

IN THE SUPREME COURT OF INDIA

Advocate-on-Record-Examination 2008

PAPER - I

PRACTICE AND PROCEDURE

Time: Three hours

Total Marks: 100

INSTRUCTIONS

1. Answer five questions in all. **Questions 1 and 2 are compulsory.** Out of questions 3 to 7, answer any three questions.
2. All questions carry equal marks of 20 each. Where a question is divided into sub-questions, the marks allotted to each sub-question are clearly indicated.
3. Clarity, brevity and legibility are expected, of course!

QUESTIONS

**Q.1.** *Discuss* the concept of a “curative petition,” the situations in which you will advise a client to file such a petition and the procedural safeguards that you will observe if you were to file such a petition. (20 marks)

**Q.2.** (a) Mahadev, a tenant of Hariprasad suffered a decree for eviction, which was upheld by the appellate forum and the High Court in revision. Impressed by a substantial question of law of general public importance raised by him, the Supreme Court granted special leave after issuing notice to Hariprasad to show cause why special leave should not be granted, and granted stay of dispossession. This was in the year 2005. When the appeal comes up for final hearing in 2008, the Respondent-landlord’s counsel is not able to give a plausible reply to the legal

- Q.IV Electoral Reform – Power of the Supreme Court to provide a format and give directions for candidates to fill up in nomination forms. Can Parliament pass law to directly set side the decision of the court. Distinction between amending the law in view of the decision to make it inoperative and directly seek to nullify the effect of the decision. People’s Union for civil liberties (PUCL) and Another Vs. Union of India and Another 2003 (4)SCC 399,=2003(2)SCR1136
- Q.V What are the basic facts and ratio of Mafatlal Industries Vs. Union of India 1996 Suppl (10) SCR585 : 1997 (5) SCC 536 ?
- Q.VI Discuss the constitutional scope and ambit of the power of President under Article 356(1) regarding dissolution of State Legislative Assemblies.
- Q.VII Constitution of India – Arts.19(1)(g),30(1),41 and 51-A(h) & (j)— Professional unaided (minority and non-minority)educational institutions –Obligations of –Admission procedure and fee structure permissible—PA Inamdar Vs.State of Maharashtra-2005(6)SCC 537.
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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 including 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 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 resiled 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 types 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 installments of 10% and the last installment 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 price was revised to 4.75 lakhs per unit in 1985. By letter dated 22.8.1985, 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 installments 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 a final notice dated in 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, 1986 ("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 installment.

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)

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SUPREME COURT OF INDIA **JUNE**  
ADVOCATES-ON-RECORD EXAMINATION, ~~NOVEMBER~~ **JUNE** 2008  
PAPER III: BOOK KEEPING AND ACCOUNTS: PROFESSIONAL ETHICS

TIME ALLOTTED: THREE HOURS

TOTAL MARKS: 100

All questions are compulsory

PART A – BOOK KEEPING AND ACCOUNTS

Q.1. Write short notes on any five of the following: [15 marks]

- a. Real accounts, Personal accounts, and Nominal accounts.
- b. Cash system and mercantile system
- c. Revenue receipts and capital receipts
- d. Single entry and double entry
- e. Income and expenditure accounts, and profit and loss account.
- f. Trial balance and balance sheet
- g. Adjustment of Closing stock.

Q.2 The following is the Trial Balance of M/s ABC for the year ended 31.12.2007

[15 marks]

	DEBIT	CREDIT
CAPITAL		5,00,000
DRAWINGS	1,25,000	
LOAN FROM XYZ BANK		2,50,000
WAGES	25,000	
FACTORY EXPENSES	15,000	
ADVANCES TO SUPPLIERS	15,000	
SUNDRY CREDITORS		1,50,000
SUNDRY DEBTORS	2,25,000	
SALES		11,50,000
PURCHASES	6,25,000	
OPENING STOCK	1,25,000	
SALARIES	12,000	
OFFICE EXPENSES	8,000	
INTEREST ON DEPOSITS		9,000
CASH IN HAND	60,000	
BANK BALANCE	4,30,000	
TRADE INVESTMENTS	50,000	
PLANT & MACHINERY	3,00,000	
OFFICE RENT	9,000	
SALES & ADVERTISING	35,000	

The stock in hand is valued at 1,35,000/-. Charge depreciation on the written down value basis on Plant & Machinery at 10%. Prepare the profit and loss account and balance sheet.

Q.3 Write up journal entries for any ten of the following:

[20 marks]

		Rs.
1.	Payment of rent	25,000/-
2.	Purchase of raw material on credit from M/s XYZ	1,50,000/-
3.	Advance to Mr. A for purchase of house given by cheque	10,00,000/-
4.	Cash deposited in Bank	10,000/-
5.	Cash withdrawn from bank	10,000/-
6.	Drawing by partner from firm in cash	15,000/-
7.	Cheque issued for purchase of shares	1,00,000/-
8.	Sale of car to Mr. B – money yet to be received	50,000/-
9.	Depreciation on plant and machinery	10,000/-
10.	Sale of scrap in cash	15,000/-
11.	Loan received from bank by credit in account	5,00,000/-
12.	Loan repaid to bank ABC by cheque drawn on bank EFG	3,00,000/-
13.	Dividend on shares received by cheque	10,000/-
14.	Money in current account with EFG bank placed in fixed deposit	50,000/-

### PART B

Answer any five questions

MARKS TO BE GIVEN FOR ANSWERS THAT ARE BRIEF AND TO THE POINT

Q.1 Lawyers cannot resort to remedies of collective bargaining such as strikes. Discuss.

[10 marks]

Q.2 The profession must regulate itself – if the Bar Councils fail in their duty a day may come when external regulation may become imperative. Discuss.

[10 marks]

Q.3 In the adversarial system, the lawyer is supposed to present his client's case. Is it then a breach of professional duty not to bring to the notice of a court the

provision of a Statute or a decision that has a direct bearing on the case but goes against the interest of the client? Discuss.

[10 marks]

Q.4 A businessman is fully justified in soliciting business from the customers of his competitor. For a lawyer soliciting business violates professional ethics. Discuss

[10 marks]

Q.5 Should lawyers be permitted to advertise? If so, what kind of advertisements would be in keeping with professional ethics. Discuss.

[10 marks]

Q.6 Filing false affidavits sullies the stream of justice. What is the duty of the lawyer in drawing up affidavits on behalf of clients? Discuss.

[10 marks]

Q.7 Lawyers were at one time regarded as members of a noble and respected profession. Of late, there has been a change in the public perception of lawyers as a community. Discuss.

[10 marks]

Q.8 Write short notes on the following:

[10 marks]

- a) conflict of interest in appearing for and against clients in different cases
- b) the duty of the lawyer to be fully prepared with cases
- c) behaviour in court
- d) Amicus Curiae

# SUPREME COURT OF INDIA

## ADVOCATES ON RECORD EXAMINATION – JUNE 2008

### PAPER IV : LEADING CASES

TIME : 3 HOURS

TOTAL MARKS : 100

NOTE : Please answer any four out of Questions 1 to 8. Each question carries 20 marks.

Please answer any two out of the four sub-questions in Question 9. Each Sub-question carries 10 marks.

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**Question 1** : International Agreements or Conventions do not automatically become part of the Domestic Law. Article 253 of the Constitution confers power on ~~the~~ Parliament to make laws for implementing international treaties, agreements or conventions. Examine the scope of the power of courts to invoke international conventions to resolve domestic law issues, in the light of the judgement of the Supreme Court in Vishakha and Others v. State of Rajasthan and Others, (1997) Supp 3 SCR 404.

**Question 2** : No judicial order can be said to affect the Fundamental Rights of citizens. Can Article 32 of the Constitution be read restrictively to make any distinction between judicial orders and other orders or decisions particularly when occasion may arise collaterally where the matter may be between the judge and the fundamental rights of any person by reason of judicial action?

Critically examine the above proposition with respect to Naresh Sridhar Mirajkar and Others v. State of Maharashtra and Another, (1966) 3 SCR 744 and Rupa Ashok <sup>Huyva</sup> ~~pure~~ v. Ashok <sup>Huyva</sup> ~~pure~~ and Another, (2002) 2 SCR 1006.

**Question 3** : Examine the relevance of prospective overruling in the light of the proposition, "Prospective overruling despite the terminology, is only recognition of the principle that the court moulds the relief claim to meet the justice of the case-justice not in its logical but in its equitable sense? [M/s Somaiya Organics (India) Ltd v. State of Uttar Pradesh and Another, (2001) 3 SCR 33; Orissa Cements Ltd v. State of Orissa, (1991) 2 SCR 105; and Managing Director, ECIL v. B. Karunakar, (1993) 4 SCC 727].

How far is it appropriate to locate the source of power of prospective declaration of invalidity of a law to Article 142 of the Constitution?

**Question 4** : Examine the scope of application of the Doctrine of Pith and Substance in the context of conflict between taxing power of the Union and the States having regard to the constitutional principle that the power to tax can not be inferred by implication and the following view taken in State of West Bengal v. Kesoram Industries and Others, (2004) 1 SCR 564: -

“The power to tax or levy for augmenting revenue shall continue to be exercisable by the State Legislature and it does not impinge upon the regulation of Mines & Minerals development or upon control of industry by the Central Government and can not be said to be trenching upon union’s power and freedom to regulate and control mines and minerals.”

**Question 5** : It is said that the judgement in the case of Maneka Gandhi v. Union of India, (1978) 2 SCR 621, has unalterably changed the content and scope of Article 21 of the Constitution and the power of judicial review. Examine the ratio of the judgement in matters of review of legality of State action in matters not falling within the scope of Article 21.

**Question 6** : Is there any dichotomy between the following two propositions :-

- (a) “It is established that Fundamental Rights enshrined in the Constitution have no fixed contents. Most of them are empty vessels into which each generation must pour its contents in the light of its experience.”
- (b) “It can not be said that as there is no specific Fundamental Rights of the voters to know antecedents of the candidates, the declaration by this Court that such Fundamental Rights can be held to be derivative and that therefore it is open to the legislatures to nullify it by appropriate legislation since there is no such concept of derivative Fundamental Rights.”

Examine the judgement of the Supreme Court in Peoples’ Union for Civil Liberties v. Union of India, (2003) 2 SCR 1136, which struck down Section 33(B) of the Representative of People’s Act, 1951, enacted in pursuance of the judgement of the Court in Union of India v. Association for Democratic Reforms, (2002) 3 SCR 696.

**Question 7** : Whether prescription of periods of limitation as a bar against continuation of criminal proceedings or prosecutions, as was done in Common Cause v. Union of India, (1996) 4 SCC 33, then Common Cause (2) v. Union of India, (1996) 6 SCC 775; Raj Dev Sharma v. State of Bihar, (1998) 7 SCC 507; and Raj Dev Sharma v. State of Bihar, (1997) 7 SCC 604, can be said to be judicial legislation? Having regard to the expansive scope of Article 21 of the Constitution, the infringement of which can be examined both from content and procedural aspects, whether prescription of limitations can not legitimately fall within the scope of the

(17)

interpretative domain of the court? Critically analyse in the light of judgement in P. Ramachandra Rao v. State of Karnataka, (2002) 3 SCR 60.

**Question 8** : Examine the relevance and appropriateness of the presidential reference under Article 143 of the Constitution in Kesho Singh (Special Reference No.1 of 1964), (1965) 1 SCR 413, in the light of various references made by the President under Article 143, namely –

- (i) In re : Kerala Education Bill, (1959) SCR 995;
- (ii) In re : The Special Court Bills, 1978, (1979) 2 SCR 476, and
- (iii) Special Reference No.1 of (2002) Supp 3 SCR 366.

**Question 9** : Write short notes <sup>on</sup> ~~of~~ any two of the following :-

- (i) The Doctrine of per incurium with special reference to A.R. Antulay v. R.S. Nayak, (1988) Supp 1 SCR 1.
- (ii) The Doctrine of Police Powers as discussed in Synthetics and Chemicals Ltd v. State of Uttar Pradesh, (1989) Supp 1 SCR 623.
- (iii) The distinction between Constitutional Law and Other Laws [Indira Gandhi v. Raj Narain, (1976) 2 SCR 347].
- (iv) Doctrine of unjust enrichment and restitution in the light of the observation, "where a person approaches the High Court or Supreme Court challenging the constitutional validity of a provision but fails, he cannot ~~not~~ take advantage of the declaration of unconstitutionality obtained by another person on another ground." [Mafatlal Industries Ltd. v. Union of India, (1996) Supp SCR 585].