

PEOPLE'S EDUCATION SOCIETY'S
ADV. BALASAHEB APTE COLLEGE OF LAW

Prin. N.M.Kale Marg, Off. Gokhale Road (S), Dadar (W), Mumbai- 400 028.

Date: 29th November, 2021


PRACTICAL TRAINING III EXAMINATION
IMPORTANT NOTICE REGARDING MOOT COURT & VIVA-VOCE
OF ALL FIFTH YEAR B.L.S./LL.B. STUDENTS (5 YRS COURSE)

This is to inform all students of **Fifth Year B.L.S. / LL.B. (5 Yrs Course)** that compulsory Moot Court and Viva-Voce have been scheduled **on Thursday, 16th December and Friday, 17th December, 2021 from 7:30 am onwards in Online Mode.** There shall be Moot Court and Viva-Voce of each student individually.

Zoom Meeting Links shall be circulated on 15th December, 2021. Following is the allocation of Moot problems.

Dates	Time	Roll Nos.	Court Room No.	Moot Problem	Name of Professor
16 th December, 2021	09:30 am	1 to 20	1	A	Prof. Zubin Saiya/ Prof. Krishna Shetty
16 th December, 2021	07:30 am	21 to 40	2	B	Prof. Vishal Shinde/ Prof. Kamni Ahuja
16 th December, 2021	07:30 am	41 to 60	3	C	Prof. Prajnee Sahoo/ Prof. Ashish Pawaskar
17 th December, 2021	09:30 am	61 to 80	1	A	Prof. Zubin Saiya/ Prof. Krishna Shetty
17 th December, 2021	07:30 am	81 to 100	2	B	Prof. Vishal Shinde/ Prof. Kamni Ahuja
17 th December, 2021	07:30 am	101 to 120	3	C	Prof. Prajnee Sahoo/ Prof. Ashish Pawaskar

The students with odd-numbered Roll No. shall argue from the Appellant/ Petitioner's side and the students with even-numbered Roll No. shall argue from the Respondent/ Opponent's side.


Vaishali Gurav
IN-CHARGE PRINCIPAL
ADV. BALASAHEB APTE COLLEGE OF LAW



MOOT PROBLEM A

On 20th December 2018, 16 years old Miss Mandira Singh was found murdered in her own bungalow in Borivali which was owned by her parents Mr. Raj Singh & Mrs. Anita Singh, both being successful surgeons. Mandira's dead body was found by her mother, early morning at around 7 am in her bedroom which was adjacent to her parent's room. Mr. Raj called police at 7:30 am informing about his daughter being found murdered and their 22 year old domestic help Mr. Amit Gupta and one of their cars and some valuables from Mandira's room missing. Amit stayed with the Singhs in servant's quarters inside the bungalow compound. Police arrived at the crime spot at 8 am and upon initial investigation found that Mandira's room seemed to have been cleaned up with only the bed-sheets stained with blood but no murder weapon was discovered. Police found a whiskey bottle in servant's quarters. Mandira's body was sent for autopsy and police declared Amit as prime suspect in the case and began searching for him.

In the evening Mr. Ashok, who was Amit's uncle, was questioned by the Police. He admitted that he was sleeping in the servant's quarters last night. Ashok claims he would come to sleep occasionally but Mr. & Mrs. Singh had no clue about this. Ashok stated that he came at around 11:45 pm and found Amit sleeping in the quarters, so he got drunk alone and went to sleep too and didn't know when Amit left the quarters. Ashok further stated that Amit usually starts work at 5 am in the morning and so when he woke up at 5:30 am he assumed Amit must have left already and so he left the room at 5:45 am so as to reach his own work place where he is a security guard. Police didn't find the missing valuables at Ashok's residence also Ashok claims that he doesn't know how to drive.

The autopsy results of Mandira's body showed that the time of death was between 2 am to 2:30 am her throat was slit and seemed to have been done with a surgical instrument by some expert. The autopsy report also said that Mandira might have had sexual intercourse without any sign of struggle.

On 23rd December a forest guard found a car half submerged in a swamp inside the forest near Mr. & Mrs. Singh's bungalow. The police pulled out the car from the swamp and found out it was Mr. Raj Singh's missing car. Amit's dead body was recovered from the trunk of the car but no valuables were found. Autopsy of Amit's body reported his throat

being slit in similar fashion as that of Mandira and his skull was ruptured by a blow from behind.

On further investigation it was found that internet router in Mandira's room was switched off at 3:45 am and the table at the corner had one of its edges broken due to some hard impact. Mr. & Mrs. Singh claim they heard nothing alarming from their daughter's room that night. Also they said their Air conditioner was making noise which was confirmed by the police. Police arrested Mr. & Mrs. Singh for the murder of Mandira and Amit. In a press conference police claimed that, this was a case of honour killing and Mandira and Amit were killed by Mr. & Mrs. Singh as they suspected an affair between the two. However Mr. and Mrs. Singh denied that they had any knowledge about any illicit relation their daughter had with Amit or about Ashok being present in servants' quarter that night.

The case has become a national sensation after the media's extensive coverage of this case and invoked society sentiments pressurizing the police to act swiftly. Mr. & Mrs. Singh have said that the investigation was not carried on properly and that they are being framed by the police; and that the actual culprit is Ashok.

The case is now for final arguments in the trial court.

ISSUES:

- 1) Whether the above grounds are sufficient to decide the guilty of accused?
- 2) What is the evidentiary value of FIR and statements made under section 161 of Cr.P.C? Can the accused be punished only on basis of these evidences?
- 3) What is the evidentiary value of expert opinion? Can an accused be punished on the basis of Autopsy/Post Mortem Report?

Students are allowed to create other sub-issues also.

MOOT PROBLEM B

Kumar, resident of Devanahalli, who owned 10 acres of agricultural land situated at Devanahalli, under Survey No.10/5 filed a suit numbered as O.S.239/2010 before the Civil Judge (Jr. Dn.), Devanahalli, for Declaration and Injunction against Neeraj on the ground that he is the sole owner of the agricultural land in dispute. On receipt of summons, Neeraj appeared before the said Court and engaged a lawyer to conduct his case. Neeraj not only opposed the suit claim but also filed a counter claim against Kumar for Declaration and injunction in respect of the said property.

The suit was decreed in favor of Kumar declaring him as the owner of 10 acres of agricultural land and restrained Neeraj from interfering with peaceful enjoyment of the said agricultural property by Kumar.

Aggrieved by the judgment and decree in O.S.239/2010 Neeraj filed Regular Appeal before the First Appellate Court. On receipt of Appeal Notice, Kumar engaged Sri. Ram Rahim, a famous civil lawyer in Devanahalli, to represent and argue his case before the Appellate Court. Kumar paid Fifty Thousand rupees as initial fee to Sri. Ram Rahim.

When the Appeal was posted for hearing, Advocate representing Neeraj argued the matter and completed his side. However, Sri Ram Rahim sought several adjournments to argue on behalf of Kumar. He did not turn up to argue even when it was posted for final argument.

The Appellate Court reversed the finding of the trial court and decreed the counter claim of Neeraj in O.S.239/2010. The Appellate Court in its judgment noted the absence of Respondent's advocate (Sri. Ram Rahim) during the course of argument and pointed out that the Court had no assistance from Respondent's Advocate in deciding the matter.

The judgment of the Appellate Court was death knell for Kumar as the land in dispute was life line for him and his family.

Kumar enquired with his Advocate about his absence during hearing of the Appeal but did not get a satisfactory answer. However, Sri Ram Rahim advised Kumar to file Second Appeal against the Judgment of the First Appellate Court and referred the name of Sri

Ajathshatru. Kumar followed his advice and engaged Sri. Ajathshatru for filing Second Appeal and paid rupees One Lakh as initial fee.

Sri Ajathshatru took his own time to file Second Appeal and by the time Second Appeal was filed, the limitation period was over. Thereafter, he filed Second Appeal along with an Application to condone the delay.

The Second Appellate Court dismissed the Appeal on the ground of limitation period since no sufficient cause was shown for condoning the delay. Sri Ajathshatru advised Kumar to approach the Supreme Court.

Kumar virtually had no means to continue the litigation before the Supreme Court as he had lost all the money in litigation. Neeraj spared no time to execute the decree passed in his favor by the First Appellate Court and took possession over the land in dispute.

Having lost agricultural land, which was life line for him and his family; due to inefficiency and negligence of his Advocates, Sri Ram Rahim and Sri Ajathshatru , Kumar filed a case against them before the National Consumer Disputes Redressal Commission (NCDRC), at New Delhi for deficiency of service and claimed One crore rupees as compensation.

Kumar argued that there was 'deficiency of service' on the part of both the Advocates who failed to pursue his case before the Appellate Courts in an efficient and professional manner. He also contended that both the advocates were highly negligent, one of them did not argue his case before the first Appellate Court and the other advocate failed to file Second Appeal in time before the High Court and got it dismissed at the threshold, as result of which he had lost his property and means of livelihood. On notice, both the advocates appeared and argued that, 3 advocates are immune from any legal action under the Consumer Protection Act, 1986, as Kumar is not a 'consumer' under the Act and their relationship as client and advocate is a 'contract of personal service' and not a 'contract for personal service.' They argued that they are merely his agents and represented him in the Court and are Officers of the Court and no legal action can be initiated for actions done in the course of judicial proceeding. Further, it was argued that, it is for the Court to decide the case on its merit and no advocate can guarantee the result.

The NCDRC, however, allowed the claim of Kumar holding that there was 'deficiency of service' and awarded One crore rupees as compensation and directed both the advocates to pay together the award amount within two months from the date of the order.

The said Order created havoc among the legal fraternity and became national news. Within two months of passing of this Order there were two thousand cases filed against advocates across the country before consumer forums for deficiency of service. Both the advocates approached the Supreme Court against the award of NCDRC and contended that among other things that the said award is also in violation of Article 19 (1) (g) of the Constitution of India. The Supreme Court issued stay against the operation, execution of the award. Now the case is set for hearing before the Supreme Court.

Issues:

1. Whether the Advocates fall within the provisions of the Consumer Protection Act, 1986?
2. Whether the award is in violation of the fundamental right to practice any profession, or to carry on any occupation as contemplated under Article 19 (1) (g) of the Constitution of India?
3. Whether the 'deficiency of service' applies to legal service also which is rendered by an Advocate?

Students are allowed to create other sub-issues also.

MOOT PROBLEM C

1. Dr. Ridhi Sharma, a 35 years old Geneticist worked in New Life Hospital, one of the prestigious hospitals in India. She was very passionate about her patients and held an exceptionally progressive record. She worked around the clock at the hospital to make sure the wellbeing of her patients and believed in making difference.
2. Mrs. Kalpna Pathak, 42 years old, resident of Amritsar was patient of New Life Hospital, Delhi, from past 12 years as she was suffering from a rare, life-threatening syndrome called ROHHAD syndrome.
3. Her family spent a lot of money on her treatment but this disease was incurable and finally left her in Delhi for her further treatment. As travels were expensive, her family only visited her when they could. Though, they appointed Gayatri, an 18 years old caretaker for her.
4. Living in hospital for 12 years almost broke Mrs. Pathak from inside. She used to be a warm and lively person who never compromised her freedom and liberty for anything. But, her time in hospital made her life monotonous and miserable. As a result, she started avoiding medications even after strict warnings by doctor and several times even overdosed tonics consisting of alcoholic contents.
5. Dr. Ridhi came to know about this condition of Mrs. Pathak from Gayatri. She also agreed that Mrs. Pathak needed regular medication. But Dr. Ridhi became quite sympathetic when she realized that Mrs. Pathak hadn't left the hospital once in 12 years. And became determined to discover any possible way to help her.
6. Following through her research, she discovered that the precise cause of ROHHAD (Rhodes illness) is reportedly unknown. Experts, however, suspect it could be a genetic disorder. She found out about a Project named "Discover Relief", which aimed to discover readily accessible guidelines for patients with rare diseases and for the anaesthesiologists caring for them.
7. Dr. Ridhi, in the data presented under this project found out that Elixir Labs, the same company, which manufactured Mrs. Pathak's medicines of ROHHAD disease, in a research have claimed that the drug they were marketing for Huntington's disease has also cured a considerable percentage of Rhodes disease patients as well. However, the chance of the treatment being fatal is expected to be 30 percent at her age.
8. She decided to bring this up to Mrs. Pathak as an option and tell her about the odds, to which Mrs. Pathak replied "*I'm really thankful for the care and time my doctors have given me, but it's just not enough just to be alive. I want to live*" and consented to it.
9. Dr. Ridhi wrote a detailed application mentioning the medical history and current scenario of Mrs. Pathak's health condition on 25th March 2019 to Elixir Labs in order to ask for the drug but her application got rejected by the Managing Director of Elixir Labs, Mr. Naveen Mathur, stating that the drug hasn't been completely approved by Food and Drug Administration, it is yet being experimented.
10. Dr. Ridhi and Mr. Mathur were never fond of each other due to their contrasting work ethics. Mr. Mathur was an established businessman who only bothered about ways to multiply his profits.
11. Dr. Ridhi decided to get to the bottom of the issue and found out that the Elixir labs actually never really wished to introduce the cure of Rhodes disease in medical world as it would reduce their company's profits. This fumed Dr. Ridhi and she decided to

get access to the drug either way and hence stole the sample drug sent by the lab to their hospital for the patients of Huntington's disease.

12. After getting the drug she asked Mrs. Pathak whether to give her the dose and she gave her verbal consent to Dr. Ridhi in front of Gayatri. Within a week Mrs. Pathak showed a miraculous recovery and on 1st May 2019 she was declared fully cured of the disease and Dr. Ridhi discharged her the next day without even keeping her under observation.
13. Mrs. Pathak, after few days of discharge on 5th May 2019 contacted Dr. Ridhi to thank her for giving her a new life where she did not just meaninglessly exist. But on 7th May 2019 the news of Mrs. Pathak's death came as a shock in the hospital which immediately raised alleging questions.
14. The post-mortem reports of Mrs. Pathak confirmed died of cardiopulmonary arrest; it was registered as a case of "sudden unexplained death (SUD)". The husband of Mrs. Pathak sued the Hospital under Section 304A for causing death by medical negligence which led to an investigation within the hospital to find the cause of her death revealing the acts of Dr. Ridhi.
15. The hospital held a meeting of Hospital Administration on 15th May 2019 against the action of Dr. Ridhi consisting of 7 jury members which included 6 Senior Doctors and Mr. Mathur and asked her to explain her actions.
16. Dr. Ridhi pleaded not guilty on the pretext of acting in good faith after receiving the consent of the patient which was corroborated by Gayatri. After the hearing, 5 members including Mr. Mathur voted against Dr. Ridhi overseeing the hospital's best interests, consequently she lost her reputed job at New Life Hospital, Delhi.
17. Moreover, the licence of Dr. Ridhi was suspended by the Medical Council of India for 7 years on 25th May 2019 believing that she did commit medical negligence due to which a patient lost her life.
18. Before the trial in court, this case gathered a lot of negative media attention which resulted in gross tarnishing of Dr. Ridhi's reputation in society.
19. The Trial Court on 26th December 2019 convicted Dr. Ridhi under section 304A IPC read with Section 90 and Section 337 of IPC and approved the suspension of her licence.
20. Now Dr. Ridhi Sharma has filed an appeal before the Hon'ble High Court to seek justice against her conviction in Trial Court.

ISSUES:

- a) Whether or not the stance of the appeal is maintainable in court of law?
- b) Whether or not the act of Dr. Ridhi Sharma amounts to negligence on her part?
- c) Whether or not the constitution of the Hospital Administration as well as its decision is in accordance with the law?
- d) Whether or not the Trial Court has erred in finding Dr. Ridhi Sharma guilty of Medical Negligence under Section 304A of IPC?

Students are allowed to create other sub-issues also.