

MOOT PROPOSITION

X, an Indian national by birth permanently migrated with his family to USA after schooling in India and acquired US nationality. Z of Indian origin, also proceeded to US for higher studies after schooling. Both of them met each other in University in USA in 2000 and became friends.

Both X and Z pursued studies for medical degrees in USA and became qualified doctors. On January 26 2006, X and Z solemnised a civil marriage in USA according to American laws, which was also beneficial to Z for acquiring American nationality by marriage to X. They did not start cohabiting as husband and wife in USA due to family reasons.

Due to reasons of family sentiments, X and Z again got married in India according to Sikh rites and ceremonies on December 26, 2007 at Jalandhar and soon thereafter returned to USA.

A daughter D was born to the parties in USA on April 13 2012 who became an American national by birth. X and Z set up a joint medical practice and soon acquired assets in USA. Both of them had professional practice licenses, bank accounts, funds, deposits, assets in USA. They filed joint income tax returns in USA, had US driving licenses, insurance policies and availed of other facilities or benefits available to all US nationals.

Due to matrimonial differences, X and Z took professional counseling as Z often accused X of being a wayward spouse who neglected family responsibilities and household affairs. X in turn was of the view that Z was overtly suspicious and suffered from a personality disorder because of which she exhibited abnormal behaviour with a violent temperament. Z was also accused of siphoning funds from the joint bank accounts of the parties and transmitting the same to private bank accounts in India for being used by the family members of Z for business purposes.

Z came to India with her daughter D on January 5 2016, to attend the wedding of her sister with a return ticket for March 5 2016. X also attended the wedding in India along with his parents from USA. However, Z refused to go back to USA complaining of domestic violence and despite best efforts of X, Z did not relent and X went back to USA alone. X was distraught to learn that Z was pregnant as she had conceived in USA but had not disclosed this fact to X. Z however claimed that she came to know of the pregnancy only upon coming to India.

X returned to USA and after failing in all family efforts to persuade Z to return to USA, X filed an emergency custody petition in USA, where he sought the return of his daughter with Z to USA. X served Z with the notice in India but Z did not appear and ex-parte interim orders were granted to X requiring Z to return to USA with D.

Meanwhile, on August 12, 2016 Z gave birth to a baby boy B in Jalandhar. Upon X rushing to India to meet his wife and son, the family of Z refused permission to meet and X had to return disappointed to USA. Meanwhile, Z invoked the jurisdiction of the Family Court, Jalandhar under the Guardians and Wards Act, 1890 (GWA) seeking guardianship and exclusive custody of

both the children D and B on the basis of the Hindu Minority and Guardianship Act, 1956 read with the provisions of the Guardians and Wards Act, 1890. Upon notice being served to X in USA, he moved an application under Section 9 GWA read with Order 7 Rule 11 CPC seeking dismissal of the guardianship petition on the ground that the children did not ordinarily reside in Jalandhar and hence, the Family Court exercising powers under the GWA has no jurisdiction.

The Guardian Judge upon a preliminary hearing dismissed the guardianship petition. Z filed an appeal in the High Court of Punjab and Haryana and obtained interim custody of D and B. Meanwhile, the US Court also proceeded with the matter and after offering opportunity to appear and Z defaulting in appearance, US Court granted interim custody to X with directions to return to USA for a final hearing. Armed with this US Orders, X moved the High Court of Punjab and Haryana in a habeas corpus writ petition for seeking directions of the return of Z with both the children to USA. The appeal of Z and the habeas corpus petition of X were clubbed to be heard together.

Z placed on record of the High Court proceedings of the US Court which she has obtained through US attorneys instructed only to observe the US Court proceedings but make no appearance.

The High Court dismissed the appeal of Z and upon the matters being heard by different Benches of the High Court due to changes in hearing as per change of roster, the habeas corpus petition was heard by a different Bench and judgment was reserved after detailed hearing.

Z appealed against the Orders of the High Court in the Supreme Court which held that the Guardianship petition could not have been dismissed summarily in a application assailing jurisdiction and directed that the Guardianship petition be heard and decided within six months. However, the Supreme Court directed that the Guardian Judge would await the decision of the High Court in the habeas corpus petition before finally proceeding in the matter.

The matter stands with the children of US parents being without valid passports. Issues of nationality of the son B are raised as under the Citizenship Act, 1955 he is not entitled to Indian citizenship being born to US parents. The US passport of the daughter D has lapsed, but not renewed. The mother Z is still a US national. The Constitution of India and Citizenship Act bar dual nationality. The welfare of the children is questioned by seeking reliance on the provisions of the United Nation Convention on the Rights of the Child, endorsed by India and pursuant to which the provisions of the Juvenile Justice (Protection of Children) Act, 2015 was amended.

Argue for X or Z and support with case law as India is not a signatory to the Hague Convention on the civil aspects of International Child Abduction, 1980 and Interparental child removal is not an offense under any Indian codified law.

RULES

Intra Institute Moot Court Competition – 2018

1. General

1.1 Dates and Venue:

The Intra Institute Moot Court Competition 2018 will be held on 9th-11th April, at the Army Institute of Law, Sector 68, Mohali, Punjab.

1.2 Team Prerequisites:

- (a) The language of the Competition shall be English.
- (b) The Team shall consist of maximum of 2 members.

1.3 Registration:

- (a) Participation for the Competition is strictly by Registration (First-cum-first-serve basis). Minimum of 16 teams are required for the competition to take place, registration of students can be done by giving their names to the Moot Court Society Convenor – Dr. Bajirao Rajwade and Ms. Jasleen Chahal.

NOTE:

In case of inability of a teammate to appear for any reason, team shall be automatically disqualified. Composition of team cannot be changed.

1.4 Dress Code:

The dress code for oral rounds shall be advocate's attire, i.e. Black and White combination including Blazer and Formal Shoes. The participants are requested to dress up in Western Formals for the other events taking place during the Competition.

1.5 Written Submission:

The following requirements for written submission must be strictly followed. Non-conformities will lead to disqualification:

- (a) Each team must prepare written submissions for both parties to the dispute.
- (b) Once the written submissions have been submitted, no revision, supplements or additions will be allowed.

- (c) The written submissions shall conform to the standards mentioned below:
- (i) Written submissions shall be printed on white A4 size paper.
 - (ii) The font and size of the text used in all parts of the written submissions (except the covers) shall be in Times New Roman, 12-point and footnotes shall be in Times New Roman, size 10.
 - (iii) The text in all parts of each written submission shall have 1.5-line spacing except the text of footnotes and headings which shall be single spaced.
 - (iv) The written submissions shall consists of:
 1. Cover Page
 2. Statement of Jurisdiction
 3. Arguments Advanced (Not exceeding 5 pages) and Prayer (Not exceeding 1 page)

Note: Last Date of Memorial submission is 5 April 2018 12:00PM

1.6 The cover page of the written submissions must state the following:

- (a) The Case Title
- (b) Identity of brief as Prosecution or Defense
- (c) The Cover Page of the written submission for the Prosecution shall be in **Blue** and the Defense shall be in **Red**.

1.7 ROUNDS

There will be a total of two Preliminary rounds of arguments, one Quarter Final Round; one Semi-Final Round and consequently one Final Round.

A. PRELIMINARY ROUND

a. Registration and Draw of Lots will be held on 09th April 2018, and the teams are requested that in all probability to kindly report latest by 1400HRS. MCS retains the right to choose if the team is not present during registration.

b. There will be two preliminary rounds of argument per team, once as Prosecution and other as Defense.

c. Speaker 1 and Speaker 2 to remain the same throughout the Competition.

d. Teams will be provided with their opponent team's memorials after the conclusion of draw of lots.

e. Preliminary rounds will be held on 10th April 2018.

f. Top eight teams will qualify for the quarterfinal rounds. The qualification to the quarterfinals will be based on:

In case of a tie, teams with the highest aggregate of scores in the Preliminary rounds shall be considered to be the winners.

. **B. QUARTER FINAL ROUNDS**

. a. The Quarter Final Rounds would also take place on 10th April 2018.

. b. Qualification to the Quarter Final Rounds will be based on scores given by judges. In case of a tie in the preliminary rounds, teams scoring the highest points will move into the Quarter Final Rounds.

. c. The teams will be provided their opponent's memorial after the declaration of preliminary results and the draw of lots for the Quarter Final Rounds. In case of a tie the win points will be considered for qualification.

. **C. SEMI FINALS AND FINAL ROUND**

. The Semi-Finals and Finals will be knockout rounds.

. Semi- Finals and Finals will be held on 11th April 2018.

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. **1.8 TIME AND MARKING SCHEME FOR ORAL ROUNDS**

. **A. PRELIMINARY ROUNDS AND QUARTER FINAL ROUNDS**

. a. Each team will get a total of 25 minutes to present their case.

. b. Each speaker should speak for a minimum of 12 minutes.

B. SEMI FINAL ROUNDS AND FINAL ROUND

- . a. Each team will get a total of 30 minutes to present their case.
- . b. A speaker shall not use more than 15 minutes of the total time.
- . c. This will be a knockout round.

C. MAXIMUM TIME ALLOTTED

- . The maximum time provided would include the time that each team may want to reserve for their rebuttal/sur-rebuttal. At the commencement of each session the team shall notify the Court Officer as to the division of time between the 2 speakers (including rebuttal/sur-rebuttal).

E. MARKING CRITERIA FOR ORAL ROUNDS

- . 1. Knowledge of Law (30)
- . 2 Application of Law to facts (40)
- . 3. Ingenuity and Ability to Answer Questions (10)
- . 4. Style, Poise, Courtesy and Demeanor (10)
- . 5. Time Management and Organization (10).

1.9 SCOUTING

- . a. Teams will not be allowed to observe the orals of any other team till the time the team is declared to have advanced to the next round. Scouting is strictly prohibited. Scouting by any of the teams will result in disqualification.
- . b. Any team can file a written complaint with the MCS, regarding a case of scouting. The decision of the MCS will be final.

2. MISCELLANEOUS

2.1 GENERAL ETIQUETTE:

- a. The participants are expected to behave in a dignified manner and not to cause any unnecessary inconvenience to the organizers. Deference to the Judges of the Moot Court

Competition is expected to be maintained within and outside the Court Hall.

b. The Organizers reserve the right to take appropriate action for any unethical, unprofessional and immoral conduct.

2.2 DELAYS IN APPEARANCE/PRESENTATION

a. If a team scheduled to take part in a round does not appear within 10 minutes of the scheduled time, the other team shall be allowed to submit ex-parte.

b. The criteria of rebuttals shall not be considered in such cases for evaluation in place of which an average for the same would be given on the basis of the marks scored by such team on other criteria.

2.3 DISCLAIMER

The Material in the Moot Court proposition is not intended to and does not attempt to resemble any incident or any person living or dead. All material in the problem is fictitious and any resemblance to any incident or person, if any, is not intended, but merely co-incidental.

2.4 INTERPRETATION OF THE RULES:

- a. The Organizer's decision as regards the interpretation of rules or any other matter related to the competition will be final.
- b. If there is any situation, which is not contemplated in the rules, the Organizer's decision on the same shall be final.
- c. The Organizer's reserve the right to vary, alter, modify, or repeal any of the above rules if so required and as they may deem appropriate at anytime
- d. Any dispute arising in the moot court rooms during the rounds would be at the discretion of the presiding officer of the respective court room.
- e. In any kind of conflict, the decision of the Principal, Army Institute of Law, Mohali would be final.

