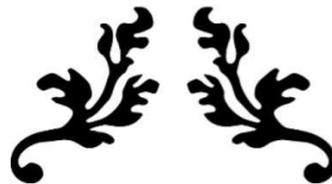


**ARMY INSTITUTE OF LAW AND MALHOTRA & MALHOTRA ASSOCIATES
CHILD LAW NATIONAL ONLINE MOOT COURT COMPETITION
June 17th- 18th, 2021**



**Malhotra & Malhotra Associates, Chandigarh
And
Army Institute of Law, Sector 68, Mohali.
Ph.: 0172-5095336-338 Fax : 0172-5039280
Website : www.ail.ac.in E-mail : ailmohalimcs@gmail.com**



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INVITATION

Army Institute Of Law, Mohali and Malhotra & Malhotra Associates, Chandigarh, announces Child Law National Online Moot Court Competition to be held virtually on 17th-18th, June, 2021.

Over the past two decades there has been a sharp rise in cases relating to child abduction, custody, maintenance, adoption, surrogacy and family related issues of Non-resident Indians (NRIs). Keeping this in view the present moot court competition has been designed with an endeavour to provide, facilitate and expose the student community towards these upcoming issues. The moot proposition is highly unconventional and challenging, thus will give an opportunity to students to research and learn how conflicting child custody litigations can be initiated and how to deal under separate legal systems of different nations.

It gives us immense pleasure to invite a team from your esteemed institution to participate in the moot competition where a challenging moot proposition awaits for them to show their mooting skills and legal acumen.

Attached herewith are the moot proposition, the schedule of events, and rules of the moot. We look forward to receiving a positive response from your Institution. Kindly confirm your participation via provisional registration by May 11th,2021.

In case of any query regarding the competition, you may write to us at ailmohalimcs@gmail.com.

Regards

Malhotra & Malhotra Associates, Chd.
And
Moot Court Society, AIL, Mohali.

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SCHEDULE

1. Release of proposition and rules: **May 1st, 2021**
2. Deadline for provisional registration: **May 11th, 2021.**
3. Deadline for submission of registration form and the fee: **May 15th, 2021**
4. Deadline for seeking clarifications to proposition: **May. 21st, 2021**
5. Release of clarifications: **May 25th, 2021**
6. Deadline for submission of Soft-copy of the memorial: **June 3rd, 2021**
7. Declaration of result of Memorial on or before: **June 10th, 2021**
8. Rounds (via video conferencing): **June 17th – 18th, 2021**
 - **Octa-Quarter finals: June 17th, 2021**
 - **Quarter finals: June 17th, 2021**
 - **Semi – finals: June 18th, 2021**
 - **Final Round: June 18th, 2021**

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MOOT PROPOSITION

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.

7. 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.
8. 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.
9. The Guardian Judge upon a preliminary hearing dismissed the guardianship petition on the issue of maintainability of the petition, as the children were not ordinarily resident in Jalandhar. 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 against the order of Guardian Judge dismissing the Guardianship petition on grounds of jurisdiction and the habeas corpus petition of X were clubbed to be heard together.
10. 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.
11. 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 an 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.
12. 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 in its judgment in the Habeas Corpus petition directed Z to return to USA with the two children upon X obtaining a mirror order from the Court in USA with the following stipulations to be made a part of the modified US order before Z could be directed to return to USA with the two minor children D and B. The conditions were as follows:

- a) The minor children shall remain the interim custody of Z till the final determination of custody and guardianship is made by the competent Court in USA and till then, the minor children would not be separated from Z and would reside with Z in an independent apartment to be provided by X with all amenities, facilities and necessary items of daily use.
- b) X will not pursue any criminal proceedings for child removal nor initiate any other proceedings for any penal action against any of her family members.
- c) X will only have visitation rights and will not reside with Z, till such time a shared/joint parenting plan is prepared by consent of parties or the US Court agrees to joint custody.
- d) X will provide maintenance/support and other facilities till Z returns to work and earns independently and will also provide financial assistance till Z gets legal aid or support.
- e) X will create an escrow account of 25,000 USD in US for ensuring compliance.

X obtains a mirror order from the US Court incorporating all the above conditions and the High Court directs Z to return to USA with B & D. However, Z does not comply with the order.

13. Meanwhile, the Family Court decides the matters in 6 months on merits and holds that the children deserve to be brought up in USA considering the rights of children and issues of Parental Alienation Syndrome. Holding children to be US nationals and considering the best interest and welfare of the children, the Family Court suggests joint parenting in US. On merits, the Family Court decides that singular custody with mother alone is not favorable. This decision is challenged by Z in the High Court and by a detailed decision, the appeal of Z is dismissed and taking note of the decision of the High Court in the Habeas Corpus petition, it is reiterated that the welfare of the children lies in returning to USA to be brought up by both parents. It is held that the children being US nationals, US Courts being the jurisdiction of closest contact, and since Z had been granted protection and facilities in US, she ought to go back with the children.

14. Both the decisions of the High Court in Habeas Corpus and appeal jurisdiction are challenged by Z in Supreme Court of India on issues of merits and maintainability & are to be heard together.

15. 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 X 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. The mother Z seeks reliance on the maternal preference rule to claim singular custody of minor children and assails the decisions on the grounds of being a victim of domestic violence and persecution in US on account of child removal being a federal offence. It is pleaded that parental custody is not child removal under any law in India.

16. 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, as also that children had settled in India. It was urged that relocation in pandemic times is not in the best interest and welfare of minor children, since they were more safe in India than in the US. Safety in US due to corona virus was at high risk and children having taken roots in India, the scenario had changed after the decisions. It was further urged that despite mirror orders, the safety and security of Z could not be guaranteed. Z in turn urged that being Hindu by religion, her matrimonial dispute should be adjudicated by the Courts in Jalandhar. X urged that all issues of matrimonial discord, child custody and division of matrimonial property could be settled in US. However, Z insisted on a division of matrimonial assets and urged that a joint parenting plan be prepared before leaving India. The matter is now to be decided finally by the Supreme Court of India.

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RULES

1. General

- a. The Army Institute of Law and Malhotra & Malhotra Associates Child Law National Online Moot Court Competition shall be administered by Army Institute of Law, Sector 68, Mohali.
- b. The Competition is scheduled to be held on June 17th – 18th, 2021 in an online format.

2. Team Pre-Requisites:

- a. Only one team from each participating college shall be registered for the competition. Each team shall comprise of either three members (two Speakers and one Researcher) or two members (two Speakers) only.

Note- No faculty member, coach, observer or a designated observer or fourth member is allowed to join neither the video-conferencing nor the chat room during the session.

- b. Participation is restricted to bona-fide law students either enrolled in the 3-year LL.B course or the 5-year integrated law course.

3. Language

English shall be the language of the Competition; all oral and written submissions are required to be made in English only.

4. Structure of the Competition

The Competition shall comprise of two stages:

a. Stage I: Memorial Elimination Round

This shall be open to all teams which register for the Competition. The results of this round shall be based on evaluation of memorials and shall determine the teams which will proceed to Stage II.

b. Stage II: Oral Rounds

The teams who qualifies Stage I shall be eligible to participate in the Oral Rounds which will comprise of Octa-Quarter Finals, Quarter Finals, Semi Finals and Finals.

Note:

- If upto 28 teams register, then Top 8 teams will go for Quarter Final. No Octa-Quarter round will be held.
- If more than 28 teams are registered for the said competition then Top 16 teams will go for Octa-Quarters.

5. Registration

- a. Only 36 teams will be registered to participate in the competition on first-come-first serve basis.
- b. The teams should provisionally register by May 11th, 2021 **through** sending an e-mail to ailmohalimcs@gmail.com (with subject Child Law Moot Registration).
- c. Once the provisional registration is confirmed, **Registration Fee: Rs 2000/- (non-refundable)** for each participating team, is to be **submitted by May 15th, 2021**, through online transaction by clicking on the link
 - <https://www.onlinesbi.com/sbicollect/icollecthome.htm?corpID=593474>
 - The scanned copy of the receipt (of payment of Rs. 2000/- paid using online mode) along with the duly **filled registration form** and scanned college Id card should be sent on or before **May 15th, 2021**, via email to ailmohalimcs@gmail.com, **with following details:**

Details of Payment of Registration Fee:

Transaction ID: _____ Bank: _____ Date of payment: _____

Teams are required to send the scanned copy of their Institute's Id card with this form.

- d. No change in the names of the participants shall be permitted unless the same has been communicated to the organizers a week prior to the event in exceptional circumstances only after due proof has been attached by the participating college.

6. Dress Code

The dress code for the oral rounds shall be advocate's attire, i.e. Black and White combination including Blazer (optional) and Formal Shoes. The participants are to dress up formally for the oral rounds.

7. Memorials

The following requirements for memorials must be strictly followed. Non-conformities will be penalized:

- a. Each team must prepare memorials for both parties to the dispute.
- b. Once the memorials have been submitted, no revision, supplements or additions will be allowed.
- c. Each team must send the Soft copy of the Memorial in Microsoft Word Document format (doc/.docx). via email [to aimohalimcs@gmail.com](mailto:to_aimohalimcs@gmail.com) by June 3rd, 2021, **by 11.59 p.m.**
- d. Please note that **NO HARD COPIES ARE TO BE SUBMITTED.**
- e. The Cover Page of the memorials for the Appellant shall be in **Blue** and the Respondent shall be in **Red**.
- f. Memorial has to be submitted by the deadline i.e. **June 3rd, 2021, by 11.59 p.m. Any memorial received after the deadline shall not be considered for the competition.**
- g. The memorials which are submitted for the memorial elimination round shall be considered to be final.

The written memorials shall conform to the standards mentioned below:

- a. Written submissions shall be on white A4 size.
- b. 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.
- c. 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.
- d. The arguments with appropriate citations shall be contained in the pleadings. The teams shall follow the 20th edition of the Bluebook mode of citation.
- e. The memorial as a whole shall not exceed 45 pages including Cover Page and Table of Contents. The Pleadings (Arguments Advanced) shall not exceed 30 pages. Non-compliance shall result in a penalty of 2 points for every additional page.
- f. Memorials must have a one-inch margin on all sides of each page.

The memorials must contain:

- Cover Page
(The cover page of the memorials must state the following:
The Case Title and Identity of brief as Appellant and the Respondent)
- Table of Contents
- Table of Abbreviations
- Index of Authorities
- Statement of Jurisdiction
- Statement of Facts
- Issues Raised
- Summary of Arguments
- Arguments Advanced
- Prayer
- Appendix (Optional)
- Exhibits (Optional)

Marking Criteria For Memorials

- Knowledge of facts and law (20)
- Proper and articulate analysis (20)
- Extent and use of research (20)
- Clarity and Organization (20)
- Citation of sources (10)
- Grammar and Style (10)

Note:

- a. The identity of the Institution or the members shall not be revealed anywhere in the memorial.
- b. Violation of this provision shall result in disqualification. The decision of the organizers will be final.
- c. It is not mandatory to submit a compendium, but if the team do so it is mandatory to do so in a pdf format. The team is required to also make an index for the compilation (at the beginning of the file/folder). The compendium should not exceed 50 pages.

8. Oral Rounds

Octa-Quarter and Quarter-Final Rounds

- a. Each team will be allotted 30 minutes to present their case, this shall include time allotted for arguments advanced, rebuttals and sur-rebuttals.
- b. The division of time between the two speakers is up to the discretion of the team; however, each speaker must speak for a minimum of 12 minutes.

- c. Before the start of the Oral Round, the team must inform the manner in which the team wishes to divide its total time between its (i) first speaker, (ii) second speaker, and (iii) the rebuttal (for Appellant) or sur – rebuttal (for Respondent).
- d. The oral arguments should not extend beyond the issues in the memorials.
- e. The researchers are also required to attend the oral rounds.
- f. Only after being allowed by the moderator a speaker shall unmute his mic and speak. The rebuttal round proceeding shall be initiated once the moderator informs the team about the commencement of the time limit. Only after being allowed by the moderator a speaker shall unmute his mic.
- g. Octa- Quarter round, scoring shall be done and top eight teams will qualify for quarter-final round.
- h. The oral rounds shall be evaluated out of 100 marks and the basis for evaluation shall be as follows:
 - Knowledge of Law 20 marks
 - Application of Law to Facts 20 marks
 - Ingenuity and Ability to Answer 20 marks
 - Style, Poise, Courtesy and Demeanor 20 marks
 - Time management 10 marks
 - Organization 10 marks
- i. In case of a tie, the team with a higher score in Written Submission shall qualify.
- j. The meeting Id & password and timings will be informed to the qualifying teams through email/whats app.
- k. Quarter Final round will be knock-out round and four teams will qualify for semi-final round.
- l. The winning team of each round shall proceed to the Semi-Finals. In case of a tie, the team with a higher score in Written Submission shall qualify.

Semi Final Rounds

- a. Semi-final round would be conducted via video-conferencing/online platform which will be intimated to the participants.
- b. Each team shall get a total time of **40 minutes** to argue subject to a **minimum of 15 minutes per speaker**. The said 40 minutes shall include maximum 3 minutes for the Rebuttals.

Final Round

- a. The final round would be conducted via video-conferencing/ online platform which will be intimated to the participants.
- b. Each team shall get a total time of **45 minutes** to argue subject to a **minimum of 18 minutes per speaker**. The said 45 minutes shall include maximum 4 minutes for the Rebuttals.

9. Awards

- a. **Best Team** – Rupees 30,000/-
- b. **Runner Up**– Rupees 20,000/-
- c. **Best Memorial**– Rupees 10,000/-
- d. **Best Student Advocate** – Rupees 10,000/-

All winners will get E-Certificates.

All Participants will get participation E-certificates.

E-Certificates shall be e-mailed to the teams within fifteen days from the event.

10. Anonymity

- a. Student Counsel may introduce him/herself to the court in the usual manner and may also state their names. However, the team's college affiliation shall not be indicated to the judges at any time.
- b. Further all team members shall refrain from identifying a team's college at any time and in any manner, including, but not limited to, wearing any identifying items (such as college clothing, ties, badges, patches, or pins) or carrying/showing material (such as books with a college logo or college seal etc.).

11. General Etiquette and Interpretation of the Rules:

- a. The participants are expected to behave in a dignified manner and not cause any unnecessary inconvenience to the organizers. Deference to the Judges of the Moot Court Competition is expected to be maintained on the virtual Court room.
- b. The Organizers reserve the right to take appropriate action for any unethical, unprofessional or immoral conduct.
- c. The Organizer's decision as regards the interpretation of rules or any other matter related to the competition will be final.
- d. If there is any situation, which is not contemplated in the rules, the Organizer's decision on the same shall be final.
- e. 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 any time before and/or during the

competition.

- f. 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.
- g. In any kind of conflict, the decision of the Principal, Army Institute of Law, Mohali would be final.

12. 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.

AIL Moot Court Society Coordinator:

Dr. Bajirao Rajwade

Event Convenor:

Dr. Puja Jaiswal

Event Student Coordinators:

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REGISTRATION FORM

Note –Soft Copy Of The Form To Be Submitted.

Teams are required to send the scanned copy of their Institute's Id card with this form

1. Name and Address of Participating College/University:

2. Contact Number of College: _____

3. Name of Head of the Institution (Principal/Director)_____

Contact Number: _____

4. Name of Faculty Coordinator of Institute's MCS _____

Contact Number: _____

5. TEAM DETAILS:

Name of Counsel I:_____

Phone No._____

E-mail:_____

Gender:_____

Name of Counsel II:_____

Phone No._____

E-mail:_____

Gender: _____

Name of Researcher:_____

Phone No._____

E-mail:_____

Gender: _____

6. Details of Payment of Registration Fee:

Transaction ID:_____ Bank:_____

Date of Payment:_____