

IN THE HON'BLE SUPREME COURT OF INDIA
ADVOCATE-ON-RECORD EXAMINATION- DECEMBER 2022

PAPER-1
(PRACTICE AND PROCEDURE)

TIME: 3 Hours

TOTAL MARKS: 100

INSTRUCTIONS:

- 1. All the questions in PART-I and PART-II are compulsory. All questions carry 10 marks each.**
- 2. The Candidates are required to choose 10 questions in PART-III. All 10 questions carry 2 marks each.**

(PART-I)

1. Critically examine the role of the Supreme Court as an Appellate Court for more than two dozen Tribunals created under various statutes. Is the Supreme Court obligated to act as a Court of Appeal and/or can exercise its discretionary jurisdiction? Does it undermine the role of the Supreme Court as a Constitutional Court tasked with the responsibility of dealing with questions of law of Constitutional importance?

2. Explain the reason as to why Article 32 finds place in the Fundamental Rights Chapter itself i.e. Part III whereas Article 226 finds place in Part VI of the Constitution; also explain as to when a litigant can approach the Supreme Court under Article 32 and when a litigant can approach the High Court under Article 226 of the Constitution?
3. Can the Supreme Court in exercise of its powers under Article 142 of the Constitution of India, through a Writ of Mandamus, direct the Executive to implement the recommendations of the Law Commission of India which highlights a crying need to fill up vacant judicial posts at various levels on the ground that it would aid the Rule of Law which forms a part of the basic structure of the Constitution?
4. Briefly explain the contours of Original, Appellate, Discretionary and Reference jurisdiction of the Supreme Court of India.

(PART-II)

1. Can a litigant file a review petition before the High Court after withdrawing its Special Leave Petition before the Supreme Court and can such a litigant be permitted to assail the Order passed by the High Court in the said review as a second bite at the cherry? Explain with case laws.
2. Explain the concept of a Curative petition with special reference to its permissibility and essential grounds to be urged in the said petition.
3. What are the parameters for transferring a civil case under Section 25 of the Code of Civil Procedure, 1908 as against transfer of a criminal case under Section 406 of Cr.P.C.?
4. Explain the meaning of *stare decisis*, *obiter dicta*, *sub silentio* and *ratio decidendi* of a Judgment.

(PART-III)

1. What is the difference between intervention and impleadment?
2. When is an appeal maintainable under Section 2 of The Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970?
3. Are the powers of Supreme Court to punish for contempt of itself circumscribed by the Contempt of Courts Act, 1971?
4. What are the pre-requisites for filing a criminal contempt before the Hon'ble Supreme Court?
5. What is the procedure in a Contempt matter where the Supreme Court issues notice to an alleged contemnor?
6. What is the remedy for seeking a modification of an Order passed by the Supreme Court where a person, though affected, was not a party to the *lis*?
7. Does e-filing in the Supreme Court confer any right regarding limitation?
8. Enumerate the powers of a Chamber Judge.

9. What is the difference between a writ of *mandamus* and writ of *quo-warranto*?
10. What is the defence available to a Respondent to resist the appointment of an Arbitrator under the Arbitration and Conciliation Act, 1996?
11. What is the procedure for getting the SLP of an accused listed before the Court who is convicted by the High Court?
12. In which form shall a Special Leave Petition (Civil) be filed before the Supreme Court?
13. When are defective matters listed before the Hon'ble Chamber Judge?
14. Is the Supreme Court obligated in law to render an opinion under Article 143 of the Constitution of India?
15. What is the prescribed Court fee in a Criminal SLP?
16. What is the concept of locus standi in a Public Interest Litigation?
17. What is the meaning of moulding of relief?

18. Why does an appeal in the Supreme Court have a general final relief of "grant special leave to appeal against the impugned judgment" only?
19. Is legal aid a Constitutional right available to every citizen?
20. Is a settlement before the Mediator binding between the parties?

SUPREME COURT OF INDIA.
ADVOCATES ON RECORDS EXAMINATION 2022

TIME: 3 HOURS
TOTAL MARKS 100

PAPER II - DRAFTING

- INSTRUCTIONS:**
1. ANSWER QUESTION NO: 1 AND ANY FOUR OTHER QUESTIONS.
 2. ALL QUESTIONS CARRY EQUAL MARKS
 3. 30 MINUTES EXTRA TIME IN ADDITION TO THE 3 HOURS FOR ANSWERING THE QUESTIONS WILL BE PERMITTED FOR READING THE QUESTION PAPER.

QUESTION NO. I.

(This is a compulsory question and must be answered)

Answer any 5 - Each answer carries 4 marks.

1. Draft an affidavit in support of a notice of Motion seeking condonation of delay of 300 days in filing an appeal against a judgment of the High Court dismissing a criminal appeal convicting the appellant U/s 302 of the Indian Penal Code.
2. Draft a Certificate to be filed by an Advocate-on-Record in support of a Curative Petition which has been filed to challenge a judgment of the Court dismissing the review.
3. Draft an application for *ad-interim ex parte* relief in an original suit filed by a State seeking a restraint order on the defendant State from interfering with possession of lands on the interstate borders which are in possession of the plaintiff and the residents in the said area are registered voters of the plaintiff State.
4. Draft a statement of costs incurred by the appellant in an appeal allowed with costs specifying the particulars and documents relied on for taxation of costs.
5. Draft a notice of motion to bring on record the legal heirs and representatives of the respondent who died pending the hearing of the appeal much prior to the period of limitation for bringing such heirs on

record, when the appeal has abated as the application for substitution was not filed within the period of limitation for substitution.

6. Draft an application seeking the discovery and inspection of documents from the plaintiff preparatory to the filing of interrogatories in an original suit.
7. Draft an application seeking exemption of an accused from surrendering in a special leave petition filed in the criminal jurisdiction challenging the judgment convicting the accused for an offence under section 366 and 375 punishing him under section 376 of the Indian Penal Code.

QUESTION NO.2.

Part XIVA containing Article 323A and 323B was inserted in the Constitution of India by the Constitution (42nd Amendment) Act, 1976 for establishing Tribunals. Article 323A provides for the establishment of Administrative Tribunals while Article 323B provides for establishing other Tribunals. Predicated on these provisions Tribunals were set up under Acts of Parliament and Acts passed by State legislatures. These Acts e.g., Central Administrative Act, 1985, the Telecom Regulatory Authority of India Act, 1997, the Recovery of Debts Due to Banks and Financial Institution Act, 1993 were promulgated/amended to establish Tribunals and set out the terms and conditions of appointment and of service of the Chairperson/Presiding officers, Members, constituting the Tribunal. These Acts remain in force.

In 2017, the Finance Act, 2017 as a money bill was passed by the Parliament which apart from giving effect to the financial proposals of the Central Government for the years 2017-18. In the said Act provisions have been made which deal with and amend the conditions and terms of service of Chairperson/Members appointed before the commence of Part XIV of the Finance Act, 2017. Section 184 of the Finance Act, reads as follows:-

"184. Qualifications, appointment, term and conditions of service, salary and allowances, etc., of Chairperson, Vice Chairperson and Members, etc., of the Tribunal, Appellate Tribunal and other Authorities.

(1) The Central Government may, by notification, make rules to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-

President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other Authorities as specified in column (2) of the Eighth Schedule:

Provided that the Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or other Authority shall hold office for such term as specified in the rules made by the Central Government but not exceeding five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided further that no Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member shall hold office as such after he has attained such age as specified in the rules made by the Central Government which shall not exceed,—

- (a) in the case of Chairperson, Chairman or President, the age of seventy years;*
- (b) in the case of Vice-Chairperson, Vice-Chairman, Vice-President, Presiding Officer or any other Member, the age of sixty-seven years:*

(2) Neither the salary and allowances nor the other terms and conditions of service of Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other Authority may be varied to his disadvantage after his appointment."

Mr. Jayant Kumar who was the Vice Chairperson of a Tribunal is of the view that these amendments are not in consonance with the constitutional mandate of separation of power and of judicial independence. He has been adversely affected by these amendments. Mr. Kumar seeks to challenge the constitutional validity of Part XIV of the Finance Act, by which sweeping changes have been made to twenty five different enactments to the qualifications, method of appointments, terms and conditions of Service of the Presiding officers and members of different statutory tribunals.

Draft a writ of mandamus to be filed in the Supreme Court under Article 32 of the Constitution on behalf of Mr. Kumar challenging the constitutional validity of the said provisions on the grounds that such amendments fall foul of the definition of a 'money bill' defined in Article 110 & 117 of the Constitution of India. Also that these amendments impinge on the independence of the judiciary thereby violating the basic structure of the Constitution of India.

QUESTION NO.3.

Based on evidence available to the prosecution and attenuating facts duly corroborated 4 persons were tried for offences U/s 302, 448, 211 read with Section 120B of the Indian Penal Code. They were also charged for offences under Section 25 of the Arms Act. In the trial, the Court of Session acquitted three of the four accused for the aforesaid offences and convicted Accused No.4. On an appeal filed by the State and the convicted accused the High Court reversed the acquittal of the 3 accused and confirmed the conviction of Accused No.4.

Draft an appeal on behalf of the 3 accused against the judgment of reversal, succinctly setting out the applicable provisions of law under which the jurisdiction of the Supreme Court of India has been invoked supported by grounds assailing the judgment of the High Court.

QUESTION NO. 4.

After preparing the Electoral Roll, elections were held for electing the President of India Mr. S contested the election and lost. He proposes to challenge the election of Mr. M as the President under the Presidential and Vice-Presidential Election Act, 1952 (Act 51 of 1952) by following the procedure prescribed under the said Act. [Section 14 to 19].

Draft an election petition on behalf of Mr. S challenging the election of Mr. M as the President of India keeping in view the provisions of the aforesaid Act and the extant Supreme Court Rules.

QUESTION NO.5.

'A', an educated young lady belongs to Saharanpur. She applies for and obtains employment in Mumbai. During the course of her employment, her marriage is arranged with 'B' working in Mumbai but is a resident of Jaipur. The couple agree to the proposed matrimonial alliance as suggested by their families. The marriage takes place in Saharanpur. The husband and wife resume work in Mumbai where they live by themselves. A son is born to them from this wedlock in Mumbai. The relationship between the couple sour because the husband wants to shift the family to Jaipur and the wife resists this. The husband resigns from employment and shifts to Jaipur leaving 'A' and their son in Mumbai. 'B' initiates proceedings for divorce in Jaipur against 'A' on the grounds of cruelty. On receiving summons of these matrimonial proceeding instituted in Jaipur by 'B', 'A' initiates proceedings for maintenance and restitution of conjugal rights in

the courts at Saharanpur where the wedding took place. She seeks to have the matrimonial cause pending in the court in Jaipur transferred to Saharanpur. Draft a petition on behalf of A seeking the transfer of the matrimonial cause from Jaipur to Saharanpur detailing the provisions of law and grounds for such transfer.

QUESTION NO.6.

Ravi Kumar is the owner of about 10,000 sq. ft. of space in a building constructed for commercial use in Kolkata. On 13.11.2015 he enters into a lease with a firm Bholanath & Co. Ltd. letting out the premises on a rent of ₹600/- per sq.ft. for a term of three years. The lease has a dispute resolution clause under which any dispute arising from the lease should be referred to arbitration by a Sole Arbitrator. Bholanath & Co.Ltd., the tenants default in the payment of rents after the tenancy has run for 18 months. Ram Kumar puts the tenant on notice mentioning that the default is a breach of the covenants of the lease and calls upon the tenant to vacate and hand over the vacation possession failing which he would initiate proceedings under the lease. The tenant does not abide by the demand made in the notice. Ram Kumar invokes the Arbitration Clause under the lease. The tenant resists this and enters issue on the validity of the clause. In 2017 the landlord sought the appointment of an Arbitrator invoking the jurisdiction of the High Court under Section 11 of the Arbitration & Conciliation Act, 1996 (as amended in 2015). On 22.10.2022 the High Court appointed an arbitrator after rejecting the tenant's objections on the arbitrability of the dispute. This order is now challenged by the tenant in a petition under article 136 of the Constitution of India in the Supreme Court of India. Ram Kumar seeks to contest these proceedings initiated by the tenant against the order of the High Court pronounced on 22.10.2022.

Draft a counter affidavit on behalf of Ram Kumar, the land lord to oppose the reliefs sought in the special leave petition on behalf of the landlord succinctly setting out the law on arbitration clauses incorporated in lease deeds as measures of alternate dispute resolution.

Supreme Court of India
Advocate-on-Record Examination
December 2022
Question Paper - III
Advocacy and Professional Ethics

Total Marks: 100

Time Allowed :3 Hours

- The Paper is divided into 5 (five) Sections
- Section 1 and 2 must be answered in the attached sheet with the Question Paper and must be submitted with the Answer Paper Book
- Section 1 - Fill in the blanks - 10 - 0.5 marks each 05 marks
- Section 2 - True or False - Question No.1-30 - 0.5 marks each 15 marks
- Section 3 - Any4 out of 7-10 marks each 40 marks
- Section 4 - Any4 out of 7 - 5 marks each 20 marks
- Section 5 - Compulsory 20 marks

ADVOCACY AND PROFESSIONAL ETHICS

Return this sheet after completing the information

Section 1

Fill in the blanks--Each correct answer carries 0.5 marks (5 Marks)

An (1)_____ shall, at all times, comport himself in a manner (2)_____ his status as an (3)_____ of the Court, a (4) _____ member of the community, and a gentleman, bearing in mind that what may be (5)_____ and a (6)_____ for a person who is not a member of the Bar, or for a member of the Bar in his (7)_____ capacity may still be improper for an Advocate. Without prejudice to the generality of the foregoing obligation, an Advocate shall (8)_____ uphold the interests of his client and in his conduct conform to the rules hereinafter mentioned both in letter and in (9)_____. The rules hereinafter mentioned contain canons of conduct and (10)_____ adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of other equally imperative though not specifically mentioned.

Section 2

Write whether the statement is True or False - Each correct answer carries 0.5 marks (= 15 Marks)

Sl.	Statement	True/False
1.	If a judge makes a statement which makes the Advocate uncomfortable, the Advocate should give back to the judge in the same coin	
2.	Whenever there is proper ground for serious complaint against a judge, it is the right and duty of the Advocate to submit his grievance to proper authorities.	
3.	An Advocate shall not enter appearance, act, plead or practice in any way before a Court, Tribunal or Authority, if the sole or any member thereof is related to the Advocate as father, mother, son, daughter, brother, sister, husband, wife	
4.	An Advocate is free to wear bands or gown in public places other than in Courts and such ceremonial occasions as prescribed.	
5.	An Advocate is free to appear in or before any Court or Tribunal or any other authority for or against an	

	organization or an institution, society or corporation, even if he is a member of the Executive Committee of such organization or institution or society or corporation.	
6.	An Advocate is free to act in a bankruptcy petition when he himself is also a creditor of the bankrupt.	
7.	An Advocate can accept a brief from a company of which he is Director.	
8.	An Advocate can stand as a surety or certify the soundness of a surety for his client required for the purpose of any legal proceedings.	
9.	An Advocate is bound to accept any brief in the Courts or Tribunals or before any other authority in or before which he proposes to practice at a fee consistent with his standing at the Bar and the nature of the case.	
10.	An Advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness, and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear as an Advocate if he can retire without jeopardizing his client 's interests.	
11.	It shall be the duty of an Advocate fearlessly to uphold the interests of his client by all fair and honorable means without regard to any unpleasant consequences to himself or any other.	
12.	An Advocate shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.	
13.	An Advocate shall not, at any time, be a party to fomenting of litigation.	
14.	An Advocate is entitled to stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof.	
15.	An Advocate shall not, directly or indirectly, bid for or purchase, either in his own name or in any other name, for his own benefit or for the benefit of any other person, any property sold in the execution of a decree or order in any suit, appeal or other proceeding in which he was in any way professionally engaged.	
16.	Where moneys are received from or on account of a client, the entries in the accounts should contain a reference as to whether the amounts have been received for fees or expenses, and during the course of the proceeding,	
17.	Advocate can without the consent in writing of the client	

	is at liberty to divert any portion of the expenses towards fees.	
18.	An Advocate can lend money to his client for the purpose of any action or legal proceedings in which he is engaged by such client.	
19.	The signboard or nameplate or stationery of Advocate can indicate that he is or has been associated with any person or organization or with any particular cause or matter or that he specializes in any particular type of work or that he has been a Judge or an Advocate-General.	
20.	An Advocate shall not accept a fee less than the fee taxable under the rules when the client is able to pay the same.	
21.	An Advocate can personally engage in any business and can be a working partner in a firm doing business	
22.	An Advocate may be Director or Chairman of the Board of Directors of a company with or without any ordinary sitting fee, provided none of his duties are of an executive character.	
23.	An Advocate can be a Managing Director or a Secretary of any company.	
24.	An Advocate shall not be a full-time salaried employee of any person, Government, firm, corporation or concern, so long as he continues to practice	
25.	An Advocate who has inherited, or succeeded by survivorship to, a family business can continue it and can personally participate in the management thereof.	
26.	An Advocate is not entitled to review Parliamentary Bills for a remuneration, edit legal textbooks at a salary, do press-vetting for newspapers, coach pupils for legal examination, set and examine question papers; and, subject to the rules against advertising and full-time employment, engage in broadcasting journalism, lecturing and teaching subjects, both legal and non-legal.	
27.	State Bar Council has no authority to give consent to an advocate to undertake part-time employment even if the nature of the employment does not conflict with his professional work and is not inconsistent with the dignity of the profession.	
28.	An Advocate can directly or indirectly bid in Court auction or acquire by way of sale, gift, exchange or any other mode of transfer either in his own name or in any other name for his own benefit or for the benefit of any other person any property which is subject matter of any suit appeal or other proceedings in which he is in any way professionally engaged.	

29.	After the termination of the proceeding, the Advocate shall be at liberty to appropriate towards the settled fee due to him, any sum remaining unexpended out of the amount paid or sent to him for expenses, or any amount that has come into his hands in that proceeding.	
30.	An Advocate who has, at any time, advised in connection with the institution of a suit, appeal or other matter or has drawn pleadings, or acted for a party, can act, appear or plead for the opposite party.	

Section 3

Attempt any 4 Questions. Each question carry 10 Marks
(10x4) = 40

1. "Court and counsel are the two wheels of chariot of justice. In the adversarial system, it will be more appropriate to say that while the judge holds the reigns, the two opponent counsels are the wheels of chariot, while the direction of the movement is controlled by the judge holding the reign, the movement itself is felicitated by the wheels without which the chariot of justice may not move and may even collapse." Discuss this statement in the light of the statutory duties of an Advocate to the Court, Client and Colleagues.

2. Innovation and activism within the framework of law is the essence of evolution process of juridical development, Discuss with reference to judgments.

3. Whether power of contempt of an advocate by High Court and disciplinary proceedings by Bar Council can co-exists? Discuss with reference to judgements.

4. Under Section 35 of the Advocates Act, 1961, if any advocate is found to be guilty of professional or other misconduct, the disciplinary committee of a State Bar Council can dismiss the complaint, reprimand the advocate, suspend the advocate from practice, for such period as it may deem fit or remove the name of the advocate from State role of Advocate.

(a) What is the other misconduct referred to in Section 35 ?

(b) Do you think the powers on disciplinary committee are wide and without any guidelines ?

5. An AOR of the Supreme Court addressed a post card (to a party against whom notice was issued by Supreme Court of India) which read as under :

"Dear Sir,

Jai Hind

Your attention is drawn to Rule 20 of Order IV of the Supreme Court Rules 1950 (as amended upto date) to appoint an Advocate on Record in the Supreme Court as according to this Rule 'no advocate other than an Advocate on Record shall appear and plead in any matter unless he is instructed by an Advocate on Record.'

You might have got an Advocate on Record in this Court but I would like to place my services at your disposal if you so wish and agree.

Hopping to be favoured.

*Yours sincerely,
Sd/-"*

Whether the AOR is guilty of professional misconduct warranting disciplinary action against him? Discuss with reference to judgements.

6. Explain the relevance and importance of Mediation and the role of lawyers in promoting the same ?

7. An Advocate refused to return original Will to the Executor / Beneficiary for non-payment of legal fees. Whether the Advocate to whom original Will was entrusted has committed any professional misconduct ? Explain with reference to judgments

Section 4

Following questions carry 05 Marks each :

Attempt any 4 Questions:

(4X5) = 20 Marks

1. Give a brief summary of restriction on Senior Advocate imposed by Bar Council of India ?
2. A Client has paid advance fee to an AOR for engaging services of Senior Counsel. As the case was not likely to be listed for hearing in near future, the AOR kept the advance in a Fixed Deposit with the Bank. Whether the interest earned on such Fixed Deposit can be appropriated by the AOR, Explain keeping in mind the concerned rules of professional ethics ?
3. What is the degree of proof required in disciplinary proceedings initiated by the Bar Council of India ?
4. A Client has approached an AOR to draft and file a Special Leave Petition ('SLP') to challenge an interim order of High Court. The AOR is convinced that there is no case made out under Article 136 of Constitution as the order is merely an ad-interim order, no question of law much less substantial question of law is involved and the case is listed before High Court for confirmation / vacation of ad-interim order. Client is insisting the AOR to draft, file and argue the SLP. Whether the AOR should file the SLP, give reasons for the answer?
5. What are the ways available to an Advocate to promote himself, without violating Sec. 49(1)(c) of Advocates Act, 1961- Lawyers are not conferred with the right to advertise and publicize their work, with the aim to solicit clients
6. Can an Advocate criticize the judiciary within and outside the courtroom? In what circumstances can the judge hold the critic advocate in contempt – Elaborate with reference to statement of law in *C. Ravichandran Iyer vs. Justice A.M. Bhattacharjee and Ors.* (1995) 5 SCC457) - "It is true that freedom of speech and expression guaranteed by Article 19[1] (a) of the Constitution is one of the most precious liberties in any democracy. But equally important is the maintenance of respect for judicial independence which

alone would protect the life, liberty and reputation of the citizen,”

7. Supreme Court has consistently held in *Ex. Capt. Harish Uppal vs Union of India (2003) 2 SCC 45*, *Krishnakant Tamrakar vs The State of Madhya Pradesh (2018) 17 SCC 27* and *DBA, Dehradun vs Ishwar Shandilya* that “strikes by advocates, are in violation of law and the same amount to contempt and at least office bearers of the associations who give call for the strikes cannot disown their liability for contempt. Every resolution to go on strike and abstain from work is per se contempt.”

The Supreme Court in the case of *District Bar Association, Dehradun Vs Ishwar Shandilya and Ors* dated 4.10.2021 held in para 35 as under:

“It is held that only in the rarest of rare case where the dignity, integrity and independence of the Bar and/or the Bench are at stake, courts may ignore (turn a blind eye) to a protest, abstention from work for not more than one day. It is being clarified that it will be for the court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or the District Judge before advocates decide to absent themselves from court.”

The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar.”

Whether in the following cases, while making demands, strike by Advocates can be justified :

- a. Non creation of a bench of High Court in a particular city.
- b. Filling of vacancies of judge in the High Court.
- c. Transfer of a judge from a High Court to another High Court.

a. Elevation of a junior judge to Supreme Court, ignoring the senior judge of that High Court

Section 5 (compulsory)

(10x2) Total 20 Marks

(a) Justice Abbot Parry in his book 'Seven Lamps of Advocacy' has elaborated the seven following qualities of a good advocate as, elaborate any 2 (two) out of them:

”

- a. Courage
- b. Eloquence.
- c. Fellowship
- d. Honesty
- e. Industry
- f. Judgment
- g. Wit

(b) Besides the seven qualities referred above, as Seven Lamps of Advocacy, what according to you are the other qualities for a successful lawyer.

SUPREME COURT OF INDIA
ADVOCATES ON RECORD EXAMINATION – DECEMBER 2022
PAPER IV – LEADING CASES

TOTAL MARKS: 100

INSTRUCTIONS:

- (I) Answer any five (5) questions
- (II) All questions carry equal marks

1. By virtue of the power to 'amend' conferred by Art. 368, Parliament cannot alter the 'basic structure' or 'fundamental features' of the Constitution because the word 'amend' implied that even after amendment, by way of addition, alteration or repeal of some of its provisions, the identity of the original Constitution must remain.

Trace the evolution of amendment to the constitution under Article 368 vis-à-vis the basic structure, fundamental rights and directive principles of state policy in light of the decision in Minerva Mills Ltd (majority decision) (1980) 3 SCC 625 with reference to the decisions in Kesavananda Bharati (1973) 4 SCC 225, Maneka Gandhi (1978) 1 SCC 248, I.R. Coelho (2007) 2 SCC 1 and Subhash Chandra Agarwal (2020) 5 SCC 481. Whether inclusion of an enactment in the IX Schedule of the Constitution makes it immune from challenge?

2. Explain the concept of separation of power under the Constitution in light of the decision in Dr. Ashwani Kumar -v- Union of India and Another (2020) 13 SCC 585. What would amount to the exceptional cases as discussed in Ashwani Kumar's Case (supra), where the Court may "legislate", taking into consideration the decisions in DK Basu (1997) 1 SCC 416, Vishakha (1997) 6 SCC 241 and Common Cause (2017) 7 SCC 158?

3. Under the RBI Act, what actions are permissible to be performed by the RBI within the scope of 'management of currency'? Do circulars/notifications issued by RBI have the status of legislature or executive action??

Explain the status and role of RBI in light of the decision in Internet and Mobile Association of India -v- Reserve Bank of India, (2020) 10 SCC 274, specially vis-à-vis management of 'virtual currencies'. What is the test of constitutional validity and the scope of judicial review while examining the scope of such actions?

4. What is the scope and ambit of the Curative Jurisdiction decided in Rupa Ashok Hurra -v- Ashok Hurra and Anr. (2002) 4 SCC 388? Whether a curative petition is maintainable after a Review Petition is heard in open court? Whether the curative jurisdiction can extend to commercial matters? What are the essential grounds for a Curative Petition to be entertained?
5. In Kailash Nath Associates -v- Delhi Development Authority & Anr. (2015) 4 SCC 136, the Supreme Court laid down the principles relating to the liability of liquidated damages vis-à-vis proof of actual damages under the Indian Contract Act, 1872 (Sections 73 and 74). In the context of the said decision, whether in all cases of liquidated damages proof of actual damages is a necessary pre-requisite for awarding compensation? Discuss with reference to decided cases.
6. What is meant by anticipatory bail and what are the conditions for grant of Anticipatory bail? Trace the evolution of the concept of anticipatory bail and discuss in light of the Judgement of the Hon'ble Supreme in Sushila Aggarwal and Others -v- State (NCT of Delhi) and Another (2020) 5 SCC 1. Is anticipatory bail a blanket protection and can it come in the way of further actions by police authorities?

Can there be any restrictive conditions imposed while granting anticipatory bail?

7. Does the right to life under Article 21 include the right to die? What is the scope of 'life and liberty' under Article 21? Is Euthanasia permitted in India? Discuss in light of Common Cause (A Regd. Society) -v- Union of India & Another 2018 (5) SCC 1.
8. What is the meaning of the term "life imprisonment" in light of the decision in Union of India -v- V. Sriharan @ Murugan & Ors. 2016 (7) SCC 1? Can there be a special category of life imprisonment? Is there a power of remission of life sentence that can be exercised by the Appropriate Government after the power has been exercised by the President or the Governor? If yes, under what circumstances can such remission be granted? Are the powers of the Governor of a State coextensive with the powers of President regarding grant of remission?
9. A mere violation of law or an erroneous application of law does not warrant an interference with the award under Section 34 of the Arbitration and Conciliation Act, 1996? Discuss the role of the courts to set aside an award under Section 34 and Section 37 of the Arbitration and Conciliation Act, 1996, in light of the recent judicial pronouncements.
Can the court exercising its jurisdiction under Section 34 or 37 of the Arbitration and Conciliation Act, 1996 uphold a minority award while setting aside the majority award?
10. "It is the commercial wisdom of this majority of creditors which is to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place". In light of this statement, and in the light of

the decisions in Swiss Ribbons v. Union of India (2019) 4 SCC 17 and ESSAR Steel India Ltd case (2020) 8 SCC 531 discuss the role of Adjudicating Authority under Section 31 of the Insolvency and Bankruptcy Code, 2016? To what extent can the Adjudicating Authority interfere with a resolution plan duly approved by the Committee of Creditors? Whether a Resolution Plan can provide for extinguishment of the claims creditors in a resolution process for revival of the company, in contrast to the liquidation process by such decision of the Committee of Creditors?