

**IN THE SUPREME COURT OF INDIA**

**Advocates-on-Record Examination – June 2007**

**PAPER – I**

**PRACTICE AND PROCEDURE**

Time: Three hours

Total Marks: 100

**INSTRUCTIONS**

1. Clarity, brevity and legibility are expected in answers. Marks will be deducted for illegible writing.
2. Answers should always be supported by brief reasons and, preferably, by case law and/or the underlying principle.
3. Answer eight questions in all out of eleven. Questions 1,2,3, and 4 are compulsory. Of the remaining questions, answer any four questions.
4. Question 1 to 4 carry 15 marks each. The rest of the questions carry 10 marks each.

**QUESTIONS**

**Q. 1.** (i) Discuss the provisions in the Constitution relating to 'substantial question of law as to the interpretation of the Constitution'. (8 marks)

(ii) Discuss the distinctions between and state the features of 'substantial question of law as to the interpretation of the Constitution', 'substantial question of law' and 'question of law.' (7 marks)

**Q. 2.** (i) Section 11 of the Inter-State River Waters Disputes Act, 1956, bars the jurisdiction of ~~the~~ all courts, including the Supreme Court, in water disputes between States. Can a Section in an Act take away, and if so, state the reasons for the same, from the constitutional jurisdiction of the Supreme Court under Article 131, Article 32 and Article 136 the subject of water disputes? (5 marks)

(ii) Can Article 136 be invoked against an interim award of a Water Disputes Tribunal and if so, on what grounds? (5 marks)

(iii) Can a Presidential Reference be made under Article 143 in respect of a legislation passed by a State with respect to the waters of an inter-State river, which legislation prejudicially affects the rights of another State to the said waters? (5 marks)

**Q. 3.** (i) Does a High Court judgment or order merge in an order made on a Petition for Special Leave under Article 136? Give reasons. (3 marks)

(ii) Does a summary dismissal by a non-speaking order of a Petition for Special Leave against a judgment or order of the High Court amount to approval or affirmance thereof? Give reasons. (3 marks)

(iii) While the Petition for Special leave is pending or after it has been dismissed by the Supreme Court, is it open to the High court to review its own judgment or order? Give reasons. (3 marks)

(iv) Does a non-speaking order dismissing a Petition for Special Leave constitute *res-judicata*? Give reasons. (3 marks)

(v) What is the difference between the doctrines of *stare decisis* and *res judicata* as regards the binding nature of judgments. Give reasons. (3 marks)

**Q. 4.** (i) <sup>which</sup> What are the courts and tribunals excluded, by the Constitution from the purview of the power of the Supreme Court to grant special leave under Article 136 against the decision of any court or tribunal in the territory of India?. (3 marks)

(ii) Which are the classes of persons whose fundamental rights may constitutionally be restricted or modified and for what purpose? (3 marks)

(iii) What is the effect on fundamental rights when martial law is in force in any area? (3 marks)

(iv) What is martial law and what is a Court-martial? Which provisions of the Constitution refer to them? (3 marks)

(v) What is the effect on enforceability of all or any of the fundamental rights guaranteed by Part III by virtue of Articles 358 and 359 of the Constitution when an Emergency is proclaimed under Article 352? ( 3 marks)

**Q.5.** (i) Does the Constitution expressly or impliedly empower the Supreme Court to overrule its own decisions? Is the power to overrule traceable to Article 137 read with Order XL (Review) of the Rules or Articles 141, 129, 142 read with Order VII Rule 2 (Reference to larger Benches)? Give reasons. (5 marks)

(ii) Is the Supreme Court included in "all courts" in Article 141 which provides that the law declared by the Supreme Court shall be binding on all courts? Why is adherence to precedents considered important in our system of administration of justice?(5 marks)

**Q. 6.** (i) Discuss the nature of disputes that may be entertained under Article 131 and those that may not be so entertained. Can such a suit be heard and decided by a bench of less than five Hon'ble Judges? Is there a period of limitation prescribed for suits under Article 131 under the Constitution, the Limitation Act, 1961, or the Supreme Court Rules 1966? Give reasons for your answer. (5 marks)

(ii) Discuss the provisions of the Constitution and the Rules relating to execution of decrees of the Supreme Court and the duty of civil and judicial authorities to act in aid of the Supreme Court. Are the Armed Forces under such a duty? (5 marks)

**Q. 7.** (i) Does a petition under Article 32 lie to challenge a judicial order of the Supreme Court or High Court? Does a second review petition lie? Is an interim order of stay amenable to the review jurisdiction or it can be recalled or vacated upon an I.A. filed for the purpose? Give reasons. (5 marks)

(ii) What are the grounds and requirements of a curative petition which may be filed "in the rarest of rare" cases for relief *ex debito justitiae*? (5 marks)

**Q. 8.** (i) What are the grounds of review in civil and criminal matters? (3 marks)

(ii) What is the practice when a Two Judges Bench differs from a decision rendered by another Bench of Two, Three or Five Judges? (2 marks)

(iii) State the grounds on which a party may move the Court and the procedure to be followed:

(a) if an appeal is dismissed in default of appearance;

(b) if an appeal is heard *ex parte* and judgment is pronounced;

(c) if an appeal is dismissed after hearing both sides;

(d) if a review petition has been dismissed either by circulation or hearing. ( 5 marks for (iii)(a) to (d) )

**Q. 9.** State briefly the salient features of any two of the following:

(i) Rules regarding Plaints under Article 131. (5 marks)

(ii) Rules regarding Applications under Article 139 A (1) and (2). (5 marks)

(iii) Rules regarding Appeals under the Advocates Act, 1961. (5 marks)

(iv) Rules regarding transfer of criminal proceedings under Section 406, Criminal Procedure Code, 1973. (5 marks)

**Q. 10.** Are the Rules, or any of them, framed under Article 145 subject to any law that may be made by Parliament; are they subject to approval of the President or the Chief Justice; and are they open to challenge on the ground of violation of fundamental rights including the fundamental right under Article 32? Give reasons. (5 marks)

(ii) Are the C.P.C. and Cr.P.C. applicable to proceedings in the Supreme Court under the civil appellate or criminal appellate jurisdiction or the original civil and writ jurisdiction? Give reasons. (5 marks)

**Q. 11.** (i) What are the powers of a learned Single Judge of the Supreme Court under the Rules? (7 marks)

(ii) An interlocutory application is filed in a matter required by Article 145(3) to be heard and decided by a Bench of not less than five Judges. Must such I.A. be placed for orders before the Five Judges Bench? Can an I.A. for interim relief be filed in a Presidential reference under Article 143? Give reasons. (3 marks)

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**SUPREME COURT OF INDIA  
ADVOCATE ON RECORD EXAMINATION  
JUNE 2007**

**PAPER - II DRAFTING**

Time : 3 Hrs.

Total Marks:100

Note of Instructions:

1. Please read the question carefully.
  2. Please attempt all the questions
  3. Each question carries equal marks
  4. You may use assumed names, dates and other details within the framework of the question.
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1. The State of Andhra Pradesh approaches you with a grievance that by the impugned judgment the High Court of Andhra Pradesh has quashed the FIR filed by Prohibition and Excise Officers alleging commission of offences under the Andhra Pradesh Excise Act, 1968 and the Andhra Pradesh Prohibition Act, 1995. In all the cases the allegation was that the accused concerned was either transporting or storing black jaggery/molasses for the purpose of manufacturing illicit distilled liquor or was an abettor so far as the offence of manufacturing illicit liquor is concerned. On being moved by application under Section 482 of the Code of Criminal Procedure, 1973 by the accused concerned for quashing the FIR, the High Court accepted the plea holding that there was no material to show that the seized articles were intended to be used for manufacturing of illicit distilled liquor. Accordingly, the FIR in each case was quashed. Your client suggests that the adequacy of material already in existence or which could have been collected during investigation and their relevance is essentially a matter of trial. The High Court was not therefore justified in quashing the FIR. The exercise of power under Section 482 of the Code, in the facts of the case, is clearly indefensible. Please draft a Petition for Special Leave to appeal without the list of dates with particular emphasis on Questions of Law and Grounds.
  
  2. Mr. X approaches you with a grievance that a judgment has been pronounced by the Hon'ble Supreme Court which adversely affects his interest and that he was not even a party to the lis and also not served with the notice of proceedings. It is also brought to your notice that a review petition against the said judgment has already been dismissed. What remedy is available to Mr. X? What would be the nature of petition which will be filed? What are the conditions which have to be satisfied before preferring such a petition? Please list out the conditions on which such petitions are to be preferred. What grounds are relevant grounds for such a petition and what are the steps to be

taken before filing such a petition? What is the law which allows such a petition, please discuss the evolution of law in this regard. How will you make your petition maintainable, please answer this question with reference to recent development in case law as to the maintainability of such a petition.

- 3(a). Please indicate the remedy for any suit, appeal or other proceeding to be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State. Similarly, please also indicate the suitable remedy for any particular case or appeal to be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court. What could be the grounds germane to the abovesaid transfer petitions?
- 3(b). In what circumstances the cases pending before one or more High Courts and the Supreme Court could be transferred to the Supreme Court. Please indicate the relevant provisions of law including the provisions of Supreme Court Rules in this regard.
4. One of the parties to an agreement, which has an arbitration clause, approaches you. He states that the dispute between the parties under the agreement was to be finally resolved by Arbitrators under the Rules of UNCITRAL. Article 5 of UNCITRAL relates to composition of the Arbitral Tribunal and provides that if the parties have not previously agreed to the number of Arbitrators, and if within fifteen days after the receipt by the Respondent of notice for arbitration the parties had not agreed that there should be only one Arbitrator, three Arbitrators should be appointed. One X Inc. through its advocate served a notice and called upon your client to appoint an Arbitrator but no appointment was made by our client. An application was made by X Inc. to Hon'ble the Chief Justice of India for appointment of an Arbitrator under sub-section (6) of Section 11 of the Arbitration and Conciliation Act, 1996 and as a nominee of Hon'ble the Chief Justice of India, a learned Single Judge of the Supreme Court, by an order dated 31<sup>st</sup> January, 2006, allowed the application and appointed a retired Judge of the High Court as the Sole Arbitrator. It is brought to your notice that as per UNCITRAL model, three Arbitrators ought to have been appointed. What remedies are available to your client against the order of learned Single Judge of the Hon'ble Supreme Court? What would be the appropriate pleading in this regard? State the legal position as to maintainability with reference to case law and also draft a suitable pleading for your client.
5. RMI Ltd. (RMIL) approaches you. It brings to your notice that it has an agreement with ITE Ltd (ITEL). ITEL has a lease of the land situated at Plot No. F-32, Sector 55, Noida from New Okhla Industrial Development Authority for a period of 90 years. ITEL wanted to

construct and develop an exhibition centre on the said land. There were negotiations between RMIL and ITEL as a result of which an exclusive management agreement was arrived at. The said agreement was signed by the Director of ITEL for and on behalf of ITEL. Under the said agreement, RMIL was granted exclusive rights to manage the said plot of land for a period of ten years from the date of possession being handed over to it. Clause 8.1 of the agreement provided for arbitration in the following terms:

"8.1 Arbitration: Any dispute, controversy or claim arising out of or in relation to this exclusive Management Agreement shall be settled by a panel of three arbitrators (the 'arbitration panel') in accordance with the provisions of the Arbitration and Conciliation Act, 1996. ITEL and RMIL shall appoint one arbitrator each and such arbitrators shall, within seven days of their appointment, designate a third person to act as the chairman and the presiding arbitrator. The arbitral proceedings shall take place in Delhi and shall be conducted in the English language. Any such dispute, controversy or claim submitted for arbitration shall be considered a commercial dispute arising under the Arbitration and Conciliation Act, 1996. The award of the arbitration panel shall be a reasoned one, and shall be final and binding on the parties."

Certain disputes had arisen between the parties as a result of which on 16.3.2005 RMIL filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the High Court of Delhi and obtained an order directing ITEL to maintain status quo with regard to possession and title of the said plot of land. On 8.4.2005, RMIL sent a legal notice to ITEL invoking Clause 8.1 of the said agreement. On 4.5.2005, ITEL replied to the said notice raising several contentions, inter alia, denying that there was any arbitration agreement in existence but, nonetheless, without prejudice, appointed Justice A.P. Goel, a retired Judge of the High Court as its nominee Arbitrator. The two Arbitrators were not in a position to arrive at a consensus about the Presiding Arbitrator.

It is also contended by ITEL that on 14.9.2004, in an extraordinary general meeting, the abovesaid management agreement has been repudiated or rendered ineffective. However, RMIL brings to your notice that one R. Sashua who is a major shareholder and Director of RMIL is also a major shareholder and Director of ITEL and had personal knowledge that no such extraordinary general meeting of ITEL was held on 14.9.2004.

RMIL approaches you for a suitable remedy before the Supreme Court. Please draft an appropriate pleading for RMIL.

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**SUPREME COURT OF INDIA**  
**ADVOCATE-ON-RECORD EXAMINATION**

**JUNE 2007.**

**PART III—ACCOUNTS AND PROFESSIONAL ETHICS**

**TIME ALLOTTED: THREE HOURS**

**TOTAL MARKS: 100**

All questions are compulsory

- 1 “Depreciation is taken to Profit and Loss Account and depreciated asset is taken to the Balance Sheet.” Is the statement correct? Explain. (15 marks)
- 2 Distinguish between:
  - a. Revenue and Capital expenditures;
  - b. Revenue and Capital receipts;
  - c. Trial Balance and Balance Sheet. (15 marks)
- 3 Prepare Profit and Loss Account and Balance Sheet from the following trial balance as on 31-3-2007.  
Depreciate ALL assets by 10% uniformly.  
Expenses on books, if periodical, are revenue expenses and if textbooks, are capital expenses.

**TRIAL BALANCE AS ON MARCH 31, 2007.**

Ledger heading	Debit Balance	Credit Balance
Advance tax	75,000	
Advances received		1,50,000
Airconditioner	14,000	
Bank balance	12,000	
Bank Commission	1,000	
Books (periodicals)	5,000	
Books (textbooks)	4,000	
Building	2,00,000	
Capital		50,000
Car expenses	2,000	
Cash balance	8,000	
Computer	25,000	
Dividend received		9,000
Drawings	10,000	

*S. S. S.*

Equity shares	17,000	
Fees paid to Jr. Adv.	20,000	
Fees paid to Sr. Adv.	50,000	
Fees received		4,00,000
Land	1,00,000	
Membership expense (professional)	3,000	
Mobile phone (purchase cost)	3,000	
Salary paid to clerk	32,000	
Telephone expenses	11,000	
Travel expenses (professional)	16,000	
Typewriter	1,000	
<b>TOTAL</b>	<b>6,09,000</b>	<b>6,09,000</b>

(20 marks)

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Part B- Professional Ethics

Q. 4 "It is settled position of law that a journalist or lawyer does not have a sacrosanct right to withhold information regarding crime under the guise of professional ethics. A lawyer cannot claim a right over professional communication beyond what is permitted under Section 126 of the Evidence Act. There is also no law that permits a newspaper or a journalist to withhold relevant information from courts though they have been given such power by virtue of Section 15(2) of the Press Council Act, 1978 as against the Press Council." Do you agree with the legal proposition? Give reasons with special reference to the advantages and disadvantages of allowing journalists to keep confidential their sources of their information. (20 marks)

Q. 5 In what circumstances, do the advocates have the right to go on strike? Is it obligatory on every member of the Bar to join the strike? Give illustrations. (15 marks).

Q. 6. "Soliciting briefs is against professional ethics". This principle of the Bar Council applicable in India is not followed in England and the USA. Has the time come to change this rule? What should be the limits of soliciting? Why? (15 marks).

*S. S. S.*

**SUPREME COURT OF INDIA**

**Advocate –on-Record Examination – June 2007**

**PAPER-IV**  
**LEADING CASES**

**TIME:Three hours**

**Total Marks:100**

**INSTRUCTION**

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

Q.I' What is a creamy layer in the context of Article 16(4), under Article 335. Its Constitutionality and scope. Indra Sawhney and others Vs. Union of India and others 1992 supp(3)SCC217 , M.Nagaraj and other Vs. Union of India 2006(8)SCC 212.

Q.II What are essential principles of Judicial Review, its scope , Wednesbury unreason-ableness how applicable. Tata Cellular Vs. Union of India 1994 (6)SCC 651 ,Jayrajbhai Jayantibhai Patel Vs. Anilbhjai Nathubhai Patel and others 2006 (8)SCC 200

Q.III The different fundamental rights conferred under Part III of the Constitution are not isolated rights but constitute an amalgam of rights which together guarantee freedom and democracy. Discuss this proposition in the light of the judgment of the Supreme Court in Rustom Covasjee Cooper Vs. Union of India-1970(1)SCC 248.

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