

IN THE SUPREME COURT OF INDIA
Advocates-on-Record Examination – June 2009

PAPER – I
PRACTICE AND PROCEDURE

Time : Three Hours

Total Marks : 100

INSTRUCTIONS

1. Answer any five questions.
2. All questions carry equal marks.

QUESTIONS

1. (a) What is the meaning of the following words, preferably, as defined in the Supreme Court Rules, 1966 or as per your understanding?
 - (i) 'Advocate'
 - (ii) 'Senior Advocate'
 - (iii) 'Advocate-on-Record'

(3 marks)
 - (b) How does an Advocate become a 'Senior Advocate'? What are the conditions of eligibility prescribed for being designated as a Senior Advocate of the Supreme Court? What are the restrictions imposed on Senior Advocates by the said Rules?

(4 marks)
 - (c) What are the conditions of eligibility for becoming an Advocate-on-Record? What are the rights and duties of an Advocate-on-Record, as per the said Rules?

(8 marks)
 - (d) Who are the Advocates declared ineligible to practice in the said Rules? What action can the Supreme Court take if an Advocate-on-Record is found to be guilty of misconduct?

(5 marks)
- (Total - 20 marks)**
2. (a) What is the difference between Appeals on Certificate by High Courts and Appeals by Special Leave?

(4 marks)

- (b) When does a High Court issue a Certificate:-
- (i) in a civil matter,
 - (ii) in a criminal matter, and
 - (iii) in a constitutional matter? Mention the relevant provisions of law.
- (9 marks)

- (c) When does an Appeal lie under Section 2 of The Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970?
- (3 marks)

- (d) Under which provision of law, can a Member of Parliament whose election has been set aside by a High Court, prefer an Appeal before the Supreme Court?
- (4 marks)

(Total – 20 marks)

3. What are the powers of transfer of proceedings pending before one Court to another Court, conferred on the Supreme Court:-
- (i) by the Constitution,
 - (ii) by the Civil Procedure Code,
 - (iii) by the Criminal Procedure Code?

Mention the relevant provisions and state the conditions to be satisfied in each case for obtaining an order of transfer from the Supreme Court.

(20 marks)

4. (a) What is the meaning of the following terms:-
- (i) *Habeas Corpus*
 - (ii) *Mandamus*
 - (iii) Prohibition
 - (iv) *Quo-Warranto*
 - (v) *Certiorari*

(5 marks)

- (b) Write a very brief note as to the nature of cases in which each of the following writs can be sought from the Supreme Court:-
- (i) *Habeas Corpus*
 - (ii) *Mandamus*

- (iii) Prohibition
(iv) *Quo-Warranto*
(v) *Certiorari*

(10 marks)

- (c) Which other Court or Courts have the power to issue the aforesaid Writs and what is the difference in the scope of power conferred on the Supreme Court and on the other courts, which are competent to issue the aforesaid Writs?

(5 marks)

(Total – 20 marks)

5. (a) What is the meaning and nature of a “Curative Petition”?

(5 marks)

- (b) At what stage of a proceeding does a Curative Petition lie and in which Court?

(5 marks)

- (c) On what grounds a Curative Petition is maintainable?

(5 marks)

- (d) Which provision of law provides for filing of a Curative Petition?

(5 marks)

(Total – 20 marks)

6. (a) After an SLP, filed against a common judgment of a High Court has been dismissed *in limine* by a non-speaking order, can another SLP filed by a person who was not a party to the first SLP be entertained by the same Bench or a different Bench of equal strength?

(3 marks)

- (b) If at all the subsequent SLP is entertainable, under what circumstances can a Bench of coordinate jurisdiction (equal strength) entertain it? If it does, can the Bench grant Special leave to appeal and allow the Appeal, notwithstanding the dismissal of another SLP filed by a different party against the same common judgment earlier by another Bench of equal strength?

(6 marks)

(c) Does the order of dismissal of SLP passed by the earlier Bench operate as *res-judicata* or binding precedent? (3 marks)

(d) What are the grounds on which special leave to appeal is generally granted by the Supreme Court? (8 marks)

(Total - 20 marks)

7. (a) Who are the 'officers of the Court' according to the Supreme Court Rules? (3 marks)

(b) What are the duties and functions of the Registrar mentioned in the Rules? (5 marks)

(c) What is the nature of business transacted in the chambers of Registrar of the Supreme Court? (12 marks)

(Total - 20 marks)

8. (a) What is the meaning of "Taxing Officer", preferably, as defined in the Supreme Court Rules or as you understand? (3 marks)

(b) What are the steps involved for realizing the costs awarded by the Court in favour of a party? (10 marks)

(c) What are the remedies, if any, open to a party who is dissatisfied with the allowance or disallowance by the Taxing Officer of the whole or any part of the items in a Bill of Costs? (7 marks)

(Total - 20 marks)

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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 tinnitus (running in the ear) and the doctor had told him to immediately stop taking Anicacin. 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(1)(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.

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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.

AOR EXAM—June 2009.

All questions are compulsory.

Part I

Book-keeping and Accountancy (P-II)

Q. 1.

- a. Write a short note on why is advocate on record required to pass the AOR examination? (7 marks)

Q. 2.

- b. Write a short note on depreciation. (7 marks)

Q. 3.

Notes: (a) 3 marks for each correct answer.

(b) In the following options, only one of them is the correct answer.

(c) In the answer sheet, indicate the answer by number. E.g., if the correct answer to the first question is that "the Cash book is an example of a ledger account", write in your answer sheet thus: (i) (2). No further elucidation is necessary.

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i. Cash Book is an example of—

- 1. Journal.
- 2. A ledger account.
- 3. It is neither a Journal nor a Ledger,

ii. Patent rights account is—

- 1. Nominal Account.
- 2. Personal Account.
- 3. Real Account.

iii. Ledger is a book in which—

- 1. Only Real Accounts are opened.
- 2. Only Real and Personal Accounts are opened.
- 3. The Real, Personal and Nominal Accounts are opened.

iv. Journal is—

1. Book of prime entry.
 2. Book of final entry.
 3. Permanent Record.
 4. Incomplete record.
- v. In a double entry system of book keeping every business transaction affects—
1. Two sides of the same account.
 2. The same account on different dates.
 3. Two accounts.
 4. One account.
- vi. Purchase of equipment for cash—
1. Decreases total assets.
 2. Increases total assets.
 3. Leaves total assets unchanged.
 4. Increases total liabilities.
- vii. Favourable bank balance means—
1. Debit balance in the Pass Book.
 2. Credit balance in the Cash book.
 3. Debit balance in the bank column of the Cash book.
 4. Combination of 2 and 3 above.
- viii. Purchase of Rs. 251 from Ramesh & Co. has been entered into Purchases Account as Rs. 215. If the debit side total of the Trial Balance is Rs. 17,364, what would be the total of credit column of the Trial Balance before the discovery of the error?—
1. Rs. 17,364.
 2. Rs. 17,400.
 3. Rs. 17,328.
- ix. Which of the following is the Error of Commission in a Trial Balance?—
1. A sale of Rs. 560 was omitted to be recorded in the book of Prime Entry.

2. A purchase of Rs. 840 was wrongly posted.
 3. Treating repairs expenses as addition to the asset.
- x. Income tax paid by a lawyer is shown—
1. On the debit side of Profit and Loss Account.
 2. As an asset in the Balance Sheet.
 3. As a deduction from the capital in the Balance Sheet.
- xi. A lawyer's Capital Account shows opening balance of Rs. 2,00,000 and closing balance as Rs. 2,03,000. His net profit is Rs. 5,000. Which of the following amounts represents his drawings?—
1. Rs. 8,000
 2. Rs. 3,000
 3. Rs. 2,000
- xii. The liabilities of a lawyers account are Rs. 16,000. The capital invested by the lawyer is Rs. 24,000. The total assets are—
1. Rs. 24,000
 2. Rs. 8,000
 3. Rs. 40,000
 4. Rs. 16,000

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Part II

ETHICS

All questions are compulsory. Each carries maximum of 15 marks. Each answer should not exceed two pages.

5 extra marks are for clarity, conciseness and precision.

- Q. 1 Is it essential that the Bar Council investigating allegations of misconduct must not only examine the facts carefully but also give reasons for its decision? Discuss with reference to case law.
- Q. 2 A client, in the vakalatnama, has expressly and in writing authorised a lawyer to give specific concessions. However, in the course of the arguments the lawyer, acting bona fide, finds that if he is to save some part of his client's claim, it is necessary to make a further concession. Can he do so without express consent of his client?

Q. 3. An advocate on record for the accused files proof of service on the Counsel of the State in respect of a bail application. Based on the proof, on the next date of hearing, the court, finding that the Counsel for the State is absent, grants bail. The accused then absconds.

The Counsel for the State files an application that neither he nor his registered clerk was served and that he remained absent not knowing that the application had been filed and that it was being heard. The advocate on record for the accused says he relied upon his clerk who said that he had given a copy of the application to some one in the office of the Counsel for the State. Should the court—

- (a) condone the action of the advocate on record;
- (b) take action against the advocate on record;
- (c) cancel the registration of the clerk of the advocate on record.

Give reasons.

SUPREME COURT OF INDIA

Advocate –on-Record Examination – June 2009

PAPER-IV

LEADING CASES

TIME: Three hours

Total Marks :100

INSTRUCTION

1. Answer any four questions.
2. All questions carry equal marks

Q.1 Discuss briefly:

- (a) The nature of the Indian Federal structure?
- (b) What is the doctrine of collective responsibility of Ministers to Parliament/and to State Legislatures?
- (c) What is the doctrine of separation of powers?

Q.2 Constitution of India – Arts. 19(1)(g), 30(1), 41 and 51-A (h) & (i) – 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 237 .

- Q.3 What is a "Curative Petition" ? Under what circumstances and subject to what limitations can it be entertained?
- Q.4 What is a creamy layer in the context of Article 16(4), under Article 335. Its Constitutionality and scope. Indra Sawhney and others Vs. Union of India and others 1992 supp(3)SCC217 , M.Nagaraj and other Vs. Union of India 2006(8)SCC 212.
- Q.5 What is the scope of the power conferred by Article 142 of the Constitution?
- Q.6 Please enumerate and discuss the distinction between the jurisdiction of and powers exercisable by tribunals created Under Article 323 A and 323 B of the Constitution vis-à-vis that of High Courts, as outlined in L. Chandra Kumar Vs. Union of India , 1997 (2) SCR 1186. Please explain the rationale behind the court's conclusion that administrative tribunals ought to be empowered to test the validity of legislations against the provisions of the Constitution. Does this power extend to testing the vires of the statute under which the tribunal has been created ? If no, why not ?

Q.7 Under what circumstances can the President of India seek the opinion of the Supreme Court ? What is the binding nature of such opinion ? Discuss with reference to decided cases under Article 143 of the Constitution of India. ?
