

**IN THE SUPREME COURT OF INDIA**  
**ADVOCATES-ON-RECORD EXAMINATION, JUNE 2012**  
**PAPER I – PRACTICE AND PROCEDURE**

Time – 3 Hours

Total Marks – 100

***Instruction to the candidates:***

- (a) *It is advised that the candidates read all the questions before answering.*
- (b) *All questions in Part I of the Paper are compulsory.*
- (c) *Answer any 25 questions from Part II.*
- (d) *All questions in Part II carry 2 marks.*

**PART I**

- Q1. What is the scope of Article 136 of the Constitution of India? Write very briefly.  
(3 marks)
- Q2. (a) What is the provision in the Supreme Court Rules which provides for Appeals under Section 23 of the Consumer Protection Act, 1986?  
(b) How many copies of the Petition of Appeal need to be filed?  
(c) What is the Court Fee payable on such a Petition of Appeal?  
(3 marks)
- Q3. What are the principles of 'pleadings' contained in Order 6 of the Code of Civil Procedure, 1908? Write a brief answer.  
(3 marks)

- Q4. (a) Habeas Corpus  
(b) Mandamus  
(c) Prohibition  
(d) Quo warranto  
(e) Certiorari

What is the correct meaning of the above mentioned expressions used in Article 32 of the Constitution?

(3 marks)

- Q5. (a) What are the conditions of eligibility for becoming an Advocate-on-Record?  
(b) What are the rights and privileges of an Advocate-on-Record under the Supreme Court Rules?

(3 marks)

- Q6. (a) How are the records prepared for the hearing of an Appeal?  
(b) Are they printed?  
(c) If they are not printed, is it necessary to seek a dispensation of such a requirement from the Court?  
(d) How does the Registrar supervise the preparation of paper books for the hearing of an Appeal?

(3 marks)

- Q7. (a) The Supreme Court of India issues notice on a Special Leave Petition. You are the Advocate-on-Record of the Petitioner. What steps have to be undertaken by you so that the notice is issued?  
(b) Do you need to deposit a process fee?  
(c) If so, how much and where?  
(d) How do you ensure that notice is served?  
(e) When is an affidavit of service necessary?

- (f) Who prepares the affidavit of service and what are its essential averments?

(3 marks)

- Q8. Order 16 Rule 4(1)(c) of the Supreme Court Rules runs as follows:-

*“SLPs shall be confined only to the pleadings before the Court/Tribunal whose order is challenged. However, the petitioner may, with due notice to the respondent, and with leave of the Court urge additional grounds, at the time of hearing.”*

Please prepare a draft application to urge additional grounds, briefly, including the prayers.

(3 marks)

- Q9. (a) What is the provision in the Supreme Court Rules under which a legal representative of any party can seek impleadment?  
(b) Is an application necessary?  
(c) Does such an application have to be supported by an affidavit?  
(d) What must be contained in the said affidavit?

(4 marks)

- Q10. (a) What is meant by a Caveat under Order 18 Rule 2 of the Rules?  
(b) How is it lodged?  
(c) Suppose you are the Advocate-on-Record who is instructed to file a Caveat, what would you do?  
(d) If you find that a petition has been lodged by the Petitioner, what would you seek to do further?  
(e) If a Caveat is lodged, how does the Caveator get notice of the hearing of the petition?

(5 marks)

Q11. What is the requirement of verification of a Special Leave Petition? How is the verification undertaken? How would you ensure that the verification is correct?

(3 marks)

Q12. Your client approaches you to file a Special Leave Petition. He produces before you, a document in support of his case. The document has not been made a part of the records of the Court below.

- (a) Would you annex the document with the Special Leave Petition?
- (b) If you think that the document is true and authentic and was missed by the Advocates in the Courts below due to oversight, how would you introduce it for perusal before the Supreme Court?
- (c) Would reasons have to be set out why the document could not be produced before the Courts below?
- (d) Is an Interlocutory Application necessary to introduce such evidence?
- (e) Who would affirm the affidavit in support of the said interlocutory application?
- (f) Can the clerk of the Advocate-on-Record file an affidavit in support of such an application?

(3 marks)

Q13. You are the Advocate-on-Record on behalf of the Petitioner who has filed a Special Leave Petition. The Hon'ble Court grants special leave in the matter. The records have to be prepared. The Court grants liberty to enable you to file additional documents.

- (a) Would the additional documents have to be filed with an affidavit?
- (b) If so, who should affirm the affidavit?
- (c) What averments would be necessary in the said affidavit?

Please draft a specimen affidavit in support of additional documents.

(3 marks)

Q14. Whose duty is the primary duty when a case is entrusted by a litigant in the Supreme Court?

- (a) The junior Advocate;
- (b) The Advocate-on-Record;
- (c) The Senior Advocate.

(1 mark)

Q15. Please choose one of the answers which would describe the correct form in which a Special Leave Petition under Article 136 of Constitution of India arising in a civil case needs to be drafted:

- (a) Form 20
- (b) Form 22
- (c) Form 25
- (d) Form 28
- (e) Form 30

(1 mark)

Q16. Is there a handbook of information published by the Supreme Court of India in relation to practice and procedure? (Yes/No)

(1 mark)

Q17. Is a certificate by the Advocate-on-Record necessary under the Supreme Court Rules that the Special Leave Petition is based only on the records of the Courts below?

(1 mark)

Q18. Does an application for withdrawal of Special Leave Petitions, Appeals or Writ Petitions have to be listed before a Bench or can it be

decided by a learned Single Judge? Please state the position under the Supreme Court Rules.

(1 mark)

Q19. Does the Supreme Court of India have a seal? Does the certified copy issued by the Registry have only a stamp, i.e., a rubber stamp or does it carry a seal?

(1 mark)

Q20. (a) What is the provision under the Supreme Court Rules which enables the Supreme Court to designate an Advocate as a Senior Advocate?

(b) Can a Senior Advocate undertake conveyancing work?

(1 mark)

Q21. Your client asks you to file an application under Section 11 of the Arbitration Act. Would you produce only the arbitration clause or would you produce the entire contract which contains the arbitration clause?

(1 mark)

## PART II

Q22. (a) Can the Attorney General for India or Advocate General of any State apply to be heard in any proceedings before the Supreme Court?

(b) If so, does any provision exist under the Supreme Court Rules which enables the Attorney General for India or the Advocate General of the State to maintain such an application? Please refer to the relevant provisions.

- Q23. Is Article 142 available to the Supreme Court when it exercises jurisdiction under Article 32 of the Constitution? Write briefly.
- Q24. What are the grounds for interim relief which would be included in a draft Special Leave Petition?
- Q25. What is the scope of review under Article 137 of the Constitution of India?
- Q26. When is a Curative Petition permissible?
- Q27. What is the difference between a substantial question of law and a question of law?
- Q28. What is the concept of an Advocate being an officer of the Court?
- Q29. (a) How is an application for discovery and inspection made under Order 6 of the Supreme Court Rules, 1966?  
(b) Who is the designated authority to exercise powers in relation to the above?  
(c) How are discovery and inspection and undertaken?
- Q30. What is meant by a statement of case? Is it obligatory to file a statement of case?
- Q31. Suppose you are the Advocate-on-Record of the Petitioner. After sometime, the Petitioner wants to change the Advocate-on-Record. What are the steps necessary to effect a change of the Advocate-on-Record and till what point of time does your responsibility continue in the proceeding?

- Q32. (a) What is meant by the expression 'complete documents' for hearing an appeal from jail under Order 21 Rule 8 of the Supreme Court Rules?
- (b) Do such documents mean the judgments of the Trial Court and the High Court only or does it mean the statements of witnesses or does it mean the original record from the Trial Court onwards?
- Q33. If the Union of India is a party respondent, is the Union of India entitled to an advance copy of the petition? If so, how and upon whom will it be served?
- Q34. Is it necessary for an accused to surrender before his Special Leave Petition is heard? Can he file an application for exemption from surrender? Is the said application usually granted?
- Q35. What is the scope of Article 145 of the Constitution? Is it mandatory that every matter involving an interpretation of a constitutional provision must necessarily be heard by a Bench of 5 Judges?
- Q36. (a) What is the period of limitation which is prescribed for filing a Special Leave Petition in a civil case?
- (b) Is such a limitation prescribed under the Limitation Act? If so, mention the Article of the Limitation Act.
- (c) Is there any reference to the period of limitation in any Handbook of Information which may have been issued by the Supreme Court of India?
- (d) If so, under what chapter is to be found?
- Q37. When does a judgment of the High Court merge into the judgment of the Supreme Court? Is there any judgment of the Supreme Court which deals with the doctrine of merger? Please explain the doctrine of merger.

- Q38. (a) Suppose you are instructed to file a Special Leave Petition and your petition is barred by time.
- (b) Is it necessary for you to move an application seeking condonation of delay?
- (c) Under what provision of law would you seek condonation of delay?
- (d) What details would you state in an application for condonation of delay?
- Q39. Under what circumstances can an application be made under Section 11 of the Arbitration and Conciliation Act, 1996 before the Chief Justice of India?
- Q40. Is the exercise of power under Section 11 of the Arbitration and Conciliation Act, 1996, an exercise of the judicial power? Are there any decisions of the Court which deal with this question? If any, please refer to them.
- Q41. When is the judgment of a Court below described as 'perverse'? Is there a difference between the expression 'erroneous' and 'perverse'? If yes, what is the difference?
- Q42. Are appeals arising out of election disputes statutory appeals or are they petitions for special leave to appeal under Article 136 of the Constitution?
- Q43. Can the Supreme Court direct a cross examination of the deponent of an affidavit? If yes, please state the provision under the Supreme Court Rules.

- Q44. (a) Is there any provision under the Supreme Court Rules which stipulates that statements based on personal knowledge must be distinguished from statements based on information and belief?
- (b) If such a provision exists, please state the provision.
- (c) Is it necessary to disclose the source of information under the Supreme Court Rules?
- Q45. Suppose your client does not understand the English language, is a certification necessary that the contents of the affidavit have been interpreted to the deponent? If so, is there a provision under the Supreme Court Rules?
- Q46. Suppose you are an Advocate-on-Record instructed on behalf of the respondent, you file your vakalatnama and memo of appearance. The Advocate-on-Record for the petitioner wants an adjournment. You desire to oppose the adjournment.
- (a) Is it open to you to circulate a letter opposing the adjournment?
- (b) If so, would you state the reason why you are opposing the adjournment and to whom would that letter be addressed?
- (c) How would that letter be circulated?
- (d) Where would you file copies of the letter and whom would you request that the letter be circulated?
- Q47. (a) Is there a Mediation Centre in the Supreme Court premises?
- (a) Is there a Legal Aid Centre in the Supreme Court Premises?
- (b) Is there a Middle Income Group Scheme for offering legal aid?
- (c) Is there a difference between the appointment of a lawyer as an Amicus Curiae and offer of legal aid?
- Q48. In the Supreme Court of India, a hearing of your case takes place.
- (a) Would you make statements on behalf of your client which are not on the record of the case?

- (b) If you were compelled to make certain statements which you believe to be true but which are not on record, would you ask the leave of the Court to make those statements?

Q49. You are being led by a Senior Counsel in the Court. Can you also simultaneously address the Court, if necessary, or is it appropriate that you would only instruct and suggest to the Senior Counsel? What is the tradition of the Court?

Q50. Are Advocates-on-Record responsible to argue cases if the Senior Counsel is absent? If so, is it not their duty to be ready with the case when the case is called out? Can an Advocate-on-Record send his junior and apply for an adjournment when the Advocate-on-Record is available?

Q51. When is an Appeal maintainable under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970?

Q52. Your client asks you to file a Public Interest Litigation.

- (a) Would you check his bonafides?
- (b) If you think the client is not acting bonafide, would you still proceed to draft and file the Writ Petition?
- (c) In the event that you file such a petition and it is later discovered that your client did not act bonafidely in filing the petition, are you accountable to the Court?

Q53. (a) What is meant by a statement at the Bar?

(b) Is it open to the Court to accept statements at the Bar?

(c) If yes, does the Court accept statements at the Bar because they are made by Advocates as officers of the Court?

Q54. Your client has engaged an Advocate-on-Record (say 'A') previously. 'A' files a Special Leave Petition on behalf of your client and there is a statement attributed to 'A' in the order of the Court. Your client comes and asks you to file a proceeding to recall that order making allegations against 'A'. Would you entertain the request? If so, what safeguards would you insist upon?

Q55. If a 2-Judge Bench of the Court doubts the correctness of a judgment delivered by 3 learned Judges, what would be the proper procedure for the Court to follow? Can you cite any decisions in this regard?

SUPREME COURT OF INDIA  
Advocates-on-and record Examination  
June 2012

Paper-II  
DRAFTING

Time: Three Hours

Total Marks: 100

INSTRUCTIONS

1. Answer all four Questions clearly, briefly and concisely.
2. All questions carry equal marks
3. You may supply assumed names, dates and other details within the basic frame of the question, if and when considered necessary.
4. Please read the requirements of the Questions carefully and answer only what has been asked for.

Question No. 1.

1. One Smt. Subhasini owned lands on the outskirts of the city of Lucknow. One of the plots owned by Smt. Subhasini measured five acres. In January 1999 one Yogesh filed a suit for specific performance contending that Smt. Subhasini had agreed to sell the said plot of land of five acres to him on 5th March 1988 for a price of Rs. six lakhs. Yogesh stated that there was a written agreement to sell the said land but the original of the agreement had been retained by Smt. Subhasini. He stated that the entire consideration of Rs. Six lacs had been paid by him to Smt. Subhasini in 1993 and thereupon Smt. Subhasini had delivered possession of the said plot of land to him namely Yogesh. He further stated that despite requests Smt. Subhasini has not executed the necessary conveyance in his favour.

On the 10 February 2001 Yogesh as plaintiff in the suit started giving evidence. Shortly thereafter on the 1<sup>st</sup> March 2001 Yogesh filed an IA for permission to lead secondary evidence of the agreement to sell. On 16 June 2001 this IA was allowed by the trial court. Smt. Subhasini filed a review application on the 10 September 2002 for reviewing the order dated 16 June 2001. Prior to this, Smt. Subhasini had on 23 June 2001 filed a revision petition against the order dated 16 June 2001 but in view of the amendment to the Civil Procedure Code she had on 28 August 2002 withdrawn the Civil Revision petition with liberty to file a review petition.

The review petition filed by Smt. Subhasini was allowed on 1<sup>st</sup> December 2003 on the ground that it had not been shown by Yogesh that the original agreement for sale was a properly stamped document and that it has been laid down by the Supreme Court that secondary evidence of a document which had not been properly stamped could not be given. Smt. Subhasini contended in the circumstances that the order dated 16<sup>th</sup> June 2001 suffered from an error of law. Yogesh filed a writ petition against the order dated 1<sup>st</sup> December 2003 allowing the review petition. The writ petition was allowed and Yogesh was allowed to lead secondary evidence.

Smt. Subhasini wishes to file SLP before the Supreme Court on the ground that the review application filed by her had been properly allowed. Smt. Subhasini states that there was no agreement for sale of the said plot of land measuring five acres written or otherwise. She admits that she received the sum of Rs. Six lacs but states that Yogesh was trying to persuade her to sell the said plot of land measuring 5 acres and had given her the money as an inducement. She denies that there was any agreement for sale. She also points out that an adjoining plot of four acres also owned by her had in the year 1988 been sold by Smt. Subhasini to Yogesh for a sum of Rs. 25 lakhs and that it was inconceivable that she would sell five acres of adjoining land for the sum of Rs. six lakhs only. Smt. Subhasini also stated that she was still in possession of the said 5 acres of land and that she had never given possession to Yogesh.

Please draft a list of dates to be incorporated in the SLP proposed to be filed on behalf of Smt. Subhasini. No other portion of the special leave petition is to be drafted.

Question No.2

Your client, the Oriental Insurance Co., had issued a Fire Insurance Policy in favour of an Oil Mill covering their "stock of oil seeds stored in a silo installed in the factory premises of the Oil Mill situated at Mathura". The value of the oil seed stock was declared as Rs. 1 crore and the value of the silo was declared as Rs.10 lakhs.

The insurance cover extended to "loss or damage by fire only" to the property insured caused by "its own fermentation, natural heating or spontaneous combustion."

The Oil Mill made a claim on your client on the ground that the oil seeds of the value of Rs.30 lakhs stored in the silo "had been affected due to spontaneous combustion." The Oil Mill called for surveyors to be deputed to assess the loss.

On receipt of this information your client appointed a survey company to survey and assess the loss claimed to have been caused to the Oil Mill. The survey company visited the Oil Mill premises on several dates and surveyed the affected goods. The surveyors sent the damaged goods to laboratories who reported that although the stock had been affected by spontaneous combustion, there had not been any "fire". On the basis of the laboratory reports, the Surveyors submitted a Report to your client in which they indicated that though spontaneous combustion had taken place, it had not resulted in "fire". The Surveyors opined that since no "fire" had resulted on account of spontaneous combustion, the condition of the Policy had not been met. Your client therefore repudiated the claim of the Oil Mill on the ground that the damage to the stock was not covered within the ambit of the risks covered by the Insurance Policy.

The Oil Mill filed a claim petition before the National Consumer Disputes Redressal Commission and the Commission, by its final order, allowed the claim of the Mill with interest.

Your client wishes to prefer an appeal to the Supreme Court under section 23 of the Consumer Protection Act.

Please draft an appropriate petition of appeal to the Supreme Court against the order of the Commission. The draft Petition of Appeal should contain all averments required under the relevant rules of the Supreme Court. You are invited to furnish assumed names, dates and appropriate factual details in your answer.

### Question No.3

The prosecution case as unfolded in the trial court was that the injured witness PW1 and the deceased Suresh were proceeding to their houses when all the three accused accosted them and wrongfully restrained them. An altercation ensued when Accused-1 Mangal took out a knife and stabbed the deceased Suresh. Then A-1 Mangal stabbed Punit on his left palm with the same knife and he again stabbed him on the left side of his neck. Punit, however, could ward off the attack. Punit ran to a shop and called for help. With the help of other PWs Suresh was taken to a Hospital where he succumbed to his injuries.

The case of the prosecution rested solely on the evidence of Punit, the injured witness. The Trial Court found that the prosecution had two First Information Reports one recorded at 9.30 p.m. on 9.7.1989 and the other recorded at 5.00 a.m. on 10.7.1989. At the trial the first one was suppressed and the other was produced. The Trial Court therefore did not find it safe to rely upon the subsequent statement.

The Trial Court further found that the evidence to the effect that Suresh started running after being stabbed, as stated by Punit was inconsistent with the fact that a pool of blood was found at the spot where Suresh was stabbed. The evidence of the Doctor showed that the nature of the injury on Suresh was such that it could not have been caused by the knife in question . Moreover evidence of the doctor who conducted the autopsy was that the assailant and the victim could not have been standing face to face to suffer the injuries in question whereas Punit had stated that they were standing face to face.

On the analysis of the evidence the Trial Court acquitted the accused because the evidence produced by the prosecution did not bring out the truth and the matter was shrouded in mystery.

On appeal the Division Bench of the High Court re-examined the entire evidence and on analysis and reappraisal of the evidence from various angles rejected the theory of two FIRs having come into existence. The High Court held that the trial judge had strained to stress minor discrepancies and had made sweeping statements in regard to the fact of discrepancy between the medical opinion and oral testimony. On the basis of the above analysis the High Court set aside the order of acquittal and convicted Mangal.

Mangal has approached you to prefer an appeal to the Supreme Court. You feel that although a conviction can be sustained on the basis of a solitary eye-witness that course can be adopted only if the evidence tendered by such witness is cogent, reliable, and in tune with probabilities and inspires implicit confidence. You find that the Trial Court had given cogent reasons to acquit the accused and you feel that the High Court ought not to have interfered merely because another opinion is possible. You feel that the reasons given by the Trial Court were neither impossible nor unreasonable.

Please draft an appropriate appeal to the Supreme Court against the conviction.

Question No. 4

(a) Once the pleadings in a writ petition under article 32 of the Constitution to the Hon'ble Supreme Court of India are complete, the Rules require a "written brief" to be filed. Please indicate what the "written brief" is to contain.

(b) Please describe the contents of the Declarations to be included in a petition for special leave to appeal in civil cases.

(c) Form No.28 of the Supreme Court Rules requires Questions of law arising for consideration and Grounds on which leave to appeal is sought to be stated separately. Please explain the difference between the two..

(d) In a petition for special leave to appeal in civil cases your client wishes to produce documents which were not part of the records of the court below. Please indicate generally the procedure and the nature of the explanations required to be given in order to do so.

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ADVOCACY AND PROFESSIONAL ETHICS.

Answer any 8 questions. Each question has 12.5 marks. Answers should be brief and pointed. Marks may be deducted for unduly long answers. Illegible handwriting may result in deduction of marks.

1. A lawyer is an officer of the Court and his primary duty is to the Court. However a lawyer should at all times act in the best interest of his client. How can a supreme court lawyer harmonise these two duties ?
2. A lawyer arguing a case does not need express authorization from his client to make a concession. Discuss.
3. Society expects a high standard of conduct from members of a learned profession, and the erosion in the values and principles by which lawyers conduct themselves does affect the public perception of the Courts. Discuss.
4. Is a lawyer obliged to accept all cases - including cases involving allegations of rape or terrorism or corruption which he may find abhorrent to his own value system ? Discuss.
5. Lawyers are not businessmen - they cannot solicit clients as a businessman solicits customers. Discuss.
6. A lawyer should state his clients case fairly and with candor, but not become disrespectful to the Court. Discuss.
7. Lawyers should not accept briefs if they know that the case is before a judge before whom they should not appear. Discuss.
8. An advocate on record should not file a petition where he is not convinced that it is a fit case for the Supreme Court. Discuss.
9. Advocacy is more effective where the petition and the submissions are brief rather than lengthy. Discuss.
10. It is the duty of a lawyer to point out all relevant cases on the subject to the Court. Is a Supreme Court lawyer under a duty to point out an adverse judgment, directly on point, if his adversary has overlooked it, even if it hurts the interest of his client ? Discuss.

11. How does the role of an amicus curiae in a PIL differ from the role of an advocate in an adversarial litigation ?

12. An advocate on record of the Supreme Court has a higher burden of duty to the Court because of the nature of the institution for which he works. Discuss.

Supreme Court of India

Advocate-on-Record Examination – June 2012

Paper – IV Leading Cases

Time : 3 hours

Total Marks 100

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

1. Examine the reason and relevance of the reference jurisdiction of the Supreme Court under Article 143 of the Constitution by analyzing the opinions in-

- i) In Re: The Kerala Education Bill, 1957, [1959] SCR 995 and
- ii) In Re: Keshav Singh [Special Reference No. 1 of 1964].

Discuss the nature and scope of the discretion of the Supreme Court in dealing with Presidential references Under Article 143?

Advert to the following observations and comment with reference to the Supreme Court Rules, 1966:

“Under this procedure question may be put which it is impossible to answer satisfactorily . Not only may the question of future litigants be prejudiced by the Court laying down principles in abstract form ..... In relation to actual facts but it may turn out to be practically impossible to define principle adequately and safely without previous ascertainment of the exact facts to which it is to be applied.”

“It is undesirable that the court should be called upon to express opinions which may affect the rights of persons not represented before

it or touching matters of such a nature that its answers must be wholly ineffectual, with regard to parties who are not and who cannot be brought before it, e.g., foreign Government.”

In re- Regulation and Control of Aeronautics, [1932] AC 54. [Reference to the Judicial Committee of the Privy Council under Section 4 of the Judicial Committee Act, 1833.]

2. Examine the ratio laid down by the Supreme Court in: *Indira Nehru Gandhi v. Raj Narain*, [1976 [2] SCR 347] that the “legislature can only enact the law, but lacks the competence to pass declaratory judgments” The observations made by the Court with reference to Article 329A inserted by the Constitution [39<sup>th</sup> amendment] Act, 1975 may be analysed to demonstrate the immanence of Rule of law in the above proposition.

3. Whether judicial review authority conferred on Constitutional Courts can be dealt with, without involving amendment of the Constitution? Examine the scope of this proposition and also, whether “the exclusion of judicial review does not mean that principles of equality are violated”? [*Indira Nehru Gandhi v. Raj Narain*] Elucidate with reference to decided cases, where creation of Courts/Tribunals, for adjudication of special categories of issues, have been accepted as valid?

4. What is the scope of the power of Supreme Court as regards enforcement of fundamental rights? Whether the authority to enforce fundamental rights would include the power to frame guidelines, which in their substantive form may partake of legislative character and thus offend the basic structure doctrine? Whether *Visaka v. State of Rajasthan* can be said to have propounded principles beyond the scope of Article 32?

See the following observations in *Standard Chartered Bank v. Directorate of Enforcement* : [2005] 4 SCC 530 – “Besides the true

function of the Court is to interpret the law, not to make it. The court cannot act as a sympathetic caddie who nudges the ball into the hole because the putt missed the hole. Even a caddie cannot do so without inviting censure and more, if the legislation falls short of the mark, the court could do nothing more than to declare it to be thus, giving its reasons, so that the legislature may take notice and promptly remedy the situation." [para 61] [Shri Krishna. J, dissenting]

5. Examine with reference to decided cases involving the invocation of Directive Principles of State Policy, as to how the following two observations can be balanced?

A] "to destroy the guarantees given by Part III in order purportedly to achieve the goals of Part IV is plainly to subvert the Constitution by destroying its basic structure" – *Minerva Mills Ltd. V. Union of India* – 1981 [1] SCR 206."

B] "Every case in which the protection of fundamental right is withdrawn will not necessarily result in damaging or destroying the basic structure of the Constitution" *Waman Rao and others v. Union of India and other* – 1981 [2] SCR 1.

6. Whether the power to effect forfeiture of tax collected by dealers beyond the conferment of authority under Sales Tax Legislation, namely tax collected excessively, can be declared to be unconstitutional only on the ground of penal character of forfeiture? Examine the proposition in the light of *R.S. Joshi vs. Sales Tax Officer, Gujarat v. Ajit Mills Ltd* – 1978 [1] SCR 338. Examine also whether non-punitive forfeitures can be constitutionally protected?

7. It is long established judicial practice, in a federal constitutional structure to construe legislative entries in distinct lists, as "to live together and to avoid any conflict, and "to let live one, not to kill another". State how a suggested conflict situation will be dealt with,

with special reference to cases of levy of tax, fee or cess traceable to entries in lists I and II of Schedule VII to the Constitution?

Keep in mind the following observation: "A power to regulate develop or control, would not include within its ken, a power to levy tax or fee except when it is only regulatory" State of W.B. v. Kesoram Industries [2004] 1 SCR 564.

8. Why is it "not advisable, or feasible nor judicially permissible to draw or prescribe an outer limit for conclusion of all Criminal proceedings"? Can there be a classification of offences, in this regard? Will not such a classification offend Articles 14 and 21 of the Constitution? Examine the above with reference to P.Ramachandra Rao v. State of Karnataka, [2002] 3 SCR 60.

Advert to the following observations :

"The mere fact that the inequality has not been made with the special intention of prejudicing a particular person or persons but in the general interest of administration will not validate a law if in fact it results in inequality of treatment. Nor can the constitutionality of a statute depend on the degree of inequality brought about by the law." [The State of W.B. v. Anwar Ali Sarkar [1952] SCR 284]

"Exclusion of the operation of equality principle from some fields is constitutionally permissible" Smt. Indira Nehru Gandhi v. Raj Narain [1976] 1 SCR 347 at 416.]