

IN THE SUPREME COURT OF INDIA

A.O.R.EXAMINATION-JUNE 2011

PAPER-I

PRACTICE AND PROCEDURE

Time: - 3 Hours.

Total Marks:-100

INSTRUCTIONS

(1) Answer any five questions

(2) All questions carry equal marks.

- 1) Explain the procedure to be adopted for the appointment of arbitrators under the Arbitration and Conciliation Act, 1996?
- 2) What are the changes introduced with effect from May 2009 by revised procedure, for filing and scrutinizing the matters in the Supreme Court of India?
- 3) Explain the procedure prescribed for challenging the election of the President and Vice President of India?
- 4) What is the difference between jurisdiction of Courts under Article 32, 226 and 227 of the Constitution of India?

- 5) Enunciate the objective behind the concept of "advocate-on-record".
Explain the eligibility criteria for registration as "advocate-on-record".

- 6) In what matters and circumstances the Supreme Court of India can exercise powers under the Consumer Protection Act, 1986?

- 7) Enunciate the powers of the Supreme Court of India for transfer of (i) Criminal proceedings and (ii) Civil proceedings?

- 8) Write a short note on any four of the following?
 - i) Attorney General for India.
 - ii) Special case.
 - iii) Notice of motion.
 - iv) Caveat.
 - v) The Registrar
 - vi) Article 142 of the Constitution.

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SUPREME COURT OF INDIA

ADVOCATES-ON-RECORD EXAMINATION – JUNE 2011

PAPER – II : DRAFTING

**Time : 3 Hours
100**

Total Marks :

INSTRUCTIONS

1. *Please attempt four 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 conceptual clarity, Brevity as also reference to Case Laws.*
 5. *Do not draft affidavits, certificates etc., and confine yourself to the core part of the drafts of petitions.*
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Q.No.1 : Facts

1. Sections 3, 4, 5 and 6 of the Central Vigilance Commission Act, 2003 in so far as they are relevant for the purposes of this case are set out below :-

Section 3. Constitution of Central Vigilance Commission. –

(2) The Commission shall consist of –

- (a) a Central Vigilance Commissioner – Chairperson;
- (b) not more than two Vigilance Commissioners – Members

(3) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons –

- (a) who have been or are in an All-India Service or in any civil service of the Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration;

Section 4. Appointment of Central Vigilance Commissioner and Vigilance Commissioners: –

- (1) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President by warrant under his hand and seal :
 Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of –
- (a) The Prime Minister – Chairperson;
 - (b) The Minister of Home Affairs – Member;
 - (c) The Leader of the Opposition in the House of the People – Member

Explanation :- For the purposes of this subsection, 'the Leader of Opposition in the House of the People' shall, when no such Leader has been so recognized, include the Leader of the single largest group in opposition of the Government in the House of the People.

Section 5. Terms and other conditions of service of Central Vigilance Commissioner. –

[1], [2]

- (3) The Central Vigilance Commissioner or a Vigilance Commissioner shall, before he enters upon his office, make and subscribe before the President, or some other person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in Schedule to this Act.

Section 6. Removal of Central Vigilance Commissioner and Vigilance Commissioner. –

- (1) Subject to the provisions of sub-section (3), the Central Vigilance Commissioner or any Vigilance Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought on such ground be removed.
- (3) Notwithstanding anything contained in subsection (1), the President may by order remove from office the Central Vigilance Commissioner or any Vigilance Commissioner if the Central Vigilance Commissioner or such Vigilance Commissioner, as the case may be, -
- (a) is adjudged an insolvent; or

- (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (c) engages during his term of office in any paid employment outside the duties of his office; or
- (d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Vigilance Commissioner or a Vigilance Commissioner.

2. On 18th December, 1997 the judgment in the case of *Vineet Narain v. Union of India, (1998) 1 SCC 226*, came to be delivered. In order to strengthen the rule of law, The Supreme Court felt that CVC should be given a statutory status as recommended by an Independent Review Committee. The recommendations of the Independent Review Committee were directed to be given a statutory status by the Supreme Court.

The judgment in *Vineet Narain's case* (supra) was followed by the 1999 Ordinance under which CVC became a multi-member Commission headed by Central Vigilance Commissioner. The 1999 Ordinance conferred statutory status on CVC. The said Ordinance incorporated the directions given by the Supreme Court in *Vineet Narain's case*. The 1999 Ordinance stood promulgated to improve the *vigilance administration* and to create a culture of *integrity* as far as government administration is concerned.

The said 1999 Ordinance was ultimately replaced by the enactment of the 2003 Act which came into force with effect from 11th September, 2003.

3. Purporting to act in terms of the provisions of sections 3 and 4 of the Act, in the month of September, 2010 a panel of three officers was prepared by the concerned department of the Central Government. Apparently with relevant information pertaining to the persons in the panel, the panel was put up before the High Power Committee for issuance of its recommendations to the President, for appointment of the Central Vigilance Commissioner.
4. In the meeting of the Committee held on 3rd September, 2010, a disagreement was raised by the Leader of the Opposition in relation to the nomination of one Shri P. Regardless of the disagreement, the name of Shri P was recommended to the President, who accorded her approval. Following such approval, Shri P was appointed as Central Vigilance Commissioner and he also took oath of office. Thus the appointment process was complete.

5. It is a matter of record that Shri P had served in the State of A.P. as an officer of the Indian Administrative Service, for more than two decades. During his tenure the state government effected some public procurements by way of import. Serious criticisms were leveled against the said Government conduct. Shri P seem to have tendered some advice favouring the Government decision. Following public criticism and some investigations, criminal prosecution was launched against the then Chief Minister of the State and few others for commission of offences under the Prevention of corruption Act 1988 and, Section 120B of the Indian Penal Code. Shri P was soon added as an accused in the said case. The State Government had been repeatedly requesting the Central Government for sanction to prosecute Shri P.
6. More than one attempt was made by the then Chief Minister albeit unsuccessfully, to challenge the criminal prosecution.
7. Meanwhile, Shri P was given a posting at the Central Government at the level of Secretary. This is said to have been done after due consideration of the pending prosecution, and taking the view that Shri P had played no inculpatory role in the decision of the state government, which is the subject matter of the criminal prosecution.
8. The recommendation made to the Hon'ble President, proceeded on the view that Shri P did not suffer any infirmity as regards his eligibility and suitability owing to the pending prosecution.
9. The moot question is whether the recommendation of the High Power Committee (with the disagreement of the leader of opposition) and the consequent appointment of Shri P as C.V.C. by the President are vitiated and could be called into question, and whether the appointment process fulfills "the authority of law" requirement, essential for holders of public offices?
10. Draft a Writ Petition to be filed under Article 32 of the Constitution of India on behalf of a respectable body of citizens who are concerned about the institutional integrity of the Central Vigilance Commission. Set out relevant grounds for the acceptance of the petition for adjudication under Article 32. Give reasons as to why the reliefs sought for, including a writ of Quo Warranto, can be granted by the Supreme Court.
11. Draft only the Writ Petition containing brief narration of the facts, but with focus on grounds, reasons and reliefs.

Q.No.2 (1) The States of Maharashtra and Tamil Nadu enacted similar legislations to grant protection to depositors investing monies in non-banking financial establishments. These legislations were

enacted in the wake of reports of large scale fraud practiced by financial establishments on investments made with them.

- (2) The statement of objects and reasons of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, read as follows -

The Statement of Objects and Reasons of the Tamil Nadu Act states :-

"There is mushroom growth of Financial Establishments not covered by the Reserve Bank of India Act, 1934 (Central Act II of 1934) in the State in the recent past with the sole object of grabbing money received as deposits from the public, mostly middle class and poor, on the promise of unprecedented high rates of interest and without any obligations to refund the deposits to the investors on maturity. Many of these Financial Establishments have defaulted to return the deposits on maturity to the public running to crores of rupees and thereby inviting the public resentment, which created law and order problems in the State. The Government has, therefore, decided to undertake suitable legislation, in the public interest, in order to regulate the activities of such Financial Establishments, other than those covered by the Reserve Bank of India Act, 1934 (Central Act II of 1934)."

- (3) In the year 2003, in view of the operational difficulties in the law and the need to further protect the interests of the depositors, the Act was amended so as to :-

- (1) bring a company registered under the Companies Act, 1956 (Central Act I of 1956) and non-banking financial company within the purview of the Act;
- (2) make the non-payment of interest and failure to render service for which deposit has been made, as offences under the Act;
xxxxxx
xxxxxx
- (5) constitute Special Courts for different areas and for different cases and to appoint Special Public Prosecutors for each of the Special Courts;
xxxxxx
xxxxxx
- (8) to sell the attached properties in public auction and to distribute the sale proceeds among the depositors.

By the Amendment Act 30 of 2003, the companies registered under the Companies Act, 1956 and the non banking financial companies, were also brought within the purview of the Act.

- (4) A full bench of the Bombay High Court in *Vijay C. Punjab v. State of Maharashtra*, (2005) 4 CTC 705, declared the Maharashtra Act as unconstitutional. However a Full Bench of the High Court of Madras after noticing the judgement of the Bombay High Court, took a contrary view and held the Tamil Nadu Act to be constitutional.
- (5) The main challenge before the High Court of Madras to the vires of the Act was that the said Act is- [i] beyond the legislative competence of the State Legislature as it falls under entries 43, 44 and 45 of List I of the Seventh Schedule to the Constitution; [ii] that the impugned Act is liable to be struck down as the field of legislation is already occupied by central legislation being the Reserve Bank of India Act, 1934, Banking Regulation Act, 1949, the Indian Companies Act, 1956 and the Criminal Law Amendment Ordinance, 1944 as made applicable by Criminal Law (Tamil Nadu Amendment) Act, 1977. It was also contended that the Tamil Nadu Act was arbitrary, unreasonable and violative of Articles 14, 19(1)(g) and 21 of the Constitution.
- (6) Relevant provisions of the Constitution and the relevant entries in List I and II of Schedule VII are set out below:-

Article 245 – Extent of laws made by Parliament and by the Legislatures of States. [1] Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

[2] No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Article 246 – Subject matter of laws made by Parliament and by the Legislatures of States: [1] Notwithstanding anything in clauses [2] and [3], Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule [in this Constitution referred to as the "Union List"].

[2] Notwithstanding anything in clause [3], Parliament, and, subject to Clause [1], the Legislature of any also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule [in this Constitution referred to as the "Concurrent List"].

List I Schedule VII

Entry 43: Incorporation, regulation and winding up of trading corporation, including banking, insurance and financial corporations but not including co-operative societies.

Entry 44: Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one state, but not including universities.

Entry 45: Banking

List II Schedule VII

Entry 30: Money lending and money lenders; relief of agricultural indebtedness.

Entry 32: Incorporation, regulation and winding up of corporation, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

- (7) The Madras High Court has turned down all these challenges and held in favour of the legislation.
- (8) Draft a Special Leave Petition against the judgment of the Madras High Court on grounds of lack of legislative competence, and that the impugned Act in pith and substance falls under the relevant entries in List I, Schedule VII to the Constitution. Also canvas the unconstitutionality of the provisions relating to attachment of property and the appointment of special courts, with reference to Articles 14, 19(1)(g) and Article 300A of the Constitution.
- (9) Confine your answer to only substantial questions of law and grounds. No other part of a special leave petition needs to be drafted.

Q. No. 3

Draft counter affidavit:

- [i] On behalf of Union of India opposing the writ petition referred to in Question No. 1 above **and**;
- [ii] On behalf of State of Tamil Nadu opposing the special leave petition referred to in Question No. 2 above and justify the vires of the law and reasoning of the High Court.

Q.No.4 (1)

Rishikesh studied law in Kinnaur in Himachal Pradesh. Kinnaur and certain parts of Himachal Pradesh are said to be hotbeds of Narcotics trade. During his student days, he was exposed to consumption of cannabis. Though he did not become an addict, he became a dependent and occasionally used to procure the substance in small quantities for personal consumption. He never indulged in any other activity relating to supply of or trade in any other narcotic substance.

- (2) His dependence came to the knowledge of his parents who could persuade him against the dangers of indulgence in consumption of even small quantities. After some time, Rishikesh could overcome his dependence and began to seriously engage himself in the profession.

- (3) However on a fateful night, at the wedding reception of a friend in Delhi, he met with an acquaintance who had initially introduced him to the drug. The two shared their old experiences and Rishikesh went and stayed with the said acquaintance and fell a prey to his temptation. While staying with him, he consumed a very small quantity of cannabis. Incidentally, Rishikesh's sister was going abroad the next day and he had to go to the airport to see her off. While going to the airport, he also carried a small quantity of the drug with him. After the departure of his sister, Rishikesh came to the parking lot and while taking out his vehicle, picked up a quarrel with the Central Industrial Security Force. The Commandant posted near the parking bay, questioned him and on getting suspicious about the responses given by Rishikesh, the said officer detained him and conducted search of his person. The packet containing the drug was seized. Two hours after his detention, information was sent to the local police station. Rishikesh was taken into custody and later an F.I.R. was registered and he was charged with commission of offence under Section 27 of The Narcotic Drugs and Psychotropic Substances Act, 1985. The officer who CISF who detained and searched him, is not an officer authorized to conduct the search. The mandatory requirement under Section 50 was also disregarded. Section 27 provides for punishment for consumption of any narcotic drug.
- (4) At the time of framing charges, prayer was made that he be discharged in view of the provisions of Section 64-A of the Act and that non-conformity with the provisions of Section 42 and 50 of the Act would render the trial unfair and hit by Article 21 of the Constitution.
- (5) Sections 42, 50 and 64A of the Act read as follows :-

Section 42- Power of entry, search, seizure and arrest without warrant or authorization.- [1] Any such officer [being an officer superior in rank to a peon, sepoy or constable] of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer [being an officer superior in rank to a peon, sepoy or constable] of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or

freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset.

.... ..

[d] detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act.

Section 50- Conditions under which search of persons shall be conducted – [1] When any officer duty authorized under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in Section 42 or the nearest Magistrate.

Section 64A- Immunity from prosecution to addicts volunteering for treatment.- Any addict, who is charged with an offence punishable under Section 27 or with offences involving small quantity of narcotic drugs or psychotropic substances, who voluntarily seeks to undergo medical treatment for de-addiction from a hospital or an institution maintained or recognized by the Government or a local authority and undergoes such treatment shall not be liable to prosecution under Section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substances:

Provided that the said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-addiction.]

- (6) In the course of consideration of an application for bail, at his request, Rishikesh was sent to an authorized de-addiction center. On the basis of a report submitted by the center in regard to the de-addiction, the trial court granted bail. This dimension was sought to be canvassed before the trial court and later before the High Court as relevant for purposes of Section 64A.
- (7) The trial court negated the pleas and held that Section 64A can be pleaded only when there is material to show that the accused is an addict and would be inclined to undergo treatment. It further held that violation of sections 42 and 50 are matters to be pleaded at the trial. A petition filed under Section 482 for quashing the proceedings was dismissed by the High Court of Delhi agreeing with the reasoning of the trial court.
- (8) Draft :-
 - (i) a Synopsis in brief showing the fitness of the case for grant of leave under Article 136; and

- (ii) a Special Leave Petition raising questions and grounds arising out of the interpretation and application of Sections 42, 50 and 64A of the Act with reference to decided case law. The infringement of Article 21 may also be suitably raised.

Confine yourself to the above parts of the Special Leave Petition.

Q.No.5

In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise and Salt Act, 1994 read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) in the public interest Notification No. 121/94-CE dated 11.8.1994 was issued by the Central Government exempting certain specified intermediate goods if those goods were captively consumed in the manufacture of specified final products. Notification also stipulated that where such use of inputs was in a factory of another manufacturer, different from the factory where the goods had been produced, the exemption contained in the notification would be allowable subject to the observance of the procedure set out in Chapter X of the Excise Rules.

The purpose and object of the notification dated 11.8.1994 was not to exempt or absolve the respondents from following the statutory requirements relating to the manufacture of the intermediate excisable goods. The notification was designed in such a manner to ensure an inseparable link between the supplier and the recipient of excisable goods for the manufacture of specified final products.

Rule 192 of Chapter X states that a manufacturer intending to receive duty free goods to be used for special industrial purpose must give details of the estimated quantity of each class or variety of goods and the value of such goods likely to be used in the year, commodities to be manufactured and estimated output and clearance of each commodity during the year, manner of manufacture, purpose for which manufactured product is supplied and the source from which excisable goods will be obtained.

For the said purpose, certain prescribed Certificates had to be issued specifying that the registration certificate is meant for obtaining the excisable goods under Rule 192. The manufacturer then becomes eligible for getting the excisable goods for which the remission of duty has been sought. Further, the applicant is also required to execute a bond with security in Form B-8, as required under Rule 192 and the Collector can put further conditions for filing the B-16 bond or B-17 bond during the permission granted for remission of duty. On such request and after complying with all statutory formalities, the jurisdictional officer is required to issue a C-2 certificate and, on the strength of that certificate, the applicant can obtain duty free goods. The jurisdictional officer has also to

certify that the said manufacturer is registered in their range under Rule 192 and is authorised for obtaining excisable goods at NIL/concessional rate of duty for use in special industrial purposes for the manufacture of specified excisable goods at their factory. Further, on the strength of the C-2 Certificate, the excisable goods can be removed from the factory of source manufacturer without payment of duty or concessional rate of duty, as the case may be.

Further as per sub-rule (1) of Rule 192, the applicant is required to maintain proper records of such goods in Form R.G. 16 register, and also required to file quarterly returns in prescribed showing entries regarding details of receipt of goods, quantities issued for manufacturing, wastage and other losses, description of process in which excisable goods to be used etc. The supplier of goods is required to be registered with the Central Excise Authority under Rule 174 and is also required to mention in Column 10(i) or 10(ii) of RT-12 returns, the details of goods despatched to the assessee availing facility under Chapter X. The supplier of goods can remove the goods only under proper gate pass GP-1 and is required to mention the details of C-2 on the gate pass. Thus, several statutory requirements were to be fulfilled in order that a person qualifies to claim the benefit under the notification.

Facts:-

M/s Vishnu Industries, M/s Hari Gopal and M/s Gopal Udyog were engaged in the manufacture of excisable goods viz. in the preparation containing chewing tobacco falling under Chapter Heading no. 2404.40 of the Tariff Act, then chargeable to nil rate of duty, which was made leviable to central excise duty with effect from 1.3.1994. The Intelligence Wing of the Department came to know that the said parties had been manufacturing the said goods without applying for/obtaining the certificate of registration as required under Rule 174 of the Excise Rules and had been removing the same clandestinely from their factories without payment of central excise duty leviable thereon and without following any of the prescribed procedures. The Central Excise Officers also visited the various factories of the respondents on 3.10.1996 and it was noticed that they were manufacturing the excisable goods 'Kimam' falling the Tariff Act under Chapter Sub-heading no. 2404.49 (up to 22.7.1996) and, with effect from 23.7.1996, covered under Chapter Sub-heading no 2404.40, packed the same in containers of different capacities as per the requirement of the buyer/consumer without obtaining Central Excise Registration Certificate in contravention of Section 8 of the Tariff Act read with Rule 174 of the Excise Rules, and removed the same from their factories clandestinely without payment of central excise duty in contravention of the provision of Rules 9(1), 52A, 53, 54, 173B, 173C, and 226 of the Excise Rules.

Consequently, notices were issued to the said parties and their partners to show cause why the amounts of duty involved should not be demanded from them jointly and severally under Rule 9(2) of the Excise Rules read with the proviso to Section

11A(1) of the Tariff Act and interest thereon under Section 11AB of the Tariff Act be not demanded from them. Penalty under Rule 173Q of the Excise Rules read with Section 11AC of the Tariff Act and Rule 209A of the Excise Rules was also demanded. In addition to the above, they were also asked to show cause why the land, building, plant and machinery used in their respective factories for the manufacture of Kimam should not be confiscated under Rule 173Q(2) of the Excise Rules.

The parties filed detailed objections to the show cause notice. The Commissioner (Excise) rejected the objections filed by them against the show cause notices and determined that they were liable to pay central excise duty of Rs. 8,14,34,285/-, Rs. 6,14,17,770/-, and Rs. 7,93,38,660/- respectively and also imposed the penalty of Rs. 18,00,000/-, Rs. 16,00,000/- and Rs. 17,00,000/- respectively, under Rule 173Q of the Excise Rules and ordered confiscation of goods seized from the premises M/s Vishnu Industries and M/s Hari Gopal respectively, with permission to redeem confiscated goods on redemption fines of Rs. 5,00,000 and Rs. 3,20,000 respectively.

Appeals were preferred by the manufacturers before the Tribunal and the Tribunal concurred with the findings of the Adjudicating Commissioner on duty liability on the goods in question and also on the issue of limitation as well as the claim for proforma credit/modvat credit, but ordered re-examination of the limited question of the applicability of Notification 121/94-CE dated 11.8.1994 since the parties raised the contention that they had substantially complied with the procedures laid down in Chapter X.

On remittance, the Commissioner rejected all the contentions and held that the benefit of the exemption notification would be available only if the procedures laid down in Chapter X were complied with, and the records produced by the parties would not substantiate a plea of substantial compliance of the procedure laid down in the above mentioned chapter. The imposition of duty liability, interest and penalty was therefore confirmed. The respondents carried the matter in appeal before the Tribunal. The Tribunal placed reliance on the judgments of the Supreme Court in *Thermax Private Ltd. v. Collector of Customs (Bombay) New Custom House [(1992) 4 SCC 440]* and *Collector of Central Excise, Jaipur v. J.K. Synthetics [(2000) 10 SCC 393]* and took the view that the benefit of exemption notification should not be denied if "intended use" of the goods was established, though there was non-compliance with the procedural conditions of Chapter X. Appeals were accordingly allowed and the order of the Commissioner was set aside.

Draft a petition of appeal with relevant grounds under Section 35L of Central Excise Act, 1944. Show that the issues fall within the scope of the appellate jurisdiction of the Supreme Court. Please bear in mind that the appellate Court interferes not because the

judgment under appeal is not right but because it is shown to be wrong.

Q.No. 6A Full Bench of the High Court of Allahabad at Lucknow was hearing certain suits, appeals and writ petitions all relating to contentious issue of the existence or otherwise of ancient temple structures and claims regarding the demolition of the same and later day erection of a mosque on the disputed premises.

Parties were given permission to lead both documentary and oral evidence and evidence of expert witnesses. This was so since issues of archeology, history and related disciplines were involved in the due resolution of the disputes.

Two professors of international repute in the field of archeology gave evidence on behalf of one set of plaintiffs. The oral testimony was tendered by the said two professors viz. Prof. M and Prof. R during the period April to July 2002 on various dates.

In the year 2003 in an application filed by some Union of Journalists seeking permission to write and report about the proceedings, the High Court imposed certain restrictions. Neither of the above said experts were party to the said application. Apparently they were not aware of the said order, and not being parties to the proceedings were not bound by the said order.

Further in July 2003 the Court granted permission to the parties to inspect certain excavation sites. The experts were also granted permission to do so. Relevant portion of the said order is set out below:

"Considering the facts and circumstances we permit the applicants and all the parties concerned to enter completed trenches, declared by the Team Leader of ASI to observe stratification but they shall not publicize by way of newspaper, TV channels, radio or otherwise and also not publish any book/article after obtaining the photographs/noting of the stratification without taking permission from this Court.

In terms of the permission granted by the Court Prof. R visited and inspected the excavation sites. By March 2007 leading of oral evidence came to a close. In April, 2007 arguments on behalf of the parties commenced and the proceedings concluded by April, 2010.

In December, 2007 Prof. M and Prof. R published a book containing their views on the excavation sites. The book was intended to be read by specialists and others who may have an interest in the concerned fields. It was not intended to be used as a source material or as a persuasive piece of evidence in the

proceedings. The book had a limited print and was not even noticed generally. No reports or reviews of the book were carried in any media. The plaintiffs did not refer to the book nor used the analysis contained therein in the arguments advanced before the Court. For all practical purposes it was a private publication and circulation.

In April 2010, three years after the publication, counsel appearing for some of the respondents made an oral mention before the Court about the publication of the book. On such oral mentioning and without any application required under the relevant rules of the High Court, notices of Contempt were issued to both the experts and the publisher of the book.

All the alleged contemnors filed affidavits tendering their unconditional apologies. It was submitted that no Contempt of Court had been committed by them and that in the event of non acceptance of their apologies, they deserve to be heard in their defence, in terms of the principles and procedures enacted under the Contempt of Courts' Act, 1971, and the mandatory rules of the High Court.

The High Court declined to accept the apologies. It did not give any further opportunity to the parties to explain and defend the publication. The Court held that the publication was in contravention of para 9 of the order which restrained the parties to the proceedings from making any publications. It held that the Court can invoke the powers under Article 215 of the Constitution and can travel beyond the provisions of the Contempt of Courts Act, 1971. It thus adjudged both Prof. M & R guilty of Contempt and imposed a sentence of imprisonment for 15 days and a fine of Rs. 1000 on each of them.

Draft a petition of appeal under Section 19 [1][a] of the Contempt of Courts Act, 1971, read with Order XXI, Rule 15 [1] [e] of the Supreme Court Rules, 1966. Raise relevant grounds relating to the application of Articles 19[i][a] 21 and 215 of the Constitution. Deal with the question as to whether Article 215 can be invoked without examining the field occupied by the Contempt of Courts Act, 1971, and whether the High Court can go beyond the definition of criminal contempt under the 1971 Act.

Alternatively draft only a counter affidavit opposing the petition of appeal and its maintainability with reference to the Law on the subject.

SUPREME COURT OF INDIA

Advocate-on-Record Examination

June, 2011.

Question Paper-III

Part-I

All questions are compulsory.

Book Keeping and Accounts—50 marks

Each multiple choice question has only one correct answer. Please write the answer in respect of each question by referring to the answer number. E.g., if your answer to the Q. No. 1 is (a), you should write 'Q. 1. (a)'. There is no need for any explanation.

Each correct answer will earn 5 marks. A wrong answer will earn 0 marks.

- 1 Of the following account types, which would be increased by debit?
 - a. Liabilities and Expenses
 - b. Assets and Capital
 - c. Assets and Expenses
 - d. Capital and Income.

- 2 The following statements each relate to the recording of journal entries. Which statement is true?
 - a. The ledger is a chronological record of transactions.
 - b. The ledger is posted from transactions recorded in the journal.
 - c. The trial balance provides the primary source document for recording transactions into the journal.
 - d. Transposition is the transfer of information from the journal to the ledger.

- 3 The following statements each relate to the recording of journal entries. Which statement is true?
 - a. For any given journal entry, debits must exceed credits.
 - b. It is customary to record credits on the left and debits on the right.
 - c. Journalisation is the process of converting transactions and events into debit/credit format.
 - d. For any given journal entry, credits must exceed debits.

- 4 Failure to record the receipt of electricity bill for services received will result in:
 - a. Overstatement of assets.
 - b. Overstatement of liabilities.
 - c. Overstatement of capital.
 - d. Understatement of assets.

- 5 ABC, an advocate, invests Rs. 50,00,000/- in buying an office, paying the full amount by cheque. This transaction would be recorded by:
- Debit Bank a/c
Credit Office premises a/c
 - Debit Office premises a/c
Credit Bank a/c
 - Debit Office premises a/c
Credit Fees a/c
 - Debit Capital a/c
Credit Office premises a/c
- 6 The trial balance—
- Is a formal financial statement.
 - Is used to prove there are no errors in the journal or ledger.
 - Provides a list of accounts.
 - Provides a list of balance of each account.
- 7 Which of the following errors will be disclosed in trial balance?
- Recording transaction in wrong account.
 - Duplication of a transaction in the accounting records.
 - Posting only the debit portion of a particular journal entry.
 - Recording the wrong amount for a transaction to accounts both debited and credited.
- 8 The sequence of accounting process is—
- Transaction→Journal entry→Ledger account→Trial balance
 - Transaction→Ledger account→Journal entry→Trial balance
 - Transaction→Journal entry→Trial balance→Ledger account
 - Transaction→Trial Balance→Journal entry→Ledger account
- 9 Typical current liabilities include:
- Prepayments by customers.
 - Travel advances to employees.
 - The amount payable on mortgage after one year, where accounts are kept on yearly basis.
 - Accumulated depreciation.
- 10 The proper Journal entry to record the receipt of cheque of dividend of Rs. 1,000/- will be—
- Debit dividend a/c
Credit bank a/c
 - Debit dividend a/c
Credit capital a/c
 - Debit income a/c
Credit dividend a/c
 - Debit bank a/c
Credit dividend a/c

Part II

Professional Ethics—50 marks.

All questions are compulsory. Each answer carries maximum of 10 marks.

Be brief, clear and precise in your answers. *Answer each question in 2 pages or less*

11. A businessman is fully justified in soliciting business from the customers of his competitor. For a lawyer soliciting business violates professional ethics. Discuss.
12. Do professional ethics require an advocates to appear for a client regardless of whether he believes in that cause or not? What is the role of the bar association?
13. Is it necessary for a bar council to give reasons for holding an advocate not guilty of misconduct?
14. Do you think that it is unethical for the lawyers to invite judges before whom they practise for legal or non-legal functions? If yes, what action would you recommend? If no, then would you put a limit on the number of times for such invitations?
15. What is the duty of a lawyer engaged by a party accused of gross corruption or terrorist activity?

Supreme Court of India
Advocate-on-Record Examination – June 2011

Paper – IV Leading Cases

Time : 3 hours

Total Marks : 100

All questions carry equal marks of 25 each. Answer any FOUR questions:

1. (a) What is law declared in *Maneka Gandhi v. Union of India (1978) 2 SCR 621*, which made it a leading case? (10 marks)

(b) Was the decision in *Rustom Cowajee Cooper v. Union of India (1970) 3 SCR 530* considered in *Maneka Gandhi* case and, if so, in what context and what is the outcome? (5 marks)

(c) State difference between “procedure established by law” and “due process”. (5 marks)

(d) What was the relief granted to the Petitioner viz., **Maneka Gandhi**? (5 marks)
2. (a) What are the points of difference between the majority and the minority judgments in *P.V. Narasimha Rao v. State (CBI, SPE) (1998) 2 SCR 870* and what is the area of agreement among all the Judges on the Bench? (20 marks)

(b) Do you agree with the law declared as regards the scope of immunity to Members of Parliament for a speech made or Vote given by him in Parliament? (Give reasons) (5 marks)
3. (a) Discuss the importance of “standards in institutions of higher education” mentioned in Entry 66 of List I with reference to the various factors identified in *Dr. Preeti Srivastava v. State of M.P. (1999) Supp. 1 SCR 249* and other cases considered therein. (20 marks)

(b) Indicate the area of disagreement between the judgment of the majority and that of S.B. Majumdar, J. (5 marks)
4. (a) Does the Supreme Court declare the law or make law? Discuss with reference to the facts and the law laid down in *Vishakha & Ors. v. State of Rajasthan & Ors. (1997) Supp. 3 SCR 404*. (15 marks)

(b) Indicate whether the Supreme Court has really declared law or made law in that case, and if so, what are the parameters of judicial law making, if any? (10 marks)

5. (a) What is the law declared in *TMA Paid Foundation v. State of Karnataka (2002) 8 SCC 481* on the following questions:
- (i) Whether the ratio laid down by the Supreme Court in *St. Stephen's case (St. Stephen's College v. University of Delhi (1992) 1 SCC 558)* is correct? If no, what order? (5 marks)
 - (ii) Whether the decision of the Supreme Court in *Unni Krishnan, J.P. v. State of A.P. (1993) 1 SCC 645* (except where it holds that primary education is a fundamental right) and the scheme framed thereunder require reconsideration / modification and if yes, what? (5 marks)
- (b) What are the rights of unaided minority institutions today in the matter of admission of students and determination of fee structure and to what extent regulation of these rights by the State is permissible? (15 marks)
6. Is Right to Information a fundamental right of a citizen of India? If so, what is the scope of the right and its limitations, if any? Has the State any power to impose restrictions on the Right to Information and, if so, on what grounds and to what extent? Discuss in the light of *Peoples Union for Civil Liberties (PUCL) & Anr. v. Union of India & Anr. (2003) 2 SCR 1136*. (25 marks)