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0101

अध्यापक/34 धर्मदाय आयुक्त

पाठ्याभ्यास परीक्षा - 2013

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परीक्षा दि: 01-12-2013

FUNDAMENTAL LAWS AND PROCEDURAL LAWS

Time : 3 Hours

Max. Marks : 100

Note :

- (i) Figure mentioned in the bracket on the extreme right indicates the marks carried for that question or sub-question.
- (ii) For objective type question in Part - I candidate has to indicate his choice on the answer book by pointing out the relevant clause against each question (e.g. Q1 : Ans : (a) or (b) likewise)
- (iii) Number of optional sub-questions upto the prescribed number in the order in which they have been solved will ONLY be assessed. Excess answers will NOT be assessed.
- (iv) Candidates are expected to answer all the sub-questions of a question together. If 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.
- (v) Candidate should not write roll number, any name (including one's own), signature, address or any indication of one's identity anywhere inside the answer book otherwise he/she will be penalised.
- (iv) Candidates should answer the question in Marathi language wherever noted.

PART - I**OBJECTIVE QUESTIONS [30 Marks] [2 Marks each]**

1. It is well settled that the nature of the enquiry under Section 22 of the Maharashtra Public Trust's Act, 1950 is
 - (a) Departmental
 - (b) Charitable
 - (c) Judicial
 - (d) Administrative

P.T.O.

SEAL

2. 'Indigent Person' means a person whose total annual income does not exceed notified by the State Government in exercise of the powers conferred by Clause (b) of Sub-section 4 of Section 41AA of the Maharashtra Public Trusts Act, 1950
- (a) ₹ 3,600
 - (b) ₹ 25,000
 - (c) ₹ 1,00,000
 - (d) ₹ 50,000
3. 'Complaint' as defined under Criminal Procedure Code means
- (a) A chargesheet submitted by Police
 - (b) First Information Report
 - (c) Allegations in the form of protest
 - (d) An oral or written allegation made to a Magistrate for taking action against some persons having committed an offence
4. The provisions of chapter 'Plea Bargaining' can be invoked by
- (a) Police
 - (b) State
 - (c) Victim
 - (d) Accused
5. Which Section of Criminal Procedure Code empowers the court to examine the accused for giving him an opportunity to explain any circumstances appearing in the evidence against him ?
- (a) Section 311 A of CrPC
 - (b) Section 314(1) of CrPC
 - (c) Section 313 of CrPC
 - (d) Section 315(1) of CrPC
6. Which of the following is a subject matter of jurisdiction of the Court as per Section 9 of Civil Procedure Code ?
- (a) Relating to Public Trust
 - (b) Dispute touching the business of a co-operative society
 - (c) All suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred
 - (d) Industrial Dispute

7. Awarding costs as per Section 35 of Civil Procedure Code is
- (a) compulsory
 - (b) at the discretion of the Court
 - (c) out of sympathy
 - (d) as a penalty
8. Document when called as attested, shall be attested by
- (a) executant
 - (b) one witness
 - (c) two or more witnesses
 - (d) transferee
9. Doctrine of 'Lis Pendens' means
- (a) bar on transfer of property before institution of suit
 - (b) prohibition on transfer of property during the pendency of suit
 - (c) insolvency proceeding
 - (d) none of these
10. The concept 'part performance' is provided under
- (a) Section 50 of Transfer of Property Act
 - (b) Section 53 of Transfer of Property Act
 - (c) Section 52 of Transfer of Property Act
 - (d) Section 53(A) of Transfer of Property Act
11. Transfer of 'actionable claim' can be effected
- (a) orally
 - (b) by execution of an instrument
 - (c) by execution of an instrument signed by transferor
 - (d) all of the above
12. The effect of law of limitation is that
- (a) right is destroyed
 - (b) remedy is barred
 - (c) bar defence
 - (d) both right and remedy barred

P.T.O.

13. Document if required by law to be attested then for the purpose of proving execution as per Section 68 of Law of Evidence
- (a) all the attesting witnesses are to be called for proving it
 - (b) calling at least one attesting witness
 - (c) by calling any person having knowledge thereof
 - (d) none of these
14. Primary evidence means
- (a) document itself produced for the inspection of the Court
 - (b) where a document is executed in several parts, each part is primary evidence
 - (c) where a document is executed in counter parts, each counter part
 - (d) all of the above
15. Leading questions can be asked in examination-in-chief when they refer to matters which are
- (a) introductory
 - (b) undisputed
 - (c) sufficiently proved
 - (d) all of the above

PART - II
SUBJECTIVE QUESTIONS

[70 Marks]

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16. What are the statutory issues for inquiry of registration of the Trust under Section 19 of the Maharashtra Public Trusts Act, 1950 ? (10)
17. Discuss the following with reference to Section 50A of the Maharashtra Public Trusts Act, 1950. (2×5=10)
- (i) Nature of power
 - (ii) 'Reason to believe' – meaning of
 - (iii) 'Necessary' and 'expedient' – meaning of
 - (iv) 'In the interest of public trust' – meaning and scope of
 - (v) General grounds for framing the scheme
18. (a) What considerations should be borne in mind while condoning the delay ? Discuss with case-laws. (5)
- (b) Give your opinion on the following in brief : (1×5=5)
- (i) Whether condonation of delay can be said to be empty formality ?
 - (ii) Whether claim of parties can be decided on merit unless the question of delay is considered and decided ?
 - (iii) Whether every day's delay must be explained ?
 - (iv) Whether ignorance of legal provisions can be a proper ground for condonation of delay ?
 - (v) Whether a mere plea of sickness is sufficient to condone the delay. ?
19. Discuss the scope of bar of jurisdiction of a Civil Court as provided under Section 80 of the Maharashtra Public Trusts Act, 1950 with case-laws. (10)
20. Write short notes on the following : (2×5=10)
- (i) Temporary injunctions
 - (ii) Modes of Alternate Dispute Resolution
 - (iii) Anticipatory Bail
 - (iv) First Information Report
 - (v) Hearsay Evidence

P.T.O.

21. Write summary of the following passage with title.

They say 'Justice Delayed is Justice Denied'. It is a deep matter of concern that 3 crore cases are pending in Courts. In USA for every one lakh population (of litigants) there are 10 Judges but in India there is only one Judge for such a population. The obvious ways implemented to tackle this issue were like appointing new Judges, establishing e-courts, and fast-track courts, etc. which are not fruitful.

Humankind is a race which is brainy enough for inventions. And is the one which keeps creating disputes and needless to say, is the one who readily solves it. The most standard example of the latter is the legal profession – a healer of human conflicts so there might not be a possibility that the brainy or kind have not thought of a solution to the issue of pending cases in Courts. The solution to it is very ideal for dispute resolution and is in the form of 'mediation' and is a sort of healing by the kind.

Alternate Dispute Resolution (ADR) has been a part of our culture for several centuries in the form of 'The Panchayat System'. The said mechanism vanished in the dark due to British and Colonial Rule. With advancement of time it is now necessary to bring it back in the form of 'Mediation' to save the country from hazards of 'unsolved cases'.

In order to prove 'Mediation' as an ideal form of dispute resolution over adjudication we must look at its mechanism – acceptable result in the shortest possible time with the least possible expense and with minimum stress on participants. And this is what justice is all about.

The highlights of mediation are that, it establishes neutrality on the part of mediator, creates the environment suitable to constructive negotiations, maintains confidentiality of the parties by the mediator, plus it is time-bound which keeps the parties hopeful, is an informal process and collaborative in nature (rather than adversarial) focusing on Mutual Beneficial settlement.

Thus Mediation is the need of the hour.

22. Translate the following passage in English :

महाराष्ट्र सार्वजनिक विश्वस्त व्यवस्थाअधिनियमाच्या तरतुदींचे अवलोकन करता हे स्पष्ट होते की, धर्मादाय उप आयुक्त/सहायक धर्मादाय आयुक्त यांना विस्तारीत अधिकार देण्यात आलेले आहेत. उदा. न्यासाचे मिळकतीत प्रवेश करणे, तपासणी घेणे, विश्वस्तांकडून/हितसंबंधीत व्यक्तीकडून कोणतीही कागदपत्रे, विवरण, लेखापत्रके मागविणे, त्याची तपासणी करणे इ.

धर्मादाय उप आयुक्त/सहायक धर्मादाय आयुक्त यांना दिलेले अधिकार हे त्यांना दिलेल्या कार्यक्षेत्रात वापरू शकतात. धर्मादाय संघटनेचा कणा म्हणजेच धर्मादाय उप आयुक्त/सहायक धर्मादाय आयुक्त आहेत असे म्हटलेतर ते वागणे ठरणार नाही, कारण न्यासाचे कामकाजावर प्रत्यक्ष नियंत्रण ठेवण्याचे ते काम करतात. धर्मादाय उप आयुक्त/सहायक धर्मादाय आयुक्त यांना तपासणी अधिकारी आणि न्यायनिर्णय देणे या दोन्हीही जबाबदाऱ्या पार पाडाव्या लागतात. शिवाय त्यांना न्यासाची न्यायिक, न्यायीकवत व प्रशासकीय कामे अशा त्रिसुत्रीमध्ये काम करावे लागते. न्यासाबाबत सार्वजनिक न्यासा नोंदणी कार्यालयात ठेवावी लागणारी नस्ती, विविध नोंदवह्या, त्याची अद्यावतता यावर नेहमीच बारकाईने लक्ष ठेवावे लागते.

महाराष्ट्रात प्रत्येक जिल्ह्यात धर्मादाय उप आयुक्त/सहायक धर्मादाय आयुक्त यांच्या समोर असलेल्या प्रलंबित प्रकरणांची संख्या दिवसेंदिवस वाढतच आहे व प्रलंबित प्रकरणांच्या संख्येत भर पडत आहे. वास्तविक, या प्रकरणातील बहुतांशी प्रकरणेही कायद्याच्या अज्ञानामुळे विश्वस्ताकडून अपुरी पाठविली जातात. परिपूर्ण, योग्य व कायदेशीर तरतुदीस अनुसरून प्रस्तुतची प्रकरणे दाखल केल्यास, त्याचे तात्काळ निर्गतीकरण करणे धर्मादाय उप आयुक्त/सहायक धर्मादाय आयुक्त यांना करणे हे सहज शक्य आहे. शिवाय त्यामुळे असणाऱ्या प्रकरणांची संख्याही कमी होवून विश्वस्त व्यवस्थेचे कामकाज सुरळीत होण्याच्या दृष्टीने मदतच होणार आहे व त्यामुळे सरकारी कार्यालयांचा अभ्यांगत, पक्षकार व वकील यांचा वेळ, पैसा व त्रास यांची बचतच होणार आहे.