

THE SUPREME COURT OF INDIA  
Advocates-On Record Examination, December 2004  
Paper-II- Drafting

Time: 3 Hours

Total Marks: 100

I N S T R U C T I O N S

1. Answer any four questions.
2. All questions carry equal marks.
3. Liberty to supply assumed names, dates and other details within the basic frame of the question, if and when considered necessary.

**Question No-1**

An international commercial contract dated 1<sup>st</sup> January 1994 between a Foreign Company and an Indian Company provides for reference of a dispute to an arbitration to be held at Paris. Foreign Company served notices dated 1<sup>st</sup> December 1995 and 1<sup>st</sup> January 1996 raising a claim for Rs. Ten Crores as damages for breach of contract against an Indian Company. There was no response to demands and hence a request for reference to arbitration was served on 1<sup>st</sup> August 1996.

Even before arbitration proceedings commenced, the Foreign Company filed in an Indian Court an application under Section 9 of the Arbitration and Conciliation Act 1996 for interim measures of attachment of sole immovable property of Indian Company on the ground that it was being transferred with a view to delay and /or defeat the claim for the amount in dispute.

The Trial Court rejected the application *inter alia* on the grounds that (i) since contract and dispute related to period prior to the bring into force of the 1996 Act application was not maintainable (ii) the arbitral proceedings had not even commenced (iii) Section 9 does not apply where place of arbitration is outside India & (iv) the Arbitral Tribunal could be moved for the same relief under Section 17 of the Act.

This order was confirmed in the first appeal by the High Court by a non speaking order.

Prepare a Special Leave Petition on behalf of the Foreign Company with prayer for an ad-interim relief, keeping in view Sections 2,9,17,21,& 89 of the 1996 Act

#### Question No-2

An application for temporary injunction in an infringement action for permanent injunction restraining the Defendant from infringing a registered trade mark of the Plaintiff was dismissed by the Civil Judge Junior Division only on the ground that balance of convenience was not in favour of the Plaintiff. First appeal filed by the Plaintiff was allowed holding that balance of convenience was in his favour.

A Special Leave Petition filed by the Defendant against the appellate order was dismissed in limine on the sole ground that no interference was called for at that stage. The aspect of prima facie case and jurisdiction was not considered though raised.

Prepare a petition for review of the said order keeping in view Sections 27 & 134 of the Trade Marks Act 1999.

#### Question No-3

Prepare a counter in response to a notice before admission issued by the Supreme Court in a Special Leave Petition challenging the order of High. Court quashing, under Section 482 of Code of Criminal procedure, a First Information Report under Section 409 of the Indian Penal Code on the sole ground that an earlier Civil Suit pertaining to the same transaction was at the ripe stage of hearing.

#### Question No-4

What is a Curative Petition? Write a note stating its source, the grounds on which it can be filed and give the draft of its necessary accompaniment

Question No- 5

Prepare a petition under Article 32 of the Constitution on behalf of a public spirited person seeking directions to stop setting up of the polluting industries in the coastal area in violation of the relevant restrictions and prohibitions.

SUPREME COURT OF INDIA  
ADVOCATES ON RECORD EXAMINATION JUNE 2005  
PAPER-II DRAFTING

Time: 3 Hrs.

Total Marks : 100

INSTRUCTIONS

1. Please attempt all the questions.
2. All question carry equal marks.
3. You may use assumed names, dates and other details within the framework of the questions.
4. Weightage will be given for clearness, brevity and conciseness.

**Q. 1.** 'A' entered into a construction contract with 'B', which contained arbitration clause. The arbitration clause was in two parts. Under the first part, any claim made by A, the Contractor, was to be referred at the first instance to the Engineer-In-Charge to construction project. The Engineer-In-Charge had to decide on the claim. If the Contractor was dissatisfied with the decision, then the matter would go to arbitration of an Arbitral Panel consisting of three members, one to be appointed by A, the second to be appointed by B and the third to be appointed by the two nominated arbitrators.

In the present case A raised a claim against B but did not go to the Engineer-In-charge on the ground that during the course of the construction, the Engineer-In-Charge had given certain instructions with reference to the subject matter of the claim. A contended that the Engineer-In-Charge was disqualified from deciding on the dispute at the first instance and they invoked the arbitration

clause.

Before the Arbitral Tribunal B raised the question of jurisdiction of the panel to decide on the dispute on the ground that the first part of the arbitration clause had not been complied with. The Arbitral Tribunal, accepting a plea under sec. 16(2), held that it had no jurisdiction to decide on the dispute and whatever may have been the circumstance, A should have gone to the Engineer - In-Charge at the first instance.

Section 16 of the Arbitration and Conciliation Act, 1996 reads as follows:

**Competence of arbitral tribunal to rule on its jurisdiction.** - (1) The arbitral tribunal....

Section 37 of the Act is in the following terms:

**Appealable orders.** - (1) An appeal shall lie from the following orders.....

A desires to challenge the order of the Arbitral Tribunal. Please draft an appropriate appeal. Assume that the forum to which appeal would lie is the High Court of Delhi.

**Q.2.** A property owned by the government is allotted to X for construction, running and management of a hospital. Under the terms of allotment, X is required to pay 5 crores to the Government. X pays earnest money of 20 lakhs but fails to pay the balance as required. The government consequently issues show cause notice to X why the allotment in his favour be not terminated. X, thereupon, files a suit for injunction seeking to restrain the government from terminating then allotment and from re-allotting the land to anyone else. The trial court refuses to grant the injunction. X files appeal against then trial court judgment, which is pending.

In the meantime, the government re-allots the land to Y and hands over possession to Y, specifying in the terms of allotment that it would be subject to the outcome of the case filed by X. Y then files application for impleadment in the suit filed by X. The trial court rejects application. Y then filed revision before the High Court which rejected it too. Please prepare SLP on behalf of Y giving grounds. Choose dates artificially.

**Q.3.** A state Transport Corporation running a bus depot had given a part of the land to a contractor 'X' for running a canteen. The period of contract was for 5 years, After 5 years, the Corporation invited fresh tenders. X submitted a tender but was unsuccessful. The Corporation awarded the contractor to the successful bidder, 'Y' and tried to remove X forcibly from possession X protested that he would not vacate and filed suit for injunction relying on section 6 of the Specific Relief Act, 1963. The High Court rejected his application for injunction.

X retains you to draft SLP against the High Court judgment. Please draft the same. S.6 of the Specific Relief Act, 1963 reads as under:  
"S.6 .....

**Q.4.** An assessee under the Delhi Sales Tax Act is assessed to tax by the Sales-tax Officer.

The Sales-tax officer examines the record produced before him and directs refund. The Delhi Sales Tax Act requires the assessee to make an application for refund.

When the assessee makes the application for refund, the officer demands more material to establish case for refund. Even though the assessee produces some documents, he objects to the procedure. The assessing officer does not accept objections and rejects refund application In his order, the Sales tax Officer threatens to re-open assessment but does not actually re-open it. The assessee files a writ petition before the High Court, which rejects the petition.

Please draft SLP on behalf of the assessee before the Supreme Court.

S.30 reads as follows. (Under another provision, power of commissioner is delegated to Sales Tax Officer).

SUPREME COURT OF INDIA

ADVOCATES ON RECORD EXAMINATION JUNE 2006

Paper -II DRAFTING

Time : Three hours

Total Marks : 100

INSTRUCTIONS

1. Please attempt all the questions.
2. All questions carry equal marks.
3. You may use assumed names, dates and other details within the framework of the questions.
4. Weightage will be given for clarity, brevity and conciseness.

Q.1 Parliament enacted THE CONSTITUTION (NINETY-THIRD AMENDMENT) Act, 2005 which reads as follows:

THE GAZETTE OF INDIA

EXTRAORDINARY

PART-II SECTION 1

PUBLISHED BY AUTHORITY

No.4] NEW DELHI, FRIDAY, JANUARY 20, 2006/PAUSA 30, 1927

THE CONSTITUTION (NINETY-THIRD AMENDMENT)  
Act, 2005

[20<sup>th</sup> January, 2006]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the fifty-sixth year of the Republic of India as follows:-

1. (1) This Act may be called the Constitution (Ninety- third Amendment Act, 2005.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Short title and commencement

Amendment of Article 15 In Article 15 of the Constitution, after clause (4), the following clause shall be inserted, namely:-

“(5) Nothing in this Article or in sub-clause (g) of Clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30”.

*T.K. VISWANATHAN*  
Secy, to the Govt, of India.

It was published in the Gazette of India dated January 20, 2006.

A registered society by name General Category Candidates Welfare Association has decided to challenge the above amendment to the Constitution before the Supreme Court of India, as according to the Association, the amendment abridges the basic structure of the Constitution.

Draft an appropriate petition to be filed in the Supreme Court on behalf of the Association, mentioning the relevant provision of the Constitution under which it is to be filed, the names of the parties to be impleaded, the possible grounds of challenge and the Prayer with a supporting affidavit. It should be a full-fledged Petition in all respects.

Q.2 The Statement of Objects and Reasons accompanying the Bill which became the Constitution (93<sup>rd</sup> Amendment) Act, 2005 reads as follows:-

#### “STATEMENT OF OBJECTS AND REASONS

Greater access to higher education including professional education, to a larger number of students belonging to the socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes, has been a matter of major concern. The reservation of seats for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes of citizens (OBCs) in admission to educational institutions is derived from the provisions of clause (4) of Article 15. At present, the number of seats available in aided or State maintained institutions, particularly in respect of professional education, is limited in comparison to those in private unaided institutions.

2. It is laid down in Article 46, as a Directive Principle of State Policy, that the State shall promote with special care the educational and economic interests of the weaker sections of the people and protect them from social injustice. Access to education is important in order to ensure advancement of persons belonging to the Scheduled Castes, the Scheduled Tribes and the socially and educationally backward classes also referred to as the OBCs.

3. Clause (1) of Article 30 provides the right to all minorities to establish and administer educational institutions of their choice. It is essential that the rights available to minorities are protected in regard to institutions established and administered by them. Accordingly, institutions declared by the State to be minority institutions under Clause (1) of Article 30 are omitted from the operation of the proposal.

4. To promote the educational advancement of the socially and educationally backward classes of citizens i.e. the OBCs or of the Scheduled Castes and Scheduled Tribes in matters of admission of students belonging to these categories in unaided educational Institutions, other than the minority educational institutions referred to in clause (1) of Article 30 of the Constitution, it is proposed to amplify Article 15. The new clause (5) shall enable the Parliament as well as the State Legislatures to make appropriate laws for the purposes mentioned above.

5. The Bill seeks to achieve the above objects.

New Delhi

Dated the 19<sup>th</sup> December, 2005

The Main Respondent in the petition mentioned in Question No. I above approaches you to prepare a counter-affidavit opposing the petition on all possible grounds including preliminary objections, if any, as to its maintainability.

Draft a counter affidavit with proper verification opposing the Petition and defending the Constitutional validity of the Constitution (93<sup>rd</sup> Amendment) Act, 2005.

Q.3 Draft a Criminal Special Leave Petition (SLP) on behalf of the accused Vishnu convicted in a case, the facts of which are as follows:

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- (a) The prosecutrix, Kumari Pushpa at the relevant time was residing with her parents Pandurang PW1 and Vimal, PW 13 at Khar Danda, Mumbai. The accused was known to the prosecutrix as they were residing in the same locality. The accused was also a friend of the maternal uncle of the prosecutrix. She used to visit her maternal uncle’s house where she used to meet the accused. Pandurang, father of the prosecutrix was admitted at K.E.M. Hospital for treatment of his eyes. The prosecutrix used to take food and tea to the hospital for her father.
  - (b) On 10.7.1980, the prosecutrix had gone to the hospital at about 11 a.m. carrying food and tea for her father. She left the hospital at about 3.30. p.m. while she was coming out of the gate of K.E.M. Hospital, the accused who was a taxi-driver met her at the gate and inquired as to where she was going. The prosecutrix told the accused that she was on her way to her residence. The accused told her that he had his own taxi and he would drop her at her residence at Danda. Upon such offer, the prosecutrix got into the taxi. When the taxi came to Linking Road Junction, the accused told her that his wife was admitted in Nanawati Hospital and he would go and see his wife in the hospital and thereafter he would drop her at her residence. The accused then took the taxi to a small hotel representing that it was Nanawati Hospital. The accused took her inside the room of the hotel, bolted the room from inside and committed rape on her by threatening that in case of her shouting, she would be finished. Both of them came out of the room and the accused dropped her

home at 5.45 p.m. in his own taxi.

- (c) The prosecutrix reached home, bleeding profusely from her private parts. After half an hour, she became unconscious. Her mother Viman PW 13 and her brother Eknath took her in a taxi to Bhabha Hospital. She was examined by Dr. Dilip Chaniary, PW 12 of Bhabha Hospital. After she regained consciousness at about 10 p.m. she narrated the incident to her mother that she was raped at about 5 p.m. and told her that she was bleeding from her vagina since 5.30 p.m. An FIR was lodged promptly at the nearest police station.
- (d) The Trial Court convicted Vishnu for the offence u/s 376 IPC (Punishment for rape) and sentenced him to two years RI. Vishnu preferred an Appeal before the High Court. The State also preferred a cross appeal for enhancement of the sentence. The High Court, by a common order dismissed the appeal filed by the accused and allowed the appeal filed by the State to the extent of enhancing the sentence to 5 years RI.
- (e) The main defence of the accused throughout was that the prosecutrix was a major and the sexual intercourse was consensual. However, the concurrent findings of the Trial Court and the High Court are that the girl was aged 16 on the date of offence and she did not consent. There was a controversy whether the date of birth of the prosecutrix is 29.11.1964 as recorded by the Municipal Corporation in the Register of Births or 29.6.1963 as recorded in the school leaving certificate by the Municipal School.

According to Section 375 IPC a man is said to commit 'rape' who has sexual intercourse with a woman, with or without her consent when she is under 16 years of age.

In the grounds of SLP make out a case for interference with concurrent findings in addition to the grounds on merits. The SLP should be complete in all respects.

Q.4 (a) Draft an appropriate petition on the basis of the following facts:

In a suit filed in 1994 by a landlord by name Vasudev against his tenant, namely, Raja Bhai, the tenant deposited in Court a sum of Rs. 400/- on October 1, 1994. The deposit remained in Court upto October 9, 1994, when it was withdrawn by the tenant. A fresh suit was filed in September, 1995, for ejection of the tenant. On January 10, 1997, the tenant deposed about the deposit of Rs. 400/- and its withdrawal after nine days. The suit was dismissed by the trial

Court on February 26, 1997, on the ground that the amount required had been deposited by the tenant in Court. The lower appellate court accepted the appeal and ordered ejectment on the ground that the amount deposited was not sufficient as Rs.400/- had already been withdrawn. In a revision petition filed in High Court, it was contended that the amount of Rs.400/- was in deposit and at the disposal of the landlord. The High Court accepted this fact but in spite of that refused to interfere in the matter and dismissed the revision petition.

In the petition for Special Leave to Appeal, the tenant quoted a long extract from the judgment of High Court regarding the deposit of Rs.400/- in court and submitted that the High Court was correct in coming to the conclusion that as there was nothing on record to show that the petitioner had withdrawn the sum of Rs.400/- the petitioner was not in arrears of rent. Special Leave to appeal was granted.

When the landlord received notice from the Registrar of Supreme Court intimating that Special Leave has been granted to the Appellant, he approached you for filing a petition pointing out the false statements made by the tenant in the Special Leave Petition about the deposit of Rs.400/- in Court and withholding of the material fact that he had subsequently withdrawn the sum of Rs.400/- initially deposited by him in the Court and obtained Special Leave by misleading the Supreme Court.

Draft a petition for appropriate relief. The Petition should contain brief facts, grounds and Prayer. Affidavit is not necessary.

Q.4 (b) Draft a Contempt Petition under Article 129 of the Constitution on the basis of assumed facts alleging that a direction given by the Supreme Court in a Civil Appeal to restore the possession of the land in dispute to the appellant within a period of three months from the date of the judgement has not been complied with willfully and deliberately. Affidavit in support of the petition is not necessary.

SUPREME COURT OF INDIA

ADVOCATE ON RECORD EXAMINATION JUNE 2007

PAPER II - DRAFTING

Time: 3 Hrs

Total Marks: 100

Note of Instructions:

1. Please read the question carefully.
2. Please attempt all the questions
3. Each question carries equal marks
4. You may use assumed names, dates and other details within the framework of the question.

1. The State of Andhra Pradesh approaches you with a grievance that by the impugned judgment the High Court, of Andhra Pradesh has quashed the FIR filed by Prohibition and Excise Officers alleging commission of offences under the Andhra Pradesh Excise Act, 1968 and the Andhra Pradesh Prohibition Act, 1995. In all the cases the allegation was that the accused concerned was either transporting or storing black jaggery/molasses for the purpose of manufacturing illicit distilled liquor or was an abettor so far as the offence of manufacturing illicit liquor is concerned. On being moved by application under Section 482 of the Code of Criminal Procedure 1973 by the accused concerned for quashing the FIR, the High Court accepted the plea holding that there was no material to show that the seized articles were intended to be used for manufacturing of illicit distilled liquor. Accordingly, the FIR in each case was quashed. Your client suggests that the adequacy of material already in existence or which could have been collected during investigation and their relevance is essentially a matter of trial The High Court was not therefore justified in quashing the FIR. The exercise of power under Section 482 of the Code, in the facts of the case, is clearly indefensible. Please draft a Petition for Special Leave to appeal without the list of dates with particular emphasis on Questions of Law

and Grounds.

2. Mr. X approaches you with a grievance that a judgment has been pronounced by the Hon'ble Supreme Court which adversely affects his interest and that he was not even a party to the lis and also not served with the notice of proceedings. It is also brought to your notice that a review petition against the said judgment has already been dismissed. What remedy is available to Mr. X? What would be the nature of petition which will be filed? What are the conditions which have to be satisfied before preferring such a petition? Please list out the conditions on which such petitions are to be preferred. What grounds are relevant grounds for such a petition and what are the steps to be taken before filing such a petition? What is the law which allows such a petition, please discuss the evolution of law in this regard. How will you make your petition maintainable, please answer this question with reference to recent development in case law as to the maintainability of such a petition.
- 3(a). Please indicate the remedy for any suit, appeal or other proceeding to be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State. Similarly, please also indicate the suitable remedy for any particular case or appeal to be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court. What could be the grounds germane to the abovesaid transfer petitions?
- 3(b). In what circumstances the cases pending before one or more High Courts and the Supreme Court could be transferred to the Supreme Court. Please indicate the relevant provisions of law including the provisions of Supreme Court Rules in this regard.
4. One of the parties to an agreement, which has an arbitration clause, approaches you. He states that the dispute between the parties under the agreement was to be finally resolved by Arbitrators under the Rules of UNCITRAL. Article 5 of UNCITRAL relates to composition of the Arbitral Tribunal and provides that if

the parties have not previously agreed to the number of Arbitrators, and if within fifteen days after the receipt by the Respondent of notice for arbitration the parties had not agreed that there should be only one Arbitrator, three Arbitrators should be appointed. One X Inc. through its advocate served a notice and called upon your client to appoint an Arbitrator but no appointment was made by our client. An application was made by X Inc. to Hon'ble the Chief Justice of India for appointment of an Arbitrator under sub-section (6) of Section 11 of the Arbitration and Conciliation Act, 1996 and as a nominee of Hon'ble the Chief Justice of India, a learned Single Judge of the Supreme Court, by an order dated 31<sup>st</sup> January, 2006, allowed the application and appointed a retired Judge of the High Court as the Sole Arbitrator. It is brought to your notice that as per UNCITRAL model, three Arbitrators ought to have been appointed. What remedies are available to your client against the order of learned Single Judge of the Hon'ble Supreme Court? What would be the appropriate pleading in this regard? State the legal position as to maintainability with reference to case law and also draft a suitable pleading for your client.

5. RMI Ltd. (RMIL) approaches you. It brings to your notice that it has *an* agreement with ITE Ltd (ITEL). ITEL has a lease of the land situated at Plot No. F-32, Sector 55, Noida from New Okhla Industrial Development Authority for a period of 90 years. ITEL wanted to construct and develop an exhibition centre on the said land. There were negotiations between RM1L and ITEL as a result of which an exclusive management agreement was arrived at. The said agreement was signed by the Director of ITEL for and on behalf of ITEL. Under the said agreement, RMIL was granted exclusive rights to manage the said plot of land for a period of ten years from the date of possession being handed over to it. Clause 8.1 of the agreement provided for arbitration in the following terms:

“8.1 Arbitration: Any dispute, controversy or claim arising out of or in relation to this exclusive Management Agreement shall be settled by a panel of three arbitrators (the 'arbitration panel') in accordance with the provisions of the Arbitration and Conciliation Act, 1996. ITEL and RMIL shall appoint one arbitrator each and such arbitrators shall, within seven days of their appointment, designate a third person to

act as the chairman and the presiding arbitrator. The arbitral proceedings shall take place in Delhi and shall be conducted in the English language. Any such dispute, controversy or claim submitted for arbitration shall be considered a commercial dispute arising under the Arbitration and Conciliation Act, 1996. The award of the arbitration panel shall be a reasoned one, and shall be final and binding on the parties."

Certain disputes had arisen between the parties as a result of which on 16.3.2005 RMIL filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the High Court of Delhi and obtained an order directing ITEL to maintain status quo with regard to possession and title of the said plot of land. On 8.4.2005, RMIL sent a legal notice to ITEL invoking Clause 8.1 of the said agreement. On 4.5.2005, ITEL replied to the said notice raising several contentions, inter alia, denying that there was any arbitration agreement in existence but, nonetheless, without prejudice, appointed Justice A.P. Goel, a retired Judge of the High Court as its nominee Arbitrator. The two Arbitrators were not in a position to arrive at a consensus about the Presiding Arbitrator.

It is also contended by ITEL that on 14.9.2004, in an extraordinary general meeting, the abovesaid management agreement has been repudiated or rendered ineffective. However, RMIL brings to your notice that one R. Sashua who is a major shareholder and Director of RMIL is also a major shareholder and Director of ITEL and had personal knowledge that no such extraordinary general meeting of ITEL was held on 14.9.2004.

RMIL approaches you for a suitable remedy before the Supreme Court. Please draft an appropriate pleading for RMIL.

IN THE SUPREME COURT OF INDIA  
ADVOCATES ON RECORD EXAMINATION JUNE 2008  
PAPER II: DRAFTING

Time 3 hours.

Total Marks : 100

**INSTRUCTIONS**

1. Please read the Questions carefully.
2. Please attempt all the Questions.
3. Each Question carries equal marks (with sub-divisions where indicated).
4. You may use assumed names, dates and other details within the framework of the question.

**Question No.1**

Vinod and Vivek are your clients.

Ashok, Pradeep, Vinod and Vivek were brothers. One of the self acquired properties of Pradeep and of which he was the absolute owner was a plot of land in Rampur (hereinafter referred to as the Rampur property). Pradeep died in the year 1983 leaving him surviving as his legal heirs his widow Kamla, two sons being Gopal and Rajesh and two daughters being Namrata and Nalini.

Prior to his death Pradeep executed a Will, which was registered, by which he made various bequests of the properties belonging to him. Amongst other bequests, Pradeep bequeathed the said Rampur property in favour of his brothers Vinod and Vivek jointly, and in equal shares, absolutely and forever.

With regard to the said Rampur property, there were certain pre-existing disputes between Pradeep and the State government authorities regarding matters of title and ownership which were pending before different Courts. After Pradeep's death the pending litigations were carried on in the names of the legal heirs of Pradeep namely, Kamla and her two sons and two daughters. That litigation is still pending.

According to your instructions it was clearly understood between the parties, as provided in the will of Pradeep, that the beneficiaries of the Rampur property were Vinod and Vivek and that the said litigations regarding that property were being carried on by the heirs of Pradeep for the benefit of your clients Vinod and Vivek.

In February 2004 the members of the family entered into a family arrangement regarding, inter alia, the Rampur property. The family arrangement acknowledged the

fact that the Rampur property belonged to Vinod and Vivek absolutely as bequeathed in the said Will. The family arrangement also took note of the pending litigations with regard to the Rampur property which were being carried on by the heirs of Pradeep at their own expense. The family arrangement provided that after the said Rampur property became free from litigation, it will be sold and certain specified sums would be\* paid to the heirs of Pradeep out of the sale proceeds as and by way of reimbursement of litigation costs and expenses

Immediately after the family arrangement was entered into, the same was evidenced in writing by a document dated February 2, 2004 signed by all the family members.

You are instructed by your clients that the relationship between the parties today may not be as cordial as it was before. Under the circumstances your opinion has been sought on the following queries:

- (i) Is the family settlement required to be registered and if so what is the effect of its non-registration ?
- (ii) Whether Vinod and Vivek have to implead themselves in the pending proceedings before the various courts in relation to the Rampur property?
- (iii) What are the rights and claims of the legal heirs of Pradeep with regard to the Rampur property ?
- (iv) What steps should be taken by Vinod and Vivek to protect their rights over the Rampur property ?

Please draw up a formal opinion to be given to your clients Vinod and Vivek.

## **Question No 2**

Your clients are one Jakki and one Sambhu who have been convicted by the High Court under Sections 148 and 302 of the Indian Penal Code (IPC). They were accused Nos. 1 and 2 in the case.

The prosecution version of the case is as follows:

There was a village rivalry between six accused persons on the one hand and one Suresh (hereinafter referred to as the deceased) and PW 1 Anant of a rival group on the other. Altercations took place between the two groups during a village function. During this altercation in June 2006 PW 1 Anant and some others had beaten up and restrained accused persons 1 to 6 from participating in the village function.

Later in the day around 4.45 p.m. with intention of killing Anant (PW 1) and the deceased Suresh, all the six accused persons unlawfully assembled at a particular place armed with dangerous weapons. Accused 1 and 2 i.e. the present appellants called out Anant (PW 1) and chased him but he managed to escape. However, that did not deter the six accused persons in eluding your clients who attacked the deceased Suresh in a garden and he lost his life because of the assaults.

The investigation was taken by the police and on completion of investigation chargesheet was filed against six accused persons including your clients. The six accused persons pleaded innocence and false implication and claimed to be tried.

In support of the prosecution several witnesses were examined before the trial Court. PWs 1, 2 and 13 were described as eyewitnesses. The trial court found that PWs 1 and 2 had realised from the statements made by them during investigation and their evidence was not relied upon. Relying on the evidence of PW 13, conviction was recorded. Accused Nos. A-1 to A-4 including your clients were convicted for offences punishable under sections 148 and 302 IPC and Accused Nos A-5 to A-6 were convicted for offences punishable under sections 147 and 302 IPC read with section 149 IPC.

All the six accused persons who were convicted including your clients preferred appeals before the High Court. Upon hearing the appeals, the High court directed acquittal of four of the six accused persons while confirming the conviction of A-1 and A-2, namely your clients. The High Court found that though the evidence of PW 13 was not reliable so far as the same related to A-3 to A-6, the same was sufficient to fasten guilt on the accused persons A-1 and A-2. It was held that his evidence was credible and cogent so far as these two accused persons are concerned.

Your clients wish to challenge their conviction before the Hon'ble Supreme Court

You may usefully bear in mind the observations of the Supreme Court in a series of judgements as to the duty of the Court in a criminal trial which may be summarised as follows:

An attempt has to be made to "separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because the "grain and the chaff" are inextricably mixed up, and in the process of separation, an absolutely new case has to be reconstructed, the only available course is to discard the evidence in toto.

It has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care.

Please draft a special leave petition challenging your clients' conviction.

### **Question No. 3**

The Golf Green Development Authority ("GGDA for short) introduced a "self-financing housing scheme" (for short "the scheme") for construction of flats/units in an area called Golf & Green in the city of Kolkata in the year 1982. The said scheme contemplated construction of three typos of flats/units categorised as higher income group, middle income group and low income group (HIG, MIG and LIG).

Under the said scheme an applicant for allotment was required to make an initial deposit of 15% of the cost of the unit and pay the balance in eight quarterly instalments of 10% and the last instalment of 5%.

A Society named Indus Society ("the Society' for short) made an application in 1984 for allotment of 15 HIG units under the said scheme. GGDA registered the request for allotment of 15 HIG units by a confirmation letter dated 20.8.1984.

GGDA had initially fixed a tentative price of HIG units as Rs. 2.85 lakhs. The pries was revised to 4.75 lakhs per unit in 1985. By letter dated 22.3.1985. GGDA informed the said Society about the revision of price of HIG units from Rs. 2.85 lakhs to Rs. 4.75 lakhs per unit. GGDA also indicated the total amount due in respect of 15 HIG units and required the said Society to pay the said amount in instalments as shown in the Annexure to the letter. GGDA also informed the said Society that the units would be ready for occupation in December 1986. By letter dated 27.5.1987 GGDA informed the said Society that 15 HIG units had been allotted to the said Society on 16.1.1987 and furnished the numbers of the units allotted.

The cost of the HIG units was paid by the said Society and received by GGDA only on 15.5.1989.

GGDA delivered 4 HIG units between December 1989 and May 1990. The completion of construction and delivery of the remaining 11 HIG units was delayed. By letters in 1989, 1990, 1993 and 1994, the said Society pointed out the delay in delivery of the HIG units and requested for early delivery of possession of the units. The said Society also demanded interest on the price paid till date the delivery of the units apart from reimbursement of losses incurred on account of non-delivery. The said Society issued final notice dated 1994 demanding performance within one month. When GGDA failed, the respondent, filed a complaint before the National Consumer Disputes Redressal Commission (the National Commission" for short) under section 21 of the Consumer Protection Act, 1963 ("The Act", for short).

The said Society in its complaint claimed completion and due delivery of the remaining 11 HIG units, damages, payment of Rs. 2 crores by way of interest and so on.

GGDA resisted the Claim on the ground inter alia (a) that it was not a service provider nor a seller of goods and the said Society was not a "consumer" within the meaning of the Act and therefore the complaint under the Act was not maintainable; (b) that it was

executing a self financing housing scheme on "no profit no loss" basis and it should not be burdened with any financial liability for any delay, (c) There was no negligence or deficiency in service on its part and the delay was for reasons wholly beyond its control and unintentional, namely, on account of the GGDA's contractor raising a dispute and stopping the work in respect of part of the project.

During the pendency of the complaint, before the National Commission GGDA delivered the balance 11 HIG units in March 1997.

The National Commission allowed the complaint on the ground that GGDA had promised to deliver the units to the said Society by December 1986. (In spite of the respondent having made full payment 11 units were not delivered till the complaint was filed in 1995. Thus there was deficiency of service on the part, of the GGDA. The National Commission also awarded interest at 18% per annum on the price of the 11 units commencing from the expiry of two years after the deposit, of the last instalment.

In the light of the above facts:

(i) Please state in which forum would a challenge lie against the judgment and order of the National Commission.

(ii) Please draft an appropriate pleading challenging the judgment and order of the National Commission in the given facts of the case.

#### **Question No. 4**

- a) Briefly indicate the major differences in the structures of a petition for special leave to appeal in civil cases, a petition for special leave to appeal in criminal cases and a writ petition under article 32 of the Constitution to the Hon'ble Supreme Court of India.

You're not required to set out the forms or to draft any particular petition. Just indicate how they differ from one another.

(10 marks)

- b) Please describe the contents of the certificate's to be included in a petition for special leave to appeal in civil cases. (5 marks)

- c) In a petition for special leave to appeal in civil cases your client wishes to produce documents which were not part of the records of the court below. Please indicate generally the procedure and the nature of the explanations required to be given in order to do so.

You are not required to draft any particular petition.

(10 marks)

SUPREME COURT OF INDIA

ADVOCATES-ON-RECORD EXAMINATION - MAY 2009

PAPER-II, DRAFTING

Time: 3 Hours

Total Marks: 100

INSTRUCTIONS

1. Answer all four questions.
2. All questions carry equal marks.
3. Liberty to supply assumed names, dates and other details within the basic frame of the question, if and when considered necessary.
4. Weightage will be given for clearness, brevity and conciseness.

Question No. 1

A doctor has approached you for filing an appeal under Section 23 of the Consumer Protection Act, 1986 against the judgment of the National Consumer Disputes Redressal Commission, New Delhi. The facts of the case are as follows:

A patient was suffering from renal failure and was referred to a hospital for the purposes of a kidney transplant. As the doctor from whom he desired to get his treatment was not present in India, he had to defer the operation. In the meantime he approached another doctor, an urologist, in the hospital and complained that he was suffering from high fever. After examining his condition the doctor recommended that he be admitted to hospital. However, he refused to be admitted. Hence, the doctor administered a broad spectrum antibiotic to him. Thereafter, since the fever persisted, he finally agreed to be admitted to hospital. After a detailed urine culture and sensitivity test, it was found that he was suffering from urinary tract infection. The alternative treatments were either Anicacin or Methylamine Mandalate. Methylamine

Mandalate could not be used in patients suffering from renal failure. Thus, the doctor administered Anicacin injection. The patient was a difficult person and did not follow the entire treatment prescribed by the doctor and got himself discharged from the hospital. Thereafter, the patient reported that he had a slight tinatus (running in the ear) and the doctor had told him to immediately stop taking Anicadn. However, the patient continued to take Anicacin.

Ultimately, the patient was operated for transplant in some other hospital and was under treatment of some other doctor. Before the patient underwent surgery, he did not complain of any impairment of hearing.

The patient filed a complaint before the National Consumer Disputes Redressal Commission claiming compensation for loss of hearing. The Commission allowed the complaint and awarded compensation of Rs. 10 lakhs holding that the doctor had been medically negligent in not treating the patient properly.

Draft an appeal to the Supreme Court under Section 23 emphasizing the salient features of the law relating to medical negligence and its application in the facts of the present case.

### Question No.2

By the Finance Act 2007, Section 245HA has been incorporated in Chapter XIX- A of the Income Tax Act which deals with Settlement of Cases. Section 245HA reads as follows:

Section 245HA - Abatement of proceeding before Settlement Commission

(1) Where-

- (i) an application made under section 245C on or after the 1st day of June, 2007 has been rejected under sub-section (1) of section 245D; or
- (ii) an application made under section 245C has not been allowed to be proceeded with under sub-section (2A) or further proceeded with

under sub-section (2D) of section 245D; or

(iii) an application made under section 245C has been declared as invalid under sub-section (2C) of section 245D; or

(iv) in respect of any other application made under section 245C, an order under sub-section (4) of section 245D has not been passed within the time or period specified under sub-section (4A) of section 245D,

the proceedings before the Settlement Commission shall abate on the specified date.

Explanation.—For the purposes of this sub-section, "specified date" means—

(a) in respect of an application referred to in clause (i), the day on which the application was rejected;

(b) in respect of an application referred to in clause (ii), the 31st day of July, 2007;

(c) in respect of an application referred to in clause (iii), the last day of the month in which the application was declared invalid;

(d) in respect of an application referred to in clause (iv), on the date on which the time or period specified in sub-section (4A) of section 245D expires.

(2) Where a proceeding before the Settlement Commission abates, the Assessing Officer, or, as the case may be, any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 245C had been made.

(3) For the purposes of sub-section (2), the Assessing Officer, or, as the case may be, other income-tax authority, shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it, as if such material, information, inquiry and evidence had been produced before the Assessing Officer or other income-tax authority or held or recorded by him in the course of the proceedings before him.

(4) For the purposes of the time-limit under sections 149, 153, 153B, 154, 155, 158BE and 231 and for the purposes of payment of interest under section 243 or 244 or, as the case may be, section 244A,\* for making the assessment or reassessment under sub-section (2), the period commencing on and from the date of the application to the Settlement Commission under section 245C and ending with "specified date\* referred to in sub-section (1) shall be excluded; and where the assessee is a firm, for the purposes of the time-limit for cancellation of registration of the firm under subsection (1) of section 186, the period aforesaid shall, likewise, be excluded.]"

Your attention is drawn to Section 245HA(l)(iv) under which an application made under Section 245C has to be disposed off within the time period mentioned under Section 245D(4A) which reads as follows:

“(4A) The Settlement Commission shall pass an order under sub-section (4),-

(i) in respect of an application referred to in sub-section (2A) or sub-section (2D), on or before the 31st day of March, 2008;

(ii) in respect of an application made on or after the 1st day of June, 2007, within twelve months from the end of the month in which the application was made.\*

Thus, if the application is not disposed off on or before the 31st March 2008 or in respect of an application made after 1st June 2007 within 12 months from the end of the month in which the application is made, the proceedings abate.

You are approached by an assessee whose application has been made prior to 1st June 2007 and would abate if not disposed off before 31st March 2008. The consequences of the Application abetting would be serious to the assessee as the regular assessment would then continue and the material placed before the Commission could be used against him in such proceedings. The assessee wishes to file a petition under Article 32 of the Constitution of India challenging the constitutional validity of the said provisions.

Draft a Writ Petition under Article 32 taking all relevant grounds for a challenge to the said Sections.

### Question No.3

A company had availed a hire purchase finance from a financial services company- It gave blank cheques in favour of the financial services company. According to the company, the understanding was that the cheques would not be presented for encashment and the payments would be made through demand drafts regularly. A complaint was filed "by the company stating that notwithstanding the fact that the entire amount was repaid by way of demand drafts (the details of which were not provided in the complaint), the cheques were presented to the bank. It was further highlighted that the company became aware of the same when information was received from the concerned bank that the sufficient money was not available in its account. It was alleged that the presentation of the cheques was an attempt to defraud and offences had been committed under Sections 406 and 420 of the Indian Penal Code. The court took cognizance of the complaint. The financial services company moved the High Court alleging that the complaint was nothing but an abuse of the processes of the law and a counterblast to the proceedings earlier initiated by it against the company under Section 138 of the Negotiable Instruments Act, 1881 and further that there is no evidence of repayment whatsoever apart from the bare unsubstantiated averments in the complaint. The court however refused to interfere.

Draft a Special Leave Petition in the Supreme Court against the order of the High Court stating clearly the provisions of law applicable to the case and the grounds required to be pleaded.

### Question No. 4

You are approached by a father in a matrimonial dispute in relation to his claim for custody of his child. The father got married in 1996. The child was born in 1997. It is the case of the father that the wife abandoned the child and left the house in 1998. The wife filed a maintenance and guardianship petition. Interim custody was given to the father and the mother was given visitation rights. According to the wife, the father did not honour the visitation rights. The wife thereupon filed a contempt petition for violation of the terms and the District Judge allowed the petition and granted custody

of the child to the wife. The husband approached the High Court which stayed the order but subsequently dismissed the appeal.

The husband wishes to approach the Supreme Court by way of a SLP against the order of the High Court. It is his contention that the District Judge and the High Court erred in not taking into consideration the paramount consideration which was the welfare of the child and exceeded their jurisdiction in contempt proceedings by interfering with custody.

Draft a Special Leave Petition to the Supreme Court challenging the order of the High Court, enunciating briefly the principles of law relating to custody as well as the aspects pertaining to the law of contempt.

SUPREME COURT OF INDIA

ADVOCATES-ON-RECORD EXAMINATION - JUNE 2010

PAPER - II: DRAFTING

Time : 3 hours

Total Marks : 100

INSTRUCTIONS

1. Please attempt all the Questions.
2. All Questions carry equal marks.
3. You may use assumed Names, Dates and other details within the framework of the Questions.
4. Weight age will be given for Clarity and Brevity as also references to Case Laws.

Q. No. 1. S.D. was charged with commission of offences under various provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987 and also with offences under Sections 3 and 7 read with Sections 25(1-A) and 25(1-B) of the Arms Act, 1959. He was found guilty of the offences under the said provisions by the Special Court and stood sentenced to seven years rigorous imprisonment.

S.D. is desirous of filing an appeal before the Supreme Court of India against the conviction and sentence. Soon after the pronouncement of the judgement of conviction, General Elections to the House of People have been announced. The family of S.D. has been in public service and in politics over a long period. S.D. is convinced that his conviction is based entirely on circumstantial evidence and the chain of circumstances is consistent with his innocence. The records of the case also seem to suggest that the conviction of S.D. stands on very slender premises and thus open to serious doubt. The

Special Court seems to have been persuaded by some evidence relating to the association of S.D. with some of the accused. According to S.D., this association was in the course of his professional pursuits and that there is nothing to show that his association with the said accused was only in the context of the commission of the offences alleged to have been committed by him. The records also show that the charges under the Arms Act may not be sustainable in view of the unchallenged defense version and evidence regarding the lawful acquisition of certain weapons obtained for reasons of security. Thus serious infirmities in the prosecution case seem to exist.

S.D. is desirous of contesting the election to the House of People from the constituency which was the birth place of his Grandfather who was a renowned Freedom Fighter and thus to demonstrate his keenness to be in the service of the Nation. S.D. has instructed you to file appropriate applications for bail and also for suspension of the order of conviction and sentence pending the final hearing of the appeal. Such suspension of conviction and sentence will lift the disqualification under Section 8(3) of The Representation of the People Act, 1951, and facilitate his being a candidate.

Draft appropriate applications for grant of bail and for suspension of his conviction and sentence under the relevant provisions of the Code of Criminal Procedure, 1973, having due regard to the provisions of Section 8(3) of The Representation of the People Act, 1951. Attention may be paid to the balance to be maintained between the high probability of S.D.'s success in the appeal against his conviction, his family background and other positive factors in his favour and the public interest element of his disqualification under Section 8(3) of The Representation of the People act, 1951. Give references to similar cases of suspension of conviction and sentence to show that exceptional circumstances for grant of suspension of the conviction and sentence cannot be put in a strait jacket.

Section 8(3) of The Representation of the People Act, 1951 is set out below:

"A person convicted of any offence and sentenced to imprisonment for

not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.] ”

Section 389 of Cr.P.C. reads as follows

"389. Suspension of sentence pending the appeal. Release of appellant on bail (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall -

- (i) shall such person, being on bail, is sentence to imprisonment for a term not exceeding three years, or
- (ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced. ”

**Q. No. 2:**

The Central Government has been pursuing the issue of Nuclear Exchange Programmes with certain countries, keen to enhance the position of the country in Nuclear Power Generation and also the use of Nuclear Power for strategic purposes. The Central Government has also embarked on an ambitious programme of inviting foreign Universities either to establish their Centres in India or to have institutional arrangements with Universities in India. Both the above said programmes were being debated in the Parliament and in the Media. Relevant legislations in draft forms were tabled in both Houses of Parliament and owing to serious concerns raised by the opposition, the matters are still under legislative scrutiny.

Meanwhile, it has been widely reported in Media on the basis of some disclosures made by some ex-civil servants who were involved in the negotiating exercises, raising serious questions of integrity of some of the Ministers holding concerned portfolios. Charges of corruption and illegal gratification as also involvement of a network of people engaged in the promotion of above said programmes for personal gains has also been alleged.

An association of Respectable Persons engaged in public services and in promotion of civil and political liberties has approached you, to move the Supreme Court seeking an enquiry by the Central Bureau of Investigation in order to protect National security and integrity and the importance of maintaining and ensuring good and accountable governance.

Whether a petition under Article 32 can be filed on behalf of such an Association seeking the said relief? If such a petition can be filed, explain which Fundamental Rights can be said to be affected and what will be the scope of exercise of Supreme Court's jurisdiction under Article 32 of the Constitution in such circumstances. Whether the principle of exhaustion of alternate remedies, mootness of the issues to be agitated etc will not be considered as factors against filing of such petition, since the Parliament has not yet enacted any

legislation on the said subjects and the matters are still under governmental scrutiny. Draft a petition on appropriate grounds and raising appropriate issues which can be dealt with by the Supreme Court under Article 32 of the Constitution.

Also draft a Counter Affidavit on behalf of Union of India opposing such a petition and its maintainability on the ground of *locus standi*, non-infringement of Fundamental Rights, inappropriateness of Judicial Review, particularly when the matters are still under scrutiny by the Government Also state in the Counter Affidavit that the court will be slow to interfere in such matters having regard to the impact of such interference on the constitutional rights of persons sought to be implicated. Give adequate reasons in support of this ground.

**Q. No. 3.** The State of Uttar Pradesh has enacted a legislation called “Promotion of Equality of Opportunity and Provision for Reservations for the Deprived Sections of the Community Act, 2010”. Deprived Sections of the community has been defined in the law to include minorities but subject to certain qualifications of economic and financial criteria. The statement of objects and reasons of the said legislation relies upon the provisions of Articles 39(a), 41 and 46 of the Constitution and suggest that preferential action per se on grounds of religion or caste may not be understood as discrimination within the meaning of Articles 15(1) and 16(2) of the Constitution.

The legislation seeks to give preferential treatment to the deprived sections of the community which includes minorities in matters of grant of certain categories of governmental contracts, public employment, housing and education aid. The legislation further confers power on the State Government to extend preferential treatment in other areas or sectors, which the Government may decide from time to time. The legislation also seeks to subject the private sector to the mandates of reservation in respect of the above.

An Association claiming to promote Equality for all has moved the High Court challenging the legislation as arbitrary and hit by Articles 14, 15 and 16

of the Constitution, on the premise that preferential treatment to minorities will amount to discrimination on the ground of religion. Other grounds regarding secularism and its relevance to non-discrimination have also been raised.

The High Court has struck down the legislation accepting the plea that any action with respect to religion will per se be discriminatory, and has also agreed with the pleas regarding secularism.

The State of Uttar Pradesh has approached you for filing a Special Leave Petition against the said judgement. The state is desirous of urging two important grounds namely, that promotion of equality of opportunity being in aid of the realization of an egalitarian society must be seen with respect to the broader constitutional purpose and object and secondly, that only excessive or undue preference with respect to religion, or total exclusion on the basis of religion alone will amount to discrimination as contemplated in Articles 15(1) and 16(2). Some preference in favour of minorities within reasonably permissible limits would not be discriminatory. Consequently the argument based on secularism will be misconceived.

Draft a Special Leave Petition raising substantial questions of law of general public importance involving the interpretation and application of the above said provisions of the Constitution. Confine yourself to the substantial questions of law and appropriate grounds in support of the petition. Give references to relevant case law in support of the petition.

Also draft a Counter Affidavit on behalf of the Petitioner before the High Court opposing the Special Leave Petition with pointed reference to the concept of discrimination as contained in Articles 15(1) and 16(2) and how the legislation will open die flood gates for arbitrary action by Governments leading to destruction of the secular fabric of the country.

Articles 39(a), 41 and 46 of the Constitution are set out below:-

"39. Certain principles of policy to be followed by the State. — The State shall, in particular, direct its policy towards securing- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;"

"41. Right to work, to education and to public assistance in certain cases. - The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

"46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other Weaker Sections. — The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

Articles 15(1) and 16(2) are set out below:-

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. - (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

"16. Equality of opportunity in matters of public employment - (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State."

Q.No.4. The appellant wife and respondent husband married as per Hindu rites and ceremonies, had two children, but started living separately after about 15 years of marriage i.e., since January, 2005. Thereafter, on 19.5.2009 they, through their common advocate, filed an application under Section 13-B of the Hindu Marriage Act, 1955 for dissolution of their marriage by mutual consent. The husband remained absent on the day of hearing, which was fixed on 19.11.2009 as per the requirements of Section 13-B(2) that a minimum period of six months has to elapse before such petition can be taken up for hearing on 19.11.2009 the matter was adjourned to 1.12.2009 and the Family Court asked the advocate to inform the husband in this regard. But the wife on same day i.e. 19.11.2009, made an application to summon the husband. The summons was not properly served and endorsed and it was returned. The Family Court, thereafter, on wife's affidavit directed service of summons on 3.12.2009 to be pasted on the door of the house of the husband. On the designated day i.e. 4.12.2009, the husband still was absent and the Family Court, initially, adjourned the matter to 10.12.2009. However, on the very same date on an ex-parte application filed by the wife, the Family Court advanced the hearing to 5.12.2009. The Family Court thereafter passed an ex- parte order of divorce on the very same preponed day i.e. 5.12.2009. The High Court by the impugned order had set aside the order of the Family Court.

The wife has filed a petition in the Supreme Court against the Reversal Order passed by the High Court and for sustaining the decree of divorce. She has canvassed the proposition that once consent is given under Section 13-B(2) of the Hindu Marriage Act, 1955, for grant of mutual divorce, the Family Court need not make any further inquiry as there will be no scope for the parties to withdraw the consent once given. The husband having remained absent, there was no need for any further hearing.

The husband has approached you for opposing the Special Leave Petition. He instructs you to file a Counter Affidavit by explaining the correct scope of Section 13-B(2), consistent with the object and purpose of the Family Courts Act,

1984. He submits that the Family Court cannot prepone the hearing in the matter without due notice to the party concerned or to grant an ex-parte decree of divorce without enquiring as to whether the consent given at the time of filing the petition subsists or is genuine, granted under duress or other such circumstances which may militate against the acceptability of the consent or its mutuality. Draft a Counter Affidavit opposing the Special Leave Petition, raising preliminary objections explaining the true meaning and scope of Section 13-B of the Hindu Marriage Act, 1955 which is set out below

“13-B. Divorce by mutual consent - (1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage laws (Amendment) act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the mean-time, the Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree. ”

State relevant grounds in enunciation of the principles which will guide the Family Court in dealing with applications under Section 13(B).

At the hearing of the Special Leave Petition, if the Court is inclined to send the matter for mediation, what ground will you consider appropriate to contest the reference to mediation? State the same in your Counter Affidavit.