BAR COUNCIL OF INDIA

28th
BAR COUNCIL OF INDIA INTER UNIVERSITY
MOOT COURT COMPETITION
FOR LAW STUDENTS

10th - 12h March, 2012

In association with

National Law University, Delhi
New Delhi

Programme, Rules & Moot Problems

BAR COUNCIL OF INDIA TRUST
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INTRODUCTION

In the practical training scheme prescribed for law students by the Bar Council of India, Moot Court practice including preparation of brief and actual argument in similar situations constitutes an important and essential learning experience. The lawyering skills, court craft, professional ethics and approaches to advocacy that the student-lawyer develops through the moot court exercises keep him/her in good stead when he/she enters the profession on his/her obtaining the law degree.

The Trust organises All India Inter-University Moot Court Competitions for law students to promote the advocacy skills and love for the profession among the new entrants. It is held in collaboration with a University, Law Department or a Law College usually during November/December each year. The students prepare four problems sent by the Trust and argue in different rounds of competitions before they are selected for the final round. The teams which are adjudged as Winner and Runner Up are awarded with Merit Certificates and Prizes.

Scholarship of Rs.1,000/- per month for a period of one year will be provided to those students who are adjudged best in each round of the competition.

National Moot Court Competitions held between 1981 and 2010

1.	1981	Delhi	
2.	1982	Poona	
3.	1983	Cochin	
4.	1984	Banaras	
5.	1985	Jodhpur	
6.	1986	Delhi	
7.	1987	Lucknow	
8.	1988	Hyderabad	
9.	1989	Shimla	
10.	1990	Ujjain	
11.	1993	Jodhpur	
12.	1995	Kurukshetra	
13.	1996	Cuttack	
14.	1997	Goa	
15.	1998	Pune	
16.	2000 (January)	Hyderabad	
17.	2000 (December)	Bangalore	
18.	2001	Chennai	
19.	2002	Kolkata	
20.	2003	Pune	
21.	2004	Lucknow	
22.	2005	Patna	
23.	2006	Bhopal	
24.		2008(January)	Patiala
25.		2008 (December)	Lucknow
26.		2010 Gujarat	

1st Bar Council Of India International Law Moot Court Competition held at KIIT University, Bhubaneshwar at, Odisha in the month of February, 2011.

BAR COUNCIL OF INDIA (BCI)

The Bar Council of India is an apex body for the entire legal profession constituted under the Advocates Act 1961. It has 21 members including the Attorney General and Solicitor General who are ex-officio members. Each of the State Bar Council which is elected by the Advocates on the roll practising in that State, has one representative elected from amongst the members of the State Council in the Bar Council of India. Certain States which have common High Courts have jointly one member in the Bar Council of India.

Among the functions of the BCI are regulating enrolment of new members to the Bar, enforcing discipline and standards of ethics for the members of the profession, promoting welfare of advocates and maintaining standards of legal education in consultation with Universities teaching law for discharging these functions it has constituted several committees which meet in Delhi and outside as often as required. Rules have been formulated under powers conferred by the Advocates Act and are enforced through the State Bar Councils. The funds of the BCI come from its share of the enrolment fee collected from advocates by the State Bar Councils. The office of the BCI is located in Delhi in its own premises.

As an independent body representing the second largest legal profession in the world, the Bar Council of India commands great respect and influence within the professional circles in India as well as outside.

MEMBERS OF THE BAR COUNCIL OF INDIA

1. Shri Ashok K. Parija, *Chairman, BCI* - Odisha

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13. Shri Biri Singh Sinsinwar - Rajasthan

14. Shri Rajinder Singh Rana - Delhi

15. Shri Manan Kumar Mishra - Bihar

16. Shri Satish Abarao Deshmukh - Maharashtra & Goa

17. Shri T.S. Ajit - Kerala

18. Shri S. Prabakaran - Tamil Nadu

19. Shri I.N. Mehta - Himachal Pradesh

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21. Shri Bhupinder Singh Rathore - Punjab & Haryana

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Officiating Secretary

THE BAR COUNCIL OF INDIA TRUST (BCIT)

The Bar Council of India Trust was created by the Bar Council of India in 1974 as an educational and research foundation with the object of establishing one or more model law schools, organizing legal aid to the poor, publishing law books and law reports and promoting welfare of members of the profession. Since 1980 the Bar Council of India Trust has launched a number of programmes designed to promote higher standards in legal education and in the legal profession. The finances for these activities come from the interest accrued on the original sum transferred by the Bar Council of India to the Trust in 1974. The Bar Council of India Trust is managed by a five-member Board of Trustees elected for four years by the Bar Council of India from amongst the members.

The Bar Council of India Trust publishes a quarterly Journal, called the Indian Bar Review of which more than 1000 copies are circulated among regular subscribers in the profession and outside. This Journal caters to the academic and professional interest of the legal community. It has also published books on Constitutional Law, Legal Profession, Legal Education, Taxation Law, Criminal procedure and a number of titles under the pre-law programme of the new 5-year pattern of legal education.

The Trust jointly with the Bar Council of India has established a Law University at Bangalore called the National Law School of India University. The Trust organises a series of summer workshops for advocates under its continuing education scheme which help updating of knowledge and skills and promoting specialisation in professional services. A number of volumes of reading materials on Constitutional Litigation, Criminal Advocacy, Labour Adjudication, Tort Litigation, Human Rights Advocacy etc. have been produced to support the continuing legal education effort which is now being undertaken by the State Bar Councils as well.

Under a scheme of training and fellowship, a number of junior advocates are selected every year and provided placement with seniors for professional advancement. Annual inter university moot court competition is sponsored by the Trust to improve the quality of professional education and to promote skills of advocacy.

BOARD OF TRUSTEES OF THE
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Shri Ashok Kumar Deb	*Managing Trustee*
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National Law University, Delhi, New Delhi

About the University

NATIONAL LAW UNIVERSITY, DELHI instituted by the Act No.1 of 2008 of National Capital Territory of Delhi is one of the youngest law schools to join the league but within a span of four years has become the pioneer of simulative and multi-disciplinary legal education in the country.

The National Law University, Delhi (NLUD), has been established with a mandate to transform and redefine the process of legal education, and to create a sui generis legal education system that is able to chisel a new generation of lawyers that are able, competent and humane, and who would permeate into the structure of legal system of this country and the world, to meet the challenges of ever-evolving human society.

The vision of the University is to make legal education as justice education, as an instrument of social, political and economic change, and to prepare Lawyers who will be competent in the art of advocacy both at the trial and the appellate level and also skilled in judicial administration. The approach at the NATIONAL LAW UNIVERSITY, DELHI is to be shape its students as agents of change as the country mandates to achieve its developmental goals for future generations. The primary mission of the University will be to create Lawyers who will be professionally competent, technically sound and socially relevant, and will not only enter the Bar and the Bench but also be equipped to address the imperatives of the new millennium and uphold the Constitution of India.

NLU, Delhi offers five year integrated B.A. LL.B. (Hons.), LL.M. and Ph.D. academic programmes. Admission to the First Year of these Degree Programmes is made strictly on merit, based on the All India Entrance Examination. The University also offers P.G. Diploma courses in Urban Environmental Management, Judging & Court Management and IPR and Patent Law.
The University has organized number of international and national conferences, seminars, Consultations and Dialogues on important contemporary themes like child rights and sexual abuse, mining and human rights and sexual harassment at the campus settings.

The University campus is fully equipped for students' academic and extra-curricular pursuits. A well-stocked library of over 25,000 volumes of books, academic and reporting journals, committee & commission reports, legislative materials, and other reference materials along with access to numerous online legal databases like Westlaw International, HeinOnline, LexisNexis, JSTOR, E-Hart Books Online, SCC Online, Manupatra Online etc. within and outside the internet centre and a wi-fi enabled (wireless friendly) campus enable legal research round the clock. All classrooms are provided with e-stations and LCD projectors, integrating technology with traditional teaching methods. A spacious auditorium provides the venue for a host of conferences, seminars and cultural events. Separate Halls of Residence for boys and girls are furnished with televisions, indoor games facilities in the common rooms and state-of-the-art gymnasiums.

The National Law University Delhi has actively explored the collaborations with various Universities and Institutions of National and International repute to create links across the globe. The Faculty Exchange programs provide platform for collaborative research and other academic ventures for the facility and students to excel in the field of legal

education in a changing global environment. The University has signed MOU's with the number of prestigious Universities/ Institutions.

Moot Courts are a thrust area of Legal Education. The University strives to integrate the theory and practice of Law in campus settings through moot court activities. The mooting in NLU, DELHI is a serious activity.

MEMBERS OF THE ADVISORY COMMITTEE AND APPELLATE TRIBUNAL OF

28th Bar Council of India, All India Moot Court Competition, 2012

1. **Shri Ashok Kumar Deb,**
   Managing Trustee,
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INTER-UNIVERSITY MOOT COURT COMPETITION

Rules for the conduct of the competitions

1. Participants should reach the venue one day prior to the competitions, *i.e.*, by the evening before the date for the first round of the competition.
2. There will be four rounds of competition with separate moot problem for each round. All teams registered with the Trust will participate in the first round. The teams will be arranged on the basis of lots drawn and grouped in pairs of two for determining who will contest against whom and for which side each team will argue. The Winner and Runner-up teams of the last 4 years shall be put in different groups for different rounds. The Moot Court competition will be held on 'Knock–Out' basis.
3. Depending upon the number of teams participating in the first round, there will be simultaneously as many Courts arguing the same problem.
4. Each Court will assign marks to each individual participant and the team in the manner shown below:

Total Marks	**100**
For written submissions	…20 Marks
For substance in arguments	…40 Marks
For skills of advocacy	…20 Marks
For general impression, court manners and behaviour	…20 Marks
Total	**…100 Marks**

Before each round, all the judges shall as far as possible meet and decide upon the level of marks on the basis of performance being excellent, good, fair, average etc., in order to ensure uniformity in the matter of awarding marks for all the participants.

Soon after each round of competition the total marks of each participant and each University team shall be calculated. The results shall be declared on the 'knock–out' basis but in any case, the names of the Runners-Up team will not be forwarded to the next round. Such declaration should be made as far as possible within 30 minutes. The marks secured by each team in a given round of the competition shall be consolidated and arranged according to the relative merits based on the total scores.

5. The required number of teams for next round of competition shall be picked up from the top in the order of merit. All winners of first round shall participate in the 2nd round. Such number be increased by one in the event of being an odd number. The number of teams for the 3rd round which will be the semi-final, shall be 4 only, which shall be rated on marks but any Runner-Up of 2nd round shall not be allowed to go in the 3rd round.

   The winning teams of each round will again be listed on the basis of lots drawn and will be grouped into pairs. In other words, the side for which a team will be arguing will be known to the teams only at the time of declaration of results and the lots of first round shall be drawn by the University concerned in the manner prescribed by

the Trust. In the 2nd round also, attempts shall be made that the winners and the Runners-Up teams of the last 4 competitions shall be put in different groups if they succeed in the 1st round.

The semi-final round will also be on 'Knock out' basis. In the semi-final, the teams will be put in alphabetical order and Team A will argue against Team C and Team B against Team D. The winner of semi-final shall contest in the final and there shall be two teams for final. The first serial of semi-finalist and finalist will argue for the Petitioner and the second serial shall argue for the Respondent.

Upon the receipt of the entries, the Organising Committee will divide the teams into suitable number of sub-groups and each sub-group will have equal number of teams in it. The seeding of the teams shall be made by the Trust on the basis of the performance of the previous years to eliminate the chance of the well recognised teams clashing with each other in the 1st/2nd rounds. If any team has won twice or thrice, the selection of 8 teams shall be made from the semi-finalists of the last 4 years who will automatically qualify for being in 8 groups as the group leader and the rest of the teams shall be divided in equal number in 8 groups and the schedule should be arranged in such a way that the seeded teams do not clash with each other in 1st/2nd rounds. The ultimate discretion to place the teams in different groups and to decide the seeding will lie with the Trust and such decision of the Trust shall be final.

6. The written submissions for the first problem has to be sent by each participant directly 7 days in advance to the host university/ college which would arrange the Moot Court competition with copies to the Bar Council of India Trust. For the rest of the three problems written submissions are to be submitted before the commencement of the competition. The written submissions shall be evaluated under the supervision of the University and the Bar Council of India Trust before the commencement of the competition. **Written submissions be submitted for both the sides**. For each round of the competition, written submissions are required, for which 20 marks are assigned.

   The written submissions will contain a precise, well-researched set of arguments on facts and law which the competitor feels are persuasive for the decision in the case (problem). It tests the student's skill on legal research and writing. It has to be written in English neatly typed or handwritten on one side of the paper bearing sufficient margin. Ordinarily the length shall not exceed five pages. It shall carry the name of the participant and University and shall be signed by him/her. They are not returnable to the candidate. The Head of the Law Department of the host University shall arrange its evaluation by a nominated team of experts well before the commencement of the court and the marks awarded will be later entered into the evaluation sheet distributed to the judges.

7. The Bar Council of India Trust shall constitute an Appellate Tribunal consisting of the Managing Trustee, the Associate Managing Trustee, Chairman, Bar Council of India (Ex-officio Trustee) and all other Trustees of the Bar Council of India Trust, local BCI member, the Director or Principal of the host university/college, Head of the Law Department of the said university/college and one more representative from the host university/college. The decision of the aforesaid Tribunal shall be final.

8. The 1st and 2nd rounds will be for 90 minutes. The semi-final and final will be of 2 hours' duration. Each participant will get about 30 minutes of which sometime will be used for questions from the Bench.

9. The two participants representing a University will argue for the same side dividing the arguments between themselves.
10. Each Court will have at least two Judges who will be drawn from the Bench and the Bar and from amongst retired Judicial personnel and noted academicians. In the semi-final and final rounds, there shall be three Judges in each Court out of which one shall be from Bar Council of India/Trust.
11. Student participants are advised to wear black coat and bands though it is not compulsory.
12. Necessary books and reports required by the teams will be provided by the host University/College subject to availability.
13. Participants who have been adjudged as Best Student Advocate in the earlier competitions held by the Trust are not eligible for prizes again.
14. All participants should bring their identity certificates with their signatures duly attested by the Principal/Dean for verification, if necessary.
15. The Trust reserves the right to modify the rules if found necessary and they shall be binding on all teams.
16. Arguments shall be in English.
17. The moot problems and rules are supplied in English only.
18. Separate accommodation for boys and girls is arranged by the host University. Free boarding and lodging during the competition will be provided for all participants.
19. One way second class train fare will be provided to each participant by the Trust if not paid by the sponsoring University.
20. The photograph of the students of the Winner and Runner-up teams of final round along with their Bio-data will be published in the *Indian Bar Review*, which shall be supplied by respective universities/colleges within a month from the declaration of the result.

MOOT PROBLEM - NO. I

(Problem for Preliminary Round)

IN THE HON'BLE SUPREME COURT OF INDIA

VECULA EXCLUSIVE CONSULTANCIES ... **APPELLANT**

v.

PERSEUSS INC. .... **RESPONDENT**

Facts:

1. Vecula Exclusive Consultancies Ltd. (VEX) is one of India's leading consultancy companies. They provide services to a large cross-section of the corporate sector clients including advice on resource allocation, project finance, financial management, staff training and public relations management, thus enabling start-up companies to streamline their resources allocation, internal functioning and optimization of productivity. VEX has developed a formula for streamlining businesses that is extremely successful and is being applied to many of the large corporate houses in the country. As part of its services, VEX also provides various computer programs developed by its Information Technology Department to help its clients to keep track of the output of each employee to ensure that every employee is working to his/ her optimal level. VEX charges a percentage of the incremental profits of each client each year as its fees and seeks reimbursement of its costs on actuals.

2. Perseuss Inc. (SEUSS) is a start-up venture started by a group of friends who met in Fashion School. The company began as a project which was part of their syllabus. SEUSS designs and manufactures a line of clothing and accessories to be sold in various retail outlets across the country.

3. As a part of their research for the project they came across VEX and agreed among themselves to avail of its services when they eventually incorporated their company. When they graduated in May 2007, they incorporated SEUSS as a private limited company, and in July 2007, approached VEX to advise them on running their business.

4. VEX has hired the country's reputed lawyers to protect their legal interests. The firm's lawyers have drafted a standard-form contract that VEX insists every client

should sign. The contract contains several negative covenants against VEX that prohibit its clients from disclosing any information provided to them by VEX during the tenure of the contract and for a period of 7 years after its termination. Correspondingly, VEX also covenants with its clients to maintain client confidentiality for like term of 7 years. VEX refuses to negotiate the terms of this contract and present it to prospective clients on a 'take-it-or-leave-it' basis.

5. SEUSS hired their own solicitors who went over the contract with a fine tooth comb and pointed out certain clauses including the clause regarding liquidated damages to their clients. SEUSS's solicitors advised them that the amount of liquidated damages provided for in case of breach was an exorbitant sum.

6. SEUSS sent a letter to VEX asking how they have arrived at the amount of liquidated damages provided for in Clause 42. VEX replied that it was the pre-estimated loss, specific to the fashion industry if information regarding their business formulae or any of their computer programs and applications were leaked by SEUSS or otherwise misused by them for purposes not pre-approved by VEX.

7. The parties executed the contract on August 2, 2007. The relevant clauses of the contract are as below:

> *41. Any disputes and differences between the parties to this contract arising in relation only to the breach or repudiation of any of the confidentiality covenants in the contract will be solely decided by Mr. Rohan Hair (a reputed name in the fashion space) within 15 days of such disputes or differences arising between the parties. The decision of Mr. Rohan Hair shall be final and binding and shall exclude all other remedies including those of seeking redressal from a court of law by the unsuccessful party with respect to such disputes or differences.*
>
> *42.Any breach committed by SEUSS of any of the covenants of confidentiality appearing hereinbefore in the contract will make SEUSS liable for liquidated damages. The parties agree that the sum of Rs. 16,52,70,000/- is a pre-estimate of the damages likely to be suffered or be occasioned due to the breach of ANY of the confidentiality covenants contained in the contract.*

8. On October 10, 2010 SEUSS found that the names, contact information and billing details of SEUSS's retailers has been published on VEX's website under the heading of 'Frequently Asked Questions' on VEX's home page as an instance of the kind of services that VEX provides to fashion industry clients. The information was widely publicized at a city fashion extravaganza.

9. On October 16, 2010 SEUSS sent legal notice to VEX. In their notice SEUSS stated that VEX had committed breach of the confidentiality covenant contained in the contract and that they were the innocent party to the breach of the confidentiality covenant committed by VEX. SEUSS informed VEX that they had not accepted the repudiation of the contract by VEX and the contract continued in existence. SEUSS invoked Clause 42 of the contract and claimed liquidated damages as stipulated by the said clause of the contract only for breach of the covenant of confidentiality.

10. SEUSS's retailers, angered by the breach of their privacy because of the release of their personal information wrote to SEUSS refusing to stock their clothes in their shops. Faced with falling revenues and increasing liabilities and inventories and being a start-up themselves, SEUSS approached VEX seeking advice on how to salvage SEUSS's public relations and their relationships with their retailers. SEUSS received advise from VEX of a circular letter to be written by SEUSS to all their retailers to salvage the situation.

11. On January 16, 2011 SEUSS, having received no reply to the notice dated October 16, 2010 from VEX, instituted the suit for damages for breach of the covenant of confidentiality by VEX.

12. The Trial Court found in favour of SEUSS and awarded damages to the tune of Rs. 16,52,70,000/- with interest at 18% p.a. from the date of the decree until the date of realization.

13. VEX challenged the decree before the High Court and averred that the Clause 41 is valid and that Mr. Rohan Hair was solely entitled to take a final and binding decision with respect to VEX's liability to SEUSS. VEX further contended that in any case SEUSS has waived Clause 42 by continuing with the contract and by seeking their advise post the notice dated October 16, 2010.

14. The High Court held clause 41 of the Contract is invalid because of the provisions of Section 23 and 28 of the Contract Act and Clause 42 of the Contract could have been applicable in the present situation. However, on further consideration, the High Court found that because SEUSS had chosen to go to VEX for advice and VEX had provided that advice and SEUSS had acted on such advise, SEUSS had waived its right to claim damages and thus, the High Court overturned the finding of the Trial Court, set aside the decree of damages and dismissed SEUSS's suit.

15. The matter has now been placed in appeal before the Supreme Court of India. The substantial questions for determination which are of general importance, broadly stated, are as follows:

a) *Whether Clause 41 of the Contract dated August 2, 2007 is valid?*

b) *Whether SEUSS is entitled to invoke Clause 42 of the Contract dated August 2, 2007, and to claim damages?*

MOOT PROBLEM - NO. II

(Problem for Quarter Final Round)

Shaheen, a shia Muslim married Sohail, a sunni Muslim on November 11, 2006 at Nakpur, Bundelia Pradesh in Republic of Industan. Shaheen is cousin sister of Afreen who is Sohail's cousin sister on the maternal side.

Both Shaheen and Sohail are graduates from a reputed college of Navi Dally University. Sohail is also a qualified chartered accountant. At the time of their marriage, which was an arranged marriage, Sohail was working with one of the big four accounting firms in Bangalore. Shaheen was working as a manager at a leading retail chain.

In January, 2009, Sohail relocated to Navi Dally with his wife Shaheen, and has set up a registered partnership enterprise Sohail & Sahil Associates with his college friend Sahil. Sohail and Shaheen live in a 1BHK apartment which is owned by his brother Amir in Greater Palash, but whose electricity charges, house tax, water tax and maintenance are all paid by Sohail. Amir is a permanent resident of United Kingdom and is a doctor with NHS Trust. Sohail and Shaheen had jointly applied for a flat in Navi Dally Development Authority Vikas Scheme, 2010 and have got a flat in lottery in Vistar Vihar Extension – Phase 3.

After moving to Navi Dally in January, 2009, Shaheen has been wanting to have a child and stay at home, to which Sohail does not agree. They have been having frequent heated arguments about this. Shaheen has discussed this with her mother, who has also tried to make Sohail understand the issue. Sohail, however, has been unrelenting and considers it too early. Since Afreen had played a vital role in getting them married, she also visited the couple, at Shaheen's mother's instance, at their residence in Greater Palash and unsuccessfully attempted to intervene between the two on September 29, 2010. It appears that Afreen being an ambition professional herself was inclined to support Sohail. On November 10, 2010, Sohail and Shaheen again had a heated argument over the same issue. After the argument, Sohail went downstairs for a walk. He returned after two hours and divorced Shaheen with three pronouncements of "*talaq*". Afreen was a witness to this development and till today continues to live in the said apartment.

Thereafter, Sohail has moved out of the house in Greater Palash where he lived with Shaheen, and has been living in a guest house which is available at nominal rent from his partnership firm.

On December 1, 2010, Shaheen filed an application under Protection of Women from Domestic Violence Act, 2005 ("**Domestic Violence Act, 2005**") before the Magistrate in Navi Dally seeking to restrain Sohail and Afreen from, directly or indirectly through agents, dispossessing her from the apartment in Greater Palash in Navi Dally. Shaheen had also approached the civil court seeking a declaration that divorce pronounced by Sohail not being in conformity with the Islamic law be declared as a

nullity. In addition to defending the above arguments, Sohail has argued that Domestic Violence Act, 2005 to the extent that it gives rights to women beyond the period of *iddat* is against his fundamental right to practise his religion. Afreen has argued that being Shaheen's relative she cannot be made a respondent under the Domestic Violence Act, 2005.

In December, 2011, while Shaheen's application under the Domestic Violence Act, 2005 has been allowed, her civil suit for declaration has been dismissed. Thus, writ petitions have been filed both by Shaheen and Sohail before the Navi Dally High Court which have been connected by a court order and are listed together for final disposal.

The polity and societal structures of Republic of Industan are identical to that of Republic of India and the provision of the Domestic Violence Act, 2005 and the Constitution of Industan are in *pari materia* with the Protection of Women from Domestic Violence Act, 2005 and the Constitution of India.

MOOT PROBLEM - NO. III

(Problem for Semi Final Round)

In the Hon'ble Supreme Court of India

Diamond Network News Pvt. Ltd.

…Petitioner

Versus

Union of India

…Respondent

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1. *"Jago India!"* is an investigative news program which is aired from 8:00 PM to 9:00 PM on Diamond News Network Pvt. Ltd. It enjoys high TRP's due to the often sensationalistic and outlandish claims made by its host Kshimendra Tripathi. Its frequent themes include, black magic, aliens, supernatural powers and sometimes even wish granting snakes. ORG-DWAR a TRP rating agency rates it as one of the top 3 programs in the Rural Market, in the viewership range of MALE/FEMALE 15-35.

2. Shortly after a verdict is delivered by the Special Bench of the Hon'ble Ballabhad High Court hearing the Garodhra Case (Similar to the Ayodhya Case decision

available at http://elegalix.allahabadhighcourt.in/elegalix/DisplayAyodhyaBenchLandingPage.do), Mr. Tripathi on 30.09.2010 airs a special program on "*Jago India!*" called "Garodhra : Mosque or Temple".

3. In the program he invites a distinguished panel of senior lawyers, former judges and civil society activists. One of the panelists includes, Mr. Kishori Nanda Bhagwat who is known for his communal and controversial views. Mr. Kishori Nanda Bhagwat also has some criminal proceedings pending against him in several states for hate speech and incitement of enmity between religious groups.

4. During the panel discussion some highly objectionable remarks are made, a transcript of which is provided below:

   "Mr. Tripathi : What can we say today ? After more than 11 years of wait what we have got today is not a verdict. It is so long and incomprehensible. The people of this country want a closure. They want a mosque or they want a temple. Now let me ask Mr. Bhagwat why he wants a temple. Mr. Bhagwat your views?

   Mr. Bhagwat: Tripathi Jee, let me be clear. The judges of this country are either corrupt or they are afraid to take decisive action. We have lot of evidence that there was a temple at the Garodhra Masjid Site. Who are these judges to tell us otherwise. I for one will not stand for a verdict which allows the Mosque to continue to be there. The courts today are a haven for blackmarketers, bride burners and FERA criminals".

   Mr. Tripathi : There is something which is rotten in the state of Denmark".

5. When this discussion is progressing, visuals showing the forceful and illegal demolition of the Garodhra Masjid are shown. There are also clips showing the Judges of the Hon'ble Ballabhad High Court who delivered the verdict in the Garodhra Case.

6. Justice M.C. Gupta, who was one of the Judges in the Garodhra Case is shocked when watches this program. Having recently retired after spending more than 14 distinguished years in the service of the Judiciary he takes this telecast to be a personal affront to him. Being deeply pained by this he sends a notice of defamation dated 12.12.2010 to Diamond Network News Pvt. Ltd. asking for a personal apology.

7. Diamond Network News Pvt. Ltd. through its lawyers reply to the notice on 06.01.2011 stating:

"While we deeply regret the pain and suffering caused to you personally as per the broadcast, we do not share or voice the views on our television programs. All our television programs which invite members of the public do not reflect the positions and the opinion of Diamond Network News Pvt. Ltd.. Towards this we put up a prominent disclaimer at the beginning of each telecast reminding our viewers that the opinions expressed by our panelists are their alone. Moreover Jago India! is a live program in which we do not censor or edit the contents. Having said this, we again are apologetic for the telecast and the contents which caused you agony. Please note that this is without prejudice to our rights to telecast differing views and opinions."

8. Not being satisfied with the reply Justice M.C. Gupta files a Suit for Damages for Defamation on 02.02.2011 in the District Court of Ballabhad. The suit is valued at Rs. 100 Crores which is also the amount of damages which are being claimed by him. On 06.04.2011, the District Court of Ballabhad issues an ex-parte interim order calling upon Diamond Network News Pvt. Ltd. to deposit Rs. 50 Crore and also not re-telecasting the program of *Jago India!* telecast on 30.09.2010.

9. Aggrieved with the Order dated 02.02.2011 passed by the Hon'ble District Court of Ballabhad, Diamond Network News Pvt. Ltd. has approached the Hon'ble Supreme Court of India under Article 32 through its majority shareholder, Mr. Priyadas Singhania who is an Indian. The substantial questions for determination are:

    a. Whether the Order dated 02.02.2011 calling upon the Petitioner to deposit Rs. 50 Crore infringes the freedom of press?

    b. Whether the Ld. District Court was correct in passing the Order dated 02.02.2011 ex-parte?

    c. Whether the Petitioner is in any way liable for the views and opinions of panelists on its shows?

MOOT PROBLEM - NO. IV

(Problem for Final Round)

IN THE SUPREME COURT OF INDIA

In the matter of-

MAHA SURYA TRUST & ORS. … Appellants

Versus

TENJIKU SPACE IMAGING INC. … Respondent

1. Tenjiku Space Imaging Inc. (TSI) is a company incorporated under the Indian Companies Act, 1956 which has its shareholding spread amongst the government of India (31%) and private holding (69%). The Board of TSI consists of 7 directors, including Mr. Mike who is a nominee director in the company and Mr. Jay Pandit who is the managing director and also is a government official. The most prominent figure within the company is Mr. Shyamalan, who though is a shareholder with only 4% and a director, he is credited to be the force behind the company-both in terms of managing of the affairs and maintaining the technological leadership of the company.

2. TSI controls a constellation of 7 earth observation satellites, namely, Taran-2,3,5,7,8,9 & 11 orbiting in elliptical polar orbits with a nominal mean altitude of 847 kms. TSI had the capability to receive electro-magnetic signals from these satellites and process the data into discernible detailed imagery of earth locations. In 2008 TSI obtained patent of a new technology which enabled them to provide live imagery of a particular location upto 5000 hours at very

affordable prices. The Taran series of earth observation satellites are compatible with this new technology. TSI also announced that in 7 to 8 months they will be ready with another system called, Unit Aman, capable of processing data into discernible detailed imagery. Unit Aman is already contracted to be sold to NoveltyImagers Inc.

3. On 23rd January, 2011 the Government of Vanar issued tender to monitor the flooding in the Nammalwar river. The All Natural Resources Management Co. Pvt. Ltd.(ARMC) having its registered office in the capital of Vanar was awarded the tender for two years starting from 1st June, 2011 after a detailed process of tendering. Mr. Lobo, an independent director on All Natural Resources Management Co. Pvt. Ltd. announced the following:

   "I am elated at the appointment of a monitoring agency to monitor the flooding in the Nammalwar river. This is a positive measure to mitigate loss due to flooding every year."

4. The All Natural Resources Management Co. Pvt. Ltd. contracted TSI to provide uninterrupted data imagery over two locations. These locations include two river bends across the Nammalwar river which are flanked by steep mountainous terrain on either side which makes access to this area difficult. A link to the live feed was made available to All Natural Resources Management Co. Pvt. Ltd.

5. On 5th July, 2011 TSI lost control over the live feed due to some technical snag and the frame froze at 8:00 a.m. Despite many efforts the engineers on duty could not revive the live feed till 8:20 a.m. wherein it was decided to call an emergency meeting. At this emergency meeting, attended by all Directors on the Board except Mr. Mike, the Chief Technical Manager suggested that the quickest way to bring the live feed on is (Method-1) to sync the current system with the new Unit Aman, and reboot the entire system; which should not take more than

30 minutes. In the alternative, (Method-2) the engineers could follow the set procedure to bring the system on, however, there was no guarantee on time with this method. Method-1 would mean that to re-sync to the original system the company would have to incur a minimum cost of Rs. 75 crore. Further, there is risk of jeopardizing the contract with NoveltyImagers Inc. for sale of Unit Aman, as it would cost nearly Rs. 100 crore to bring Unit Aman to the configurations demanded under the contract. Considering the costs involved the Board decided with a dissent from Mr. Shyamalan to follow Method-2. It took the engineers nearly 2 hours to bring the live feed on. No separate information was sent to All Natural Resources Management Co. Pvt. Ltd.

6. When the live feed was restored a landslide was noticed at one of the river bends. Huge bolders of rock had fallen over from the flank north of the river bend impairing the flow of water. TSI immediately informed All Natural Resources Management Co. Pvt. Ltd. regarding the landslide. By the time All Natural Resources Management Co. Pvt. Ltd. could inform the government and some mitigative measures taken pressure developed at the other end of the river at the Nammalwar Dam. A part of the dam gave way flooding a new upcoming township, Vrindavan Homes, and submerging the Maha Surya temple, an important place of worship for the Suriyau sect who for centuries have held the Maha Surya temple as there most sacred site for centuries. Due to a Court order access to both these sites had been cut off temporarily till 15th July, 2011 and there was no loss of life.

7. There was huge public outcry due to the incident, particularly, due to the submerging of the Maha Surya temple. In the month of August every year Maha Surya temple witnesses great revelry due to the Surya festival and this compounded the public anger. The investors and stakeholders of Vrindavan Homes expressed outrage and a demand was placed on the authorities to

compensate them for the loss. There was scathing criticism of All Natural Resources Management Co. Pvt. Ltd. for its failure to monitor the landslide and alert the authorities. At this stage TSI issued a public statement, announced via its director, Mr. Mike:

> "We are sad at the turn of events. Despite our best efforts the live feed took some time to restore…a couple of hours. This was an event *force majeure* and our sympathy is with the all stakeholders of the new township. We assure the public that the best judgment was employed by our company to maintain the live feed and will continue to take every step to prevent recurrence of such events."

8. Soon the details of the emergency meeting was leaked to the media by an unknown source and public anger mounted against TSI, particularly Mr. Mike. There was severe criticism of the judgment exercised by TSI and different sections of civil society denounced the decision of the Board as a naked act of capitalism.

9. When the water receded, apart from settlement of mud deposits remarkably there was no damage to the temple structure. TSI offered to pay for the cleaning of the temple as a goodwill gesture but stated unequivocally that the same is not an admission of liability in any way. Accordingly, with permission from the government of Vanar TSI began cleaning operations. However, as the month of August approached the Maha Surya Trust increasingly became impatient regarding the possession of the temple. TSI had employed substantial resources at the temple for cleaning purposes and was unwilling to either hurry up the cleaning process or hand over the site with the cleaning equipments. In addition, certain prominent members of the Suriyau community demanded monetary value from TSI for cleaning instead of letting TSI clean. TSI repeatedly made its stand clear that the cleaning activity is a good will gesture and not admission of guilt of not taking due care. In a statement released by Mr. Jay TSI announced:

> "While TSI respects the emotions of the Suriyau community it is made clear that TSI is cleaning the Maha Surya temple as a goodwill gesture and not as admittance of guilt. Even if the Surya festival is not organized this year it can be organized at some later date in the year or even next year. And TSI will not be hurried to hand over the premises midway through the cleaning process and no monetary compensation will be given to the trust for remainder of the cleaning process."

10. This fanned the rage of some sections of the Suriyau community and the trust issued several statements stating this is in violation of their fundamental rights.

11. The government of Vanar set up an enquiry against the incident. A committee headed by a Retired Judge of the High Court of Vanar was commissioned which opined *inter alia* that the reason for the landside was illegal mining in the north side of the flank. The report named Vinda Mining Co. responsible for the illegal mining in the area. Incidentally, Mr. Lobo is a nominee director on the Board of Vinda Mining Co. The report also stated negligence as the reason for the loss and stated that liability falls upon All Natural Resources Management Co. Pvt. Ltd. as the Government had imposed the duty to monitor flooding upon them.

12. In the meanwhile, the trustees of the Maha Surya temple, Maha Surya Trust, moved the Hon'ble High Court of Vanar against TSI seeking directions in writ proceedings against TSI for [a] being dispossessed of their access to the temple [b] payment of cost of cleaning of the temple, and [c] damages on account of inability to host the Surya festival. TSI challenged the maintainability of the writ petition. The Hon'ble High Court of Vanar dismissed the writ petition as non-maintainable vide order dated 7th December, 2011.

13. Alternatively, a civil suit was filed by the investors and stakeholders of the Vrindavan Homes in the Hon'ble Delhi High Court against TSI and all the directors individually for failing to exercise due care in preventing the occurrence of loss to

them. TSI submitted that no liability falls on either TSI or any of its directors. The Hon'ble Delhi High Court dismissed the suit vide order dated 22nd December, 2011.

14. Aggrieved by the said orders the Maha Surya Trust and Vrindavan Homes alongwith stakeholders appealed to the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India has issued notice to TSI and its directors to respond to these proceedings and tagged both the matters together. The questions for determination are broadly stated as follows:

(i) Whether the writ petition is maintainable and Maha Surya Trust entitled to any writ remedy?

(ii) Whether the Maha Surya Trust is entitled for payment of cost of cleaning of the temple and for damages on account of inability to host the Surya festival against TSI?

(iii) Whether any liability can be fastened upon the directors of TSI?

(iv) Whether TSI is liable to compensate Vrindavan Homes alongwith its stakeholders?

Date and Day	*Time*	*Event*	*Venue*

28th ALL INDIA MOOT COURT COMPETITON

10th - 12th March, 2012

PROGRAMME SCHEDULE

10th March, 2012 (Saturday)	4:00 p.m. to 5:00 p.m.	Tea & Registration	Auditorium Hall.
10th March, 2012 (Saturday)	5:00 p.m. to 6:30 p.m.	Inauguration	Auditorium Hall.
10th March, 2012 (Saturday)	6:30 p.m. to 7:30 p.m.	Draw of Lots	Room 101, Academic Block.
10th March, 2012 (Saturday)	7:30 p.m. to 8:30 p.m.	Orientation for participants	Room 101, Academic Block,
10th March, 2012 (Saturday)	8:30 p.m. onwards	Dinner	Auditorium Hall,
11th March, 2012 (Sunday)	07.30 a.m. to 08.30 a.m.	Breakfast	University Canteen,
11th March, 2012 (Sunday)	08:30 a.m. to 09:00 a.m.	Tea and Judges Briefing	Judges Lounge
11th March, 2012 (Sunday)	09:15 a.m. to 10:45 a.m.	1st Round (Preliminary Round) Session 1	Moot Court Rooms, Academic Block.
11th March, 2012 (Sunday)	11:30 a.m. to 01:00 p.m.	1st Round (Preliminary Round) Session 2	Moot Court Rooms, Academic Block
11th March, 2012 (Sunday)	1:00 p.m. to 2:30 p.m.	Lunch	Auditorium Hall.
11th March, 2012 (Sunday)	4:00 p.m. to 5:30 p.m.	Quarter Finals	Moot Court Rooms, Academic Block
11th March, 2012 (Sunday)	05:30 p.m. to 07:30 p.m.	Tea	Judges and Students Lounge
11th March, 2012 (Sunday)	8:00 p.m. Onwards	Dinner	Auditorium Hall.
12th March 2012 (Monday)	8:30 a.m. to 9:30 a.m.	Breakfast	University Canteen.

12th March 2012 (Monday)	10:00 a.m. to 12:00 noon	Semi Final Round	Moot Court Rooms, Academic Block
12th March 2012 (Monday)	12:00 noon to 1:30 p.m.	Lunch	Auditorium Hall.
12th March 2012 (Monday)	2:00 p.m. to 4:00 p.m.	Final Round	Auditorium Hall
12th March 2012 (Monday)	4:00 p.m. to 4:30 p.m.	High Tea	Auditorium Hall
12th March 2012 (Monday)	4.45 p.m. to 6.45 p.m.	Valedictory and Prize Distribution Ceremony	Auditorium.
12th March 2012 (Monday)	7:00 p.m. – 9:00 p.m.	Dinner	Auditorium.

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