

SUPREME COURT OF INDIA

ADVOCATE-ON-RECORD EXAMINATION, JUNE 2010

PAPER - I

PRACTICE AND PROCEDURE

Time: Three Hours

Total Marks: 100

Instructions

- A. Questions 1 and 2 are compulsory. Answer any three of the remaining questions.
- B. All Questions carry equal marks. Where a Question has more than one part, marks allocated to each part are indicated alongside.
- C. Candidates are expected to support their Answers with brief reasons and with reference to applicable case law and the underlying principle.

QUESTIONS

- (1) What are the responsibilities of an Advocate-on-Record in respect of a case filed by him/her? Discuss with reference to recent case law.
(20 marks)
- (2) (i) Ramesh, a tenant, has filed a Special Leave Petition against an order of eviction and has also obtained a stay of the said order. However, the building is then served with a demolition notice by the Municipal Corporation on the ground of its violating statutory provisions. Ramesh suspects that officials of the Corporation have acted at the behest of the landlord. Advise him.
(ii) What application(s) would have to be moved by Ramesh to seek relief? Draft the prayer(s) only of such application(s).
(10 marks each = 20 marks)
- (3) (i) Discuss the concept of *stare decisis* in the context of whether the Supreme Court is bound by its own decisions. What is the source of the power of the Supreme Court to overrule its own decisions?
(ii) A two-judge bench hearing a case feels that an earlier decision of a coordinate bench requires reconsideration. What is the procedure to be followed? Would the procedure change if the earlier decision was by a three-judge bench, or a five-judge bench?
(10 marks each = 20 marks)

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(4) (i) "The Supreme Court does not generally interfere with interim orders passed by the courts below": Discuss. What are the exceptions to this general rule?

(ii) In the context of interim orders, what is the difference between an "application for recall", an "application for review", an "application for clarification" and an "application for modification"? Under what circumstances are each of these applications entertained? Are these applications mutually exclusive?

(10 marks each = 20 marks)

(5) While hearing public interest petitions, the Supreme Court is often required to determine questions of fact. What procedure(s) does the Court follow in such situations? In your opinion, are there any lacunae in such procedure(s)? Suggest measures for improvement.

(20 marks)

(6) What is the meaning of "question of law", "substantial question of law", and "substantial question of law as to the interpretation of the Constitution"?

(20 marks)

(7) What is the meaning of a "curative petition"? What are the circumstances in which such petitions can be entertained by the Supreme Court? What is the procedure to file such a petition?

(20 marks)

(8) Write Short Notes on any four of the following:

(i) Powers of a Single Judge

(ii) Powers of a Registrar

(iii) Difference between "intervention" and "impleadment"

(iv) Transfer of cases under Article 139A of the Constitution

(v) Transfer of cases under Section 25 of the Code of Civil Procedure

(vi) Transfer of cases under Section 406 of the Code of Criminal Procedure

(5 marks each = 20 marks)

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. *Weightage 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 can not 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.

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(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 the 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 can not 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. I lift 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.

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SUPREME COURT OF INDIA
A-O-R EXAMINATION—JUNE 2010.

Paper III

Time allowed: 3 hours

Total Marks:100

All Questions are compulsory

Your answer to each question should not exceed two pages.

Part A—Book-Keeping and Accounts

Q. 1. Differentiate between Trial Balance, Trading Account, Income & Expenditure Account, Profit and Loss Account and Balance Sheet, (15 marks)

Q. 2. Write short notes with examples on: (i) Revenue receipt v Capital Receipt; (ii) Revenue Expenditure v Capital Expenditure; (iii) Depreciation v Amortization. (15 marks).

Q. 3. Prepare Income and Expenditure Account and draw Balance Sheet on the basis of the following Trial Balance, providing for 10% depreciation on all assets. [Books (periodicals) are revenue expenses and Books (textbooks) are capital expenses.]

Trial Balance as on March 31, 2010.

<u>Ledger heading</u>	<u>Debit balance</u>	<u>Credit Balance</u>
Advance tax	75,000	
Advances recd		1,50,000
Airconditioner	14,000	
Bank balance	12,000	
Bank commission	1,000	
Books (periodicals)	5,000	
Books (textbooks)	4,000	

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Building	2,00,000	
Capital		50,000
Cash balance	8,000	
Computer	25,000	
Dividend recd.		9,000
Drawings	10,000	
Equity shares	17,000	
Fees to Junior	20,000	
	50,000	
Fees to seniors		
Fees received		4,00,000
Land	1,00,000	
Membership yearly	3,000	
Mobile phone	3,000	
Salary to clerk	32,000	
Telephone exp	11,000	
Transport expenses	2,000	
Travel exp	17,000	
TOTAL	6,09,000	6,09,000

(20 marks)

Part-B—Professional Ethics.

Q. 4. State your views on the following observations by the Supreme Court in a recent judgment.

"The other important issue thrown up by this case and that causes us both grave concern and dismay is the decline of ethical and

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professional standards among lawyers. ...The bitter truth is that the facts of the case are manifestation of the general erosion of the professional values among lawyers at all levels. We find today lawyers indulging in practices that would have appalled their predecessors in the profession barely two or three decades ago. Leaving aside the many kinds of unethical practices indulged in by a section of lawyers we find that even some highly successful lawyers seem to live by their own rules of conduct." (20 marks)

Q. 5. A judgment of the Supreme Court makes following observations:

"It is true that society is entitled to expect the highest and most exacting standards of propriety in judicial conduct. Any conduct which tends to impair public confidence in the efficiency, integrity and impartiality of the Court is indeed forbidden."

If a judge accepts hospitality from a lawyer, would you say that his conduct tends to impair public confidence in the integrity and impartiality of the court? If your answer is 'no', then would his acceptance frequently of hospitality would impair such confidence? If your answer is 'yes', then what is your idea of frequency?

If your answer to either question is 'yes', then what action the Bar Council should take on lawyers giving such hospitality? (15 marks)

Q. 6.

State your views on the duty of lawyer engaged to defend the case of a person alleged to be involved in terrorism. (15 marks)

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Advocate-on-Record Examination – June 2010

Paper – IV Leading Cases

Time: 3 hours

Total Marks: 100

All questions carry equal marks of 25 each. Attempt any FOUR questions.

1. Discuss the issues involved and the principles laid down in *Pradeep Kumar Biswas vs Indian Institute of Chemical Biology*, 2002(3)SCR 100.
2. Explain the present law with regard to the meaning of the term “industry” under the Industrial Disputes Act 1947. Is there scope for reconsideration?
3. Discuss the facts and the law laid down in *B.R.Kapur vs State of Tamil Nadu and Anr* 2001 Supp(3) SCR 191.
4. Rupchand, the landlord of a residential premises, files an eviction petition against his tenant under the Rent Act applicable to his State. The eviction petition is allowed but the tenant succeeds in appeal. The High Court, holds in favour of Rupchand, but the Supreme Court allows the tenant’s appeal by special leave. Rupchand’s review petition is dismissed by the Supreme Court. He feels that two courts have decided in his favour, and he now wants to take a “chance” with a curative petition. Advise him.
5. Discuss the correctness or otherwise of the following two statements, with reference to decided cases:
 - i) “The Supreme Court has no option but to answer a Reference under Article 143(1) of the Constitution.”
 - ii) “The answer given by the Supreme Court to a Reference under Article 143(1) does not constitute binding law.”
6. Discuss the scope and extent of the powers of the Supreme Court under Article 142(1) of the Constitution to do “complete justice”, with reference to decided cases.