

SUPREME COURT OF INDIA

AOR EXAMINATION 2017

PRACTICE AND PROCEDURE

Duration : 3 Hours

CATETANMOY LAW LIBRARY

QUESTION 1 and 2 are Compulsory. Answer nine questions from Questions 3 to 14.

The answers should be brief and wherever possible, a pointwise reply will be appreciated.

Please write in legible handwriting.

- 1) The Supreme Court may, in its discretion, grant Special Leave to Appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India. You are approached by a client who is aggrieved by the decision of a statutory tribunal. Would you advise him to file directly in the Supreme Court a petition seeking leave to appeal under Article 136 of the Constitution? Explain the general principles on which leave to appeal is granted by the Court. [12].
- 2) Briefly answer 8 of the following questions: [16]
 - a) Is a certificate of an advocate on record necessary under the Supreme Court Rules certifying that the special leave petition is based on the records of the courts below?
 - b) Does the application for the withdrawal of a petition for special leave have to be listed before a bench, or can it be listed before a single judge?
 - c) Is the power under Article 142 available to the Court when it exercises jurisdiction under Article 32?
 - d) What are the certificates necessary to be filed with a curative petition?
 - e) Can a petition for special leave filed by a convict in a criminal case be listed before he surrenders?
 - f) What is the period of limitation in respect of a petition for special leave?
 - g) Is an appeal in an election dispute filed under Article 136 of the Constitution, or some other provision of law?
 - h) What is the procedure for seeking an adjournment of a petition for special leave listed for hearing?
 - i) When is an appeal maintainable under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970?
 - j) When can a bench of two judges refer a case directly to a bench of five judges?

- k) A petition for leave to appeal is listed, but is delisted. It is then listed again, and your client is keen to ensure that the matter is not adjourned again. What would you do in the circumstances?
- 3) When can statutory appeals under the Customs Act and the Central Excise Act be filed in the Supreme Court from the order of the CESTAT? [8]
- 4) When a bench of two judges [of the Supreme Court] doubts the correctness of a decision of a bench of three judges, what would be the appropriate course of action? In what circumstances can a bench of two judges refer a question of law directly to a bench of five judges? [8]
- 5) You are approached by a client with a request to file a petition for Special Leave. He brings you documentary evidence which is of significance to the case, but has not been produced before the lower courts. What steps would you take before you agree to seek to introduce the documents in the Supreme Court? What is the procedure to be followed for this purpose? [8]
- 6) Article 32 of the Constitution confers upon the Supreme Court the power to issue writs similar to a power conferred upon the High Courts under Article 226. What are the differences between the two provisions? [8]
- 7) A curative petition is not an appeal to a larger bench. Explain this statement, with particular reference to the circumstances in which a curative petition is maintainable, and the procedure for filing such a petition. [8]
- 8) When does a petition lie in the Supreme Court for the appointment of an arbitrator under the Arbitration and Conciliation Act, 1996? What are the defences available to the respondent of such a petition to resist the appointment of an arbitrator? [8]
- 9) In what circumstances can a suit be filed directly in the Supreme Court? Who would be the parties to such a suit and what would be the procedure for its trial? Discuss. [8]
- 10) In what circumstances can the President seek an advisory opinion of the Supreme Court? Can the Supreme Court decline to answer a reference under Article 143? Discuss. [8]
- 11) A client is unhappy with a judgment of the Supreme Court and requests you to file a petition for review. In what circumstances should you agree to do so? [8]

- 12) What are the powers of the Supreme Court to transfer proceedings from one Court to another under the Constitution of India, the Code of Civil Procedure, and the Criminal Procedure Code? [8]
- 13) What is the difference between a question of law, a substantial question of law, and a substantial question of law as to the interpretation of the Constitution? Discuss. [8]
- 14) What is the difference between a writ of habeas corpus, the writ of mandamus, and a writ of quo warranto? [8]

1

SUPREME COURT OF INDIA

ADVOCATES - ON - RECORD EXAMINATION 2017

PAPER - II

(DRAFTING)

TOTAL : 100 MARKS

TIME : 3 HOURS

Instructions :

1. Attempt all four questions.
2. In question No. 2, Synopsis, list of dates, cause title, affidavit, certificate need not be drafted. "Application for bail" may be read as interim relief as per SLP format.
3. In question No. 3, Synopsis, list of dates, cause title, affidavit, certificate with special leave petition are required to be drafted. "Application for stay" may be read as interim relief in SLP format.
4. 30 minutes extra time shall be provided for reading the question paper.

Q1. Your client, an advocate (AB) filed a writ petition on 03.01.2017 in the High Court of XY. The registry of the High Court returned his petition on 04.01.2017 as he was neither enrolled with the Bar Council of the State of XY nor he was on the role of advocates prepared by the High Court and had therefore failed to fulfil the requirement of Rule 3 and 3A of the High Court of XY Rules by not filing vakalatnama alongwith a local advocate. AB thereafter refilled the writ petition with the registry on 05.01.2017 by filing a joint vakalatnama with local advocate. AB has to now engage a local advocate for all his cases which he wishes of file in the High Court of XY.

Rule 3 and 3A of the High Court of XY are as under :

“3. Advocate who is not on the roll of advocates - An advocate who is not on the roll of advocate or the Bar Council of the State in which the court is situated, shall not appear, act or plead in such court, unless he files an appointment along with an advocate who is on the roll of such State Bar Council and who is ordinarily practising in such court.

In cases in which a party is represented by more than one advocate, it shall be necessary for all of them to file a joint appointment or for each of them to file a separate one.

- A. (i) Unless the court grants leave, an advocate who is not on the roll of advocates in the High Court of XY shall not be allowed to appear, act or plead in the High Court unless he files appointment along with an advocate who is on such roll of High Court.
- (ii) The High Court shall prepare a roll of advocates in Parts A and B of those who ordinarily practise in the High Court.
- (iii) The roll of advocates shall bear in regard to each advocate entered, his full name, father's name, passport size coloured photograph, enrolment number, date of enrolment, complete postal address both of residence and office which shall be in the municipal limits of the city of RST as the case might be.
- (iv) The rolls shall be prepared and revised periodically in the manner and under the authority as may be prescribed by the Chief Justice.
- (v) This Rule 3-A shall come into force after notification by the Chief Justice."

AB approaches you to file a writ petition in the Supreme Court of India challenging Rule 3 and 3A as reproduced above. AB feels that the right of an advocate to practise in any court in India has been recognized and granted by

Section 30 of the Advocates Act, 1961. He also feels that the right to practise is a fundamental right guaranteed under Article 19 (1) (g) of the Constitution of India. He believes that the High Court of XY while exercising its powers under Section 34 of the Advocates Act cannot prohibit an advocate from appearance and therefore, Rule 3 and 3A amount to prohibition, put unreasonable restrictions and therefore ultra vires.

Draft a writ petition under Article 32 of the Constitution of India challenging the validity of the Rules 3 and 3A of the High Court of XY as being ultra vires the constitution and affecting his fundamental right to practice. (Synopsis and List of Dates is not required).

(20 Marks)

Q2. The prosecution case as unfolded in the trial court was that when the deceased was going towards his house alongwith his sons PW1, PW2 and PW3, the accused A1 to A13 restrained them on the road. It is alleged that all the accused formed an unlawful assembly and assaulted the deceased and his sons with stones and clubs. A1 assaulted the deceased with club on his head and A2 assaulted the deceased with chopper on his head. A-3 to A-5 assaulted the deceased with stones on his chest. All other accused assaulted with hands. The deceased succumbed to the injuries on the frontal portion of his head. PW1, PW2 and PW3 also suffered some simple injuries which could be caused with clubs. The father of A-2 had filed FIR with the police station alleging that the PW-1 to PW-3 and deceased had assaulted A-2 with chopper. A-2 was sent to the Hospital and PW-4, the doctor, found some serious injuries including incised wound on him. PW-1 filed FIR. There was no mention of A-6 to 13 in the FIR. There was no mention as to the role played by of A1 and A2 in the FIR. PW-4, who did post mortem, did not find any injury on the chest of the deceased.

A1 to A13 were charged with offences punishable under Section 143, 147, 148, 324, 302 R/w Section 149 of IPC. The closure report was filed in respect of FIR given by the father of A-2.

The case of the prosecution rested upon the testimony of the injured eye witnesses and Medical evidence. The injuries caused to A-2 remained unexplained in the evidence led by the prosecution.

After appreciating the entire evidence on record, the trial court acquitted all the accused holding that prosecution has failed to prove the guilt of the accused beyond reasonable

doubt. The main reasons for the said acquittal were that the evidence of eye witnesses is inconsistent and not trustworthy. There is an improvement in the evidence given as A-6 to A-13 are mentioned subsequently. The role of A-1 and A-2 is stated for the first time in evidence. Medical evidence do not mention about any injury on the chest of the deceased. Also that non-explanation of the serious injuries on the person of one of the accused by the prosecution is fatal.

On appeal filed by the State, the High Court reversed the order of acquittal and convicted A1 and A2 for offences punishable under Section 302 R/w 149 and A-3 to A-5 convicted under Section 324 R/w Section 149 of IPC. The reasoning of the High Court is that PW1, PW2 and PW3 are injured witnesses and some inconsistencies need not dislodge their evidence. Further that non explanation of injuries on A5 is not very material and is not fatal. Even if there is no injury on the chest of the deceased, injuries found on the head could be caused by the weapons used by A-1 and A-2.

A1 to A5 approached you to prefer Special Leave Petition to the Supreme Court. You feel that High Court has not followed the principles before reversing the order of acquittal. You also feel that eye witnesses are relatives and no independent witness is examined. You feel that there is material improvement in the evidence. You also feel that non explanation of injuries on A-2 is fatal. Non mentioning of the FIR filed by father of A-2 by the prosecution is a serious lapse.

Draft special leave petition on behalf of A-1 to A-5 and also application for bail.

(30 Marks)

OR

Q2. Your client AB (A2), an Inspector of Central Excise was charged along with XY (A1) a Senior Assistant, for offences under Section 120-B IPC R./w Section 7 and 13 (2) R/w Section 13 (1) (d) of the Prevention of Corruption Act, 1988 ("Act") for demanding and accepting illegal gratification from CD, PW10, for clearing and sending a Grinding Machine to Dubai. Trial Court acquitted accused 1 but convicted your client and sentenced him to undergo R.I. for 3 ½ years. The High Court doubted the demand of money by your client and acquitted him of charges under Section 120-B IPC and Section 13 (1) (d) of the Act but maintained the conviction under Section 7 of the Act since tainted currency note were recovered from the pocket of your client.

AB (A2) was working as inspector of Central Excise, Air Cargo complex along with XY (A1).

It is the case of the prosecution that on the morning of 1.10.2013 XY (A 1) while working as the Inspector of Central Excise, Air Cargo Complex, Chennai demanded an amount of Rs. 3000 as gratification from one EF (PW10) Senior Assistant of M/s PQRS, as a reward for giving clearance for sending Grinding Machine booked by one DE to be sent to Dubai.

EF (PW 10) in his evidence stated that on 1-10-2013 XY (A 1) in the morning hours suggested certain corrections in the documents as regards the valuation and description of the item that was to be sent to Dubai. When EF (PW 10) went back to office and told GH (PW 2) (Manager of M/s. PQRS) said that no correction need be made. Thereafter both of them visited Air Cargo Complex. It is in the evidence of PW 10 that he alone went inside the room to meet Accused 1 and told him that no corrections possibly could be made as PW 2 was not interested in making the suggested corrections. But Accused 1 insisted on

carrying out corrections if the item was to be cleared for its dispatch to Dubai. Then PW 10 requested Accused 1 to meet PW 2 but Accused 1 retorted saying that whoever he may be, he will not meet him.

According to GH (PW 2) (Manager of M/s. PQRS), XY (A1) repeated the demand in presence of AB (your client) when he along with EF (PW10) visited the Air Cargo Office in the evening of 1.10.2013. PW 2 thereafter never visited Air Cargo Complex till he came with the trap party early in the morning on 2.10.2013. PW 2 in his evidence stated that on 2.10.1999, PW 10 came to office at 4:30 a.m. and informed him that he went to Air Cargo Office and found that XY (A 1) was not on duty and AB (A2) (your client) was on duty. According to PW 2, PW 10 informed him that on inquiry about the cargo the AB (A2) told him that XY (A 1) has already apprised him about the cargo and accordingly it would be cleared only if Rs 1500 is brought. PW 2 stated in his evidence that he immediately wrote Ext. P-2, complaint. He clearly admitted in his evidence that he had no personal knowledge as to what transpired between PW 10 and AB (A2) at Air Cargo Office.

PW 11, MN, stated that from the conversation between the appellant and PW 10, he could hear the AB(A1) asking "Is it ready?" and PW 10 only nodding his head.

PW 10 did not support the prosecution story and was declared hostile.

Your client feels that prosecution has failed to establish the criminal conspiracy as A1 has been acquitted. He also feels that there is no proof of demand of any gratification.

Draft a Special Leave Petition on behalf of AB and application for bail.

(30 Marks)

Q3. The preliminary notification to acquire the land of the AB and other land owners under Section 4 (1) of the Land Acquisition Act was issued by the State Government on 10.02.2014 for the purpose of Industrial Board to set up the industry in the State. The final notification under Section 6 of the LA Act was issued on 19.08.2014 for the purpose of Industrial Board. The Land Acquisition Officer, by its award dated 15.06.2015, awarded compensation of Rs.2,50,000/- per acre.

AB filed the Reference Petition under Section 18 of the Land Acquisition Act before the Reference Court on 07.07.2015. The State Government was represented before the Reference Court and in spite of opportunity led no evidence. AB produced number of sale deeds executed just before the preliminary notification. The Reference Court found the sale deed Ex P-6 as comparable but the Reference Court granted 53 % deduction towards development cost. The reference Court, by award dated 16.02.2016, fixed the market value of the acquired land at Rs. 7,20,000/- .

The State Government filed an appeal before the High Court challenging the said order of the reference Court on 05.07.2016. AB filed appeal challenging the percentage of deductions on 15.07.2016.

The Industrial Board allotted the land to the Company XY on 12.09.2016 under lease cum sale agreement for 10 years. The XY Company filed an application on 27.10.2016 under Order 1 Rule 10 (2) of CPC in an appeal filed by the land owner for enhancement of compensation. The XY Company also filed application under Order 41 Rule 27 CPC for production of additional documents. The case of the XY Company is that the State has not properly conducted the case and since the

Company has to bear the cost of acquisition, they are 'person interested' within the meaning of LA Act.

The High Court allowed the application filed by the XY Company under Order 1 Rule 10 (2) of CPC holding that since the compensation has to be paid by the XY Company, XY Company is a necessary party to the proceedings. That the State has led no evidence. Under Order 1 Rule 10 (2), the Court can add or delete the party at any stage of the case. That Section 50 of the LA Act provides a right to a Company to represent before the Court in the process of determination of compensation. After permitting the XY Company to be impleaded, the High Court remanded back the matter to the Reference Court permitting the XY company to lead fresh evidence for determination of compensation.

AB feels that the said remand is illegal as the XY Company is not the beneficiary of the acquired land and therefore, is not a necessary party to the proceedings. AB further feels that the allotment to XY Company is subsequent to the preliminary notification and therefore, the XY Company is neither necessary nor proper party to the proceedings. AB feels that XY Company has no locus to be heard as the acquisition is not under Part VII of LA Act. AB feels that once the lands vest with the government, the acquisition is complete and subsequent transferee from the State is not concerned with the process of acquisition.

Draft Special Leave Petition on behalf of AB with Synopsis and List of Dates and Application for stay. (30 Marks)

OR

Q3. The State Government sanctioned state project of construction of dam in the year 1978 with the objective to provide water for drinking. The Water Resources Department issued Notice Inviting Tender (NIT) as per the Standard Bidding Documents (SBD) on 28.02.2014. Pre-bid meeting was held on 24.03.2014 and ten tenderers participated. It was observed that there is departure in the terms of NIT from SBD. After the pre-bid meeting, only three tenderers participated in the tender process and submitted their bid. Departmental Tender Committee held its meeting on 02.06.2014 and 06.06.2014 and even amongst the three tenderers, only one tenderer was responsive. The Tender Committee took a decision as per Clause 4.18 (d) of the Central Vigilance Commission Guidelines (CVC guidelines) to cancel the tender and to go for retendering to make the process more competitive. It was noticed that every tender has to be in consonance with SBD, which has approval from the Cabinet. Any variation in the terms of SBD require prior approval of Department which is done after considering whether the particular clause should be added or not and whether the clause is restrictive and stringent in nature.

The tenderer AB, who participated in the tender process, filed a writ petition on 07.07.2014 before the High Court challenging the cancellation of tender. The contention of AB is that clause 4.17 and 4.18 of the CVC Guidelines provide for procedure in case of single valid acceptable quote and the said clause can be invoked only in case of lack of competition due to restrictive specifications, which are stringent in nature. AB contended that the Tender Committee has not taken any decision that specifications are restrictive or stringent. That the present case is to be guided by clause 4.17 of CVC guidelines and invoking clause 4.18(d) is arbitrary.

The learned Single Judge allowed the Writ Petition by the judgment and order dated 28.11.2016 holding the action of the State to be arbitrary and against public interest. The Writ Appeal filed by the State was also dismissed concurring with the Single Judge by judgment and order dated 26.04.2017. The Division Bench noticed that there were three tenderers, who participated and not a single tenderer. The Division Bench also held that retendering after almost about two years would increase the estimated cost of project by about 100 crores which is not in public interest.

The State Government is of the view that so long as bid is not accepted, the bidder gets no vested right to have the auction confirmed. That it is the prerogative of the Government to award tender. That clauses 4.5A(b) and 4.5(A)(c) of the contract are restrictive and the decision of the Tender Committee to cancel the tender is in consonance with clause 4.18 of the CVC Guidelines. 4.5 (A) (b) and 4.5(A) (c) are departure from the SBD. As per Clause 24 and clause 32.1 of SBD, even though the State is entitled to cancel the tender without assigning any reasons but in this case, the Tender Committee has provided cogent reason of lack of adequate competition. The decision to cancel the tender did not suffer from arbitrariness and unreasonableness. There is no infirmity in the decision making process.

Draft Special Leave Petition on behalf of State Government challenging the judgment of the Division Bench with Synopsis, List of Dates and Application for stay.

Relevant Clauses of SBD

“Clause 24 of NIT: “Authority reserves the right to reject any or all of the tender(s) received without assigning any reason thereof.”

Clause 32.1 of SBD: "...the Employer reserves the right to accept or reject any Bid to cancel the bidding process and reject all bids, at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Employer's action."

Clause 4.18 of CVC Guidelines reads as under:-

"4.18. Re-tendering- Retendering may be considered by the TPC/CFA with utmost caution, under the following circumstances:

- a) Offer do not confirm to essential specification.
- b) Wherever there are major changes in specification and quantity, which may have considerable impact on the price.
- c) Prices quoted are unreasonably high with reference to assessed price or there is evidence of a sudden slump in prices.
- d) There may be cases when the lack of competition is due to restrictive specification, which do not permit many vendors to participate. The CFA must consider if there are reasons for review of specification of the item to facilitate wider competition. Re-tendering will be done only after approval of IFA and CFA in all cases."

Clause 4.17 of the CVC Guidelines reads as under:-

"4.17. There are cases when only a single quote or a single valid acceptable quote is received even against LTE or OTE, this results in a single vendor situation indicating lack of competition. These cases will not be treated as procurement against Single Tender Enquiry and shall be progressed as an LTE or OTE case as applicable."

Clause of the NIT in departure from SBD reads as under :

"4.5 (A) To qualify for award of the contract, each bidder in its name should have in the last five years as referred to in Appendix.

- a) Achieved a minimum annual turnover (in all classes of civil engineering construction works only) amount indicated in Appendix in any one year, (usually not less than one & half times the

estimated cost of the project may be kept. However, for Turn-key & other projects where completion period is two years or more, the annual turnover may be kept as per the requirement upto $1.50 \times$ Estimated cost/years of completion of project).

(b)

(c) Executed in any one year, the minimum quantities of the following items of work as indicated Appendix.

- cement concrete (including RCC and PSC)...cum

- earthwork in both excavation and embankment
(combined quantities ... cum

-cum

-cum

(usually 50% of estimated quantity. However, for Turn-key & other projects where completion period is two years or more as per the requirement may be kept as estimated quantity/years of completion of project.)"

(30 Marks)

Q4. Your client is a lady professing Sikh religion. She was born in Kabul in Afghanistan on 16.10.1984 and lived there till January 1988. She alongwith her family shifted to Delhi in February 1988 and thereafter she continued her education in Delhi till 1999. Your client together with her family migrated to United Kingdom in May 2001 where she and her parents were given British Nationality. Your client started her own business and was self employed till she got married to XY in October 2007.

The engagement ceremony of AB with XY was performed at London and the marriage was preformed in Delhi on 10.11.2007 as per Hindu Rites and Customs. However, on insistence of XY, the marriage was registered before Civil Registrar Vasco-Da-Gama Goa on 15.11.2007 in presence of three witnesses arranged by XY. The parties resided at Goa after their marriage till October 2015. A girl child was born to the parties on 01st April, 2014. Several incidents of cruelty and physical violence occurred between the parties as a result of which AB left Goa on 25.10.2015 and took up residence in a rented accommodation in New Delhi. AB discovered that XY had commenced proceedings for divorce on the ground of cruelty & desertion in the Court of Civil Judge, Goa. However, since she was residing in Delhi it was impossible to contest the litigation filed at Goa.

AB has approached you to file a transfer petition to transfer the matrimonial petition filed by XY before the Court of Civil Judge, Goa seeking divorce on the ground of cruelty and desertion, to the Court of Civil Judge, Rohini, Delhi.

AB has been living in Delhi for last 3 years. She has her support of friends and acquaintances in Delhi. She has a minor daughter aged 3 years from the said marriage. She had to give up her business in United Kingdom and struggling to set up a small business in Delhi to meet with her financial needs for herself and her minor daughter.

Her parents continue to reside in United Kingdom and hence there is nobody else to look after her daughter as and when she has to travel to contest the divorce proceedings.

Draft a transfer petition on behalf of wife under Section 25 of Code of Civil Procedure. (Synopsis and List of Dates is not required).

(20 Marks)

SUPREME COURT OF INDIA
ADVOCATE-ON-RECORD EXAMINATION
(JUNE, 2017)

Total Marks: 100 Marks

Time Allowed: 03 Hours

-
- *Answer any four out of questions 1 to 8 which carry 20 marks each.*
 - *Questions 9 to 12 carry 10 marks each. Answer any two out of 9 to 12.*
 - *Answers should be brief and pointed. Illegible handwriting may result in deduction of marks.*
 - *Proficiency in language, comprehension, references to case law and statement of principles will carry weightage.*
-

Q.No.1. What is the role of law legal profession in maintaining public trust in the administration of justice? How is it comparable with the responsibility of judiciary in maintaining such public trust?

Q.No.2. An independent legal profession is as indispensable to rule of law as an independent judiciary. Examine this proposition, in the light of a possible governmental initiative to convert the legal profession into a government regulated public service?

Q.No.3. The standard conception of the role of lawyers is said to comprise the following principles namely, neutrality, partisanship and non-accountability. Suggest and elaborate a critique of the standard conception or alternatives to the standard conception.

[Notes in aid:- *The principle of neutrality demands that it is the duty of the lawyer not to select clients and to present cases on behalf of unpopular causes or those with which they may morally disagree. The principle of partisanship demands that lawyers follow the instructions of the client within the limits of law even if the outcomes may be unjust. If the principles of partisanship and neutrality are observed, lawyers are absolved of personal moral responsibility for the consequences. The pursuit of the causes of clients, right or wrong seems to be at odds with wider social purposes and the common good. In several controversial cases involving governmental or other*

corporate decision making process, advice given by lawyers is very often at the centre of controversy. Social diversity and conflicts, issues of environmental concern, constitutional claims to equality etc. entail empathetic response to human issues raised by legal problems.]

Q.No.4. As long as the adversarial system continues to exist as the predominant system or structure for resolving conflicting claims, interests, or rights, whether the role of the lawyer would be that of a "hired gun" admitting of no ethical or moral autonomy for the lawyer?

[The famous statement by Lord Brougham in the Trial of Queen Caroline: "An advocate, in the discharge of his duty, knows but one person in all the world and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others."]

Q.No.5. On an overall examination of the Bar Council India Rules what changes if any in your view would advance the public trust role of the legal profession?

Q.No.6. "The spirit amongst counsel is one of generous emulation and not the spirit of embittered and petty rivalry. The brotherhood of the Bar is a notable and felicitous fact." *[Justice MC Cardie]*. It is therefore said that advocacy is not a mere craft but a calling. Examine the Bar Council of India Rules in regard to court room conduct and judgments of the Supreme Court dealing with this aspect.

Q.No.7. What are the duties of a lawyer in terms of the Bar Council of India Rules? Do you think that the several duties of the lawyer laid in the Bar Council of India Rules, are in conflict with each other and are not reconcilable? Examine from relevant judicial precedents and also from the position in other countries.

Q.No.8. "A lawyer is under obligation to do nothing that shall detract from the dignity of the court, of which he is himself a sworn officer and assistance. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the Court room."
[Warvelle on Legal Ethics].

"An over-subservient Bar would be one of the greatest misfortunes that could happen to the administration of justice."
[Oswald on Contempt of Court, 3rd Edition.]

Are these statements in opposition to each other? State how duty to the Court does not in any manner impede the majesty of independence of the legal profession, while underscoring the intrinsic elements of dignity and responsibility?

Q.No.9. Examine the nature of the law of confidence between a lawyer and the client and whether the duty towards confidence continues after determination of the engagement of the lawyer? Examine with reference to decided cases, and relevant Rules.

Q.No.10. Section 35(1) of Advocates Act reads thus:-

"Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee."

How will you deal with 'professional' or 'other misconduct', in the absence of definition of misconduct in the Advocates Act and in the absence of any guidelines in Section 35?

Explain how other misconduct is relevant to the fitness of a person to be a member of the legal profession? Explain the distinction between 'professional misconduct' and 'other misconduct' with reference to decided cases.

Q.No.11. Section 24[A] of the Advocates Act, 1961 which provides for disqualification for enrolment reads as under:-

“Disqualification for enrolment – Clause [1] No person shall be admitted as an advocate on a State roll :–

- (a) If he is convicted of an offence involving moral turpitude.
- (b) If he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955.
- (c) If he is dismissed or removed from employment or office under the State on any charge involving moral turpitude.

Explanation :– In this clause, the expression “State” shall have the meaning assigned to it under Article 12 of the Constitution.

Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of 2 years has elapsed since his [released or dismissal or, as the case may be removal].”

If conduct involving moral turpitude is a matter of great importance in regard to enrolment, what is the rationale or wisdom of the proviso to Sub-Section (1) of Section 24[A]?

Do you think this proviso dilutes the substantive provision and should not remain in the Statute book?

Q.No.12. Examine the emerging role of Legal profession in promoting mediation as a preferable mode of dispute resolution.

... ..

Supreme Court of India
Advocate-on-Record Examination – June 2017

Paper – IV Leading Cases

Time : 3 hours

Total Marks : 100

All questions carry equal marks of 25 each. Attempt any FOUR questions. Answers should be precise and to the point.

- 1) What is the nature of the function of the Chief Justice or his designate under Section 11 (6) of the Arbitration and Conciliation Act, 1996? Which is the leading case dealing with this question and what is the law declared therein? Is it a unanimous decision? If not, what is the majority view and the minority view?
- 2) What are the questions of law answered by the larger Bench of 11 Judges in TMA Pai Foundation & Others v State of Karnataka & Others? Whether the answers to the questions dealt with by the Court are unanimous? If not, what are the points of difference between the majority view and the minority view?
- 3) Which is the leading case on the meaning and scope of 'State'? What are the tests laid down for deciding whether the Society or an Institute or a Company is 'State' within the meaning to Article 12 of the Constitution? Was there any difference of opinion among the 7 Judges who decided the case in the year 2002? If there is, indicate the majority view and the view taken by the dissenting Judge or Judges.
- 4) What are the constitutional issues decided by a Bench of 7 Judges in Shamsher Singh v State of Punjab, (1975) 1 SCR 814 and what is the law declared by the Court with respect to each of the questions? What was the reason for referring the case to a larger Bench of 7 Judges? Has the Court over-ruled any previous decision and if so, which decision and what did

5) What is the law declared by the Constitution Bench in *Kihoto Hollohan v Zachillhu & Others*, 1992 Supp (2) SCC 651? What are the contentions advanced by the Petitioners and the findings of the Court with respect to each contention? Was there any difference of opinion among the Judges? If so, what are the points of difference between the majority and the dissenting Judges?

6) Which is the leading case on the Right to Die / *Euthanasia*? What are the kinds of *Euthanasia* noticed and what are the issues considered by the Supreme Court? Indicate the law declared issue-wise?

7) Which is the leading case dealing with the question of validity of Muslim Women (Protection of Rights on Divorce) Act, 1986 decided in 2001? What is the background of the Act? What are the other questions of law raised and dealt with by the Constitution Bench? What is the extent of protection available to divorced Muslim women under the Act as interpreted by the Supreme Court?

8) Which is the leading case regarding Pension of retired Government employees decided by a Constitution Bench of the Supreme Court? What is the meaning of 'Pension'? What are the questions of law considered by the Court and what is the law declared with respect to each question?