

DJ : MW

CE-101/11

**HIGH COURT OF JUDICATURE AT BOMBAY
(APPELLATE SIDE)**

WRITTEN EXAMINATION

FOR THE POST OF DISTRICT JUDGE

PAPER I – CIVIL LAW

Sunday, 18th September, 2011

Total Marks: 100

Time: 11.00 a.m. to 2.00 p.m.

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 entered into a transaction with the defendant on or about 07.10.1989. The deed was titled as Conditional Sale Deed of immovable property. The land, in question, was situate in the town of Solapur in a market area. A shed was constructed thereupon. The market price of the land was higher than Rs.51,000/- at the relevant point of time.

The relevant terms of the said document evidencing the transaction in question are as under:

“1. The property described above is sold by me for a period of five years and you are put into possession thereof. Consideration of Rs. 51,000/- for the said sale is paid by you to me and I have received the same and there is no grievance with respect to the said receipt.

2. You are entitled to enjoy the possession of the said property till the said period and get the property transferred in your name and pay the municipal assessment with respect thereto.

3. In case the above said amount of Rs. 51,000/- is repaid to you by the end of the above said period or prior thereto, you will accept the same and restore the said property in my possession and execute the sale deed in my favour as per the agreement between us.

4. At the end of the period mentioned hereinabove or also before the expiry of the said period at any time if we return the sale deed amount of Rs.51,000/-, after accepting the said amount you have to return the possession in our favour and to execute sale deed in our favour. This is agreed between us."

The plaintiff offered to return the said amount of Rs. 51,000/- to the defendant. It was not accepted on the premise that the defendant had acquired an absolute title thereto.

A suit for redemption of mortgage was filed on or about 24.02.2001. The defendant filed written statement to the effect that it was not a mortgage by conditional sale but a sale with an option to repurchase within the stipulated period.

The Court of CJSD Solapur framed necessary issues. Upon consideration of the said deed dated 07.10.1989 the Court opined that the transaction was that of a sale and not a mortgage and thus dismissed the suit.

The Plaintiff has preferred appeal against the said decree.

2. Answer any two (2) of the following giving reasons: 10
- I. On 10th of January 2004, 'A' executes an unregistered agreement to sell an immovable property for consideration in favour of 'B' and puts 'B' in possession of the property. Half of the consideration is paid. Balance consideration was to be paid within six months by 'B'. Alleging breach of contract by 'B', 'A' institutes a suit for regaining possession of the property on 30th July, 2007. 'B' seeks to protect possession on the principle of part performance u/s 53A of The Transfer of Property Act. Will 'B' succeed?

II. A, a female Hindu had inherited property from her brother. Her husband had died during her lifetime. She died intestate issueless. Y, a heir of her husband and Z, a heir of her brother from whom she had inherited the property, stake rival claims over the property.

Who will succeed?

III. "Sterilisation Scheme" was launched by a State Government. S, a poor labourer woman, who already had seven children, opted for sterilisation. A certificate of sterilisation was issued to her. She was assured that full, complete and successful sterilisation operation had been performed upon her and she would not conceive child in future. But due to negligence of Doctor conducting operation the sterilisation was not complete. As a result she conceived and gave birth to a female child inspite of the operation. S instituted a suit for damages.

a. Is 'S' entitled to recover general and special damages for personal injury in suffering unwanted pregnancy?

b. Is 'S' entitled to recover damages for economic loss in rearing up the child?

3. "*Damnum Sine Injuria* and *Injuria Sine Damnum* are two different principles of Law". Explain briefly.

OR

Explain the tort of "malicious prosecution". What a plaintiff is required to prove in order to sustain the plea of malicious prosecution?

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4. Explain the nature, scope and validity of the provisions contained in Section 9-A (Maharashtra Amendment) of the Code of Civil Procedure.

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5. Discuss any two (2) out of the following:

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I. The status and right of the daughter of the coparcener, in the light of Hindu Succession (Amendment) Act, 2005.

II. Temporary injunction in a mandatory form

III. A Mohammedens power to dispose of property by will and gift.

6. Define and distinguish between composite negligence and contributory negligence in the context of Motor Accident Claims.

OR

On breach of contract only such loss can be recovered as was in the contemplation of both the parties at the time of entry into the contract. Discuss.

7. Write short notes on any two (2) : 10
I. Customary easements 10
II. Doctrine of pleasure
III. Universal donee
IV. Rule of ejusdem generis
8. Express your views on any one (1) of the following: 20
(In about 400 words)
I. Role of Ombudsman (Lokpal) in a constitutional democracy.
II. Primacy to the executive in the matter of appointment of the Judges of the Supreme Court and High Court.
