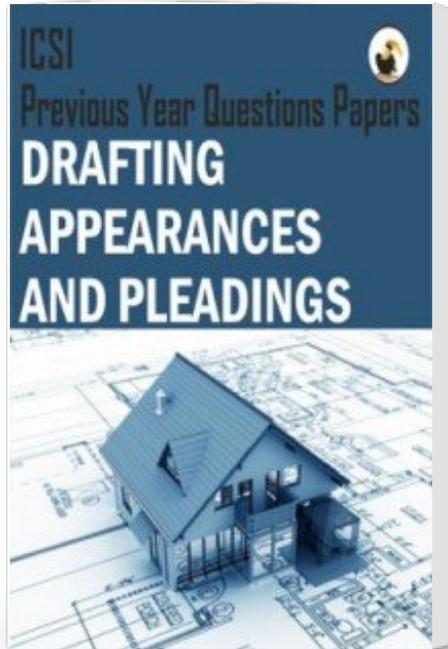
(10 marks)

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

(6 marks)

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