

10 MAY 2024

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination, May-2024

Semester: X

Subject: Drafting, Pleading and Conveyancing.

Marks: 100

**TIME: Three Hours**

*Instructions:*

1. Attempt any Five questions.
2. Assume the facts wherever necessary. Brevity will be appreciated.
3. Marks for the Answers are indicated at the end of each question.
4. No bare acts and/or study materials are allowed. The relevant sections are provided as reference at the end of the question paper.
5. No clarification will be sort during examination.
6. In drafting questions mention only brief facts, grounds and Prayer. Affidavit is not necessary.

Q.1. Pleadings are the backbone of the litigation, the basis on which the courts proceeds. Justify the statement. Discuss following terms with respect to pleadings with suitable examples:

i. Alternative pleadings

ii. Inconsistent pleadings

iii. *Facta probanda and facta probantia*

(Marks 5+5+5+5=20)

Q.2. Draft a usufructuary mortgage deed on imaginary facts.

(Marks 20)

Q.3. Draft a bail petition under section 438 of Code of Criminal Procedure, 1973.

(Marks 20)

Q.4. One Rekha daughter of Mr. Kishan got married on 1<sup>st</sup> July 2021 with Ravi who runs a garment shop. On 14<sup>th</sup> October, 2021, there was some quarrel between Ravi and Rekha regarding Ravi's habit of chewing Gutkha and gambling on loans. She was brutally beaten by Ravi. On 15<sup>th</sup> October, 2021, when Ravi returned home from his shop, Rekha was not at home. Ravi enquired about her with neighbours and her friends but all in vain. He also inquired about her at her parental home but got no positive response therefore, a 'missing' application was given by Ravi with Viraj Police Station on 17<sup>th</sup> October, 2021 bearing missing No. 117 of 2021. Rekha's father, Mr. Kishan who was out of India for some official work was also informed on 15<sup>th</sup> October, 2021 by Mr. Shyam, father of Ravi about non availability of his daughter in-law. Mrs. Kishan waited at her house for Rekha and also tried to contact on her phone, however, her phone was found switched off and she did not return to her parental house. Several attempts were made to search Rekha but no whereabouts of her were found. On 12<sup>th</sup> December 2022 while talking to Rekha's friend Mr. Kishan came to know some shocking fact that there was a college friend of Rekha who wanted to marry her and was after him. Later, Mr. Kishan also came to know that Joy had abducted Rekha. Mr. Kishan filed a writ petition to the High Court stating that though the missing complaint was lodged with the



Viraj Police Station, no fruitful efforts were made so this writ petition. Draft a writ petition for the same as an advocate on behalf of Mr. Kishan, your client. (Marks 20)

Q.5. Draft a pleading for dissolution of partnership of firm on imaginary facts. (Marks 20)

Q.6. i. Draft an application under Order XVIII rule 16 of the Code of Civil Procedure, 1908.

ii. Draft an application under section 258 of the Code of Criminal Procedure, 1973.

(Marks 10+10=20)

**Sections for reference:**

Section 438 Code of Criminal Procedure, 1973- Direction for grant of bail to person apprehending arrest.

- [(1) Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognisable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-Section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in charge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.

(1-A) Where the Court grants an interim order under sub-Section (1), it shall forthwith cause a notice being not less than seven days- notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1-B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice] [Substituted by Act 25 of 2005, Section 38, for sub-Section (1). Prior to its substitution, sub-Section (1) read as under :- [(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this Section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail].]

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including -

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of Section 437, as if the bail were granted under that section:

Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

(4) [ Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code.] [Inserted by Criminal Law (Amendment) Act, 2018 (22 of 2018), dated 11.8.2018.]

Order XVIII rule 16 of the Code of Civil Procedure, 1908-Hearing of the suit and examination of witnesses

16. Power to examine witness immediately—(1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it,

and it may then be read at any hearing of the suit.

Section 258, Code of Criminal Procedure, 1973

Power to stop proceedings in certain cases.

In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.