



# SYMBIOSIS LAW SCHOOL, NAGPUR

Constituent of Symbiosis International (DEEMED UNIVERSITY)

Established under Section 3 of the UGC Act 1956

Re-accredited by NAAC with "A++" Grade – Awarded Category – I by UGC

## CRITERIA 7.2.1\_SLS-NGP\_Best Practices\_2021 - 2022.

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Director  
Symbiosis Law School  
Nagpur



## **SYMBIOSIS LAW SCHOOL, NAGPUR**

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Founder: Dr. S.B. Mujumdar, M.Sc. Ph.D.

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### **Title of Practice: SKILLED-BASED LEARNING IN INTERNAL COMPONENTS**

(Activity with a practical learning experience)

#### **Background:**

Law being a professional field, it is not enough for the students to know the nuances involved in the bare provisions. Students need practical insight. Therefore, learners must possess specific kind of skill set which can be acquired through various methods. One of the methods which is adopted at SLS, Nagpur is inculcating skill-based learning through internal components. Deviating from mundane question answer pattern various internal components are devised to test their field knowledge, few of such practices are IRAC Analysis, Opinion Drafting, Legal Advice, Application based Open-Book Exam etc. Students getting trained in regular classes are also trained through the methodical internal assessments.

#### **1) IRAC ANALYSIS:**

SLS, Nagpur strives for providing the best analytical practices to ensure utmost participation of the students thereby honing their professional skills.

**Keywords:** – Analytical skills, decision-making, communication skills, far-sightedness, promptness.

#### **Objectives of the Practice:**

IRAC Analysis stands for issue, rule, analysis, and conclusion. It is the way to answer the question of the examination. The objective behind IRAC is that students should be able to critically evaluate and analyze the question presented before them. It includes detecting several issues, stating the rules of law, applying the law to the facts, and then reaching on conclusions.

#### **The Context:**

The idea of IRAC is that students go through an exam fact pattern, spot as many issues as they can, state the rules of law, apply the law to the facts, then arrive at conclusions. The IRAC method is a framework for organizing your answer to a law related question. The basic structure is: Issue, Rule, Analysis, and Conclusion.

#### **The Practice:**

First, the main issues to be addressed are stated. Next, the applicable rules of law or legal tests to be used in analyzing the issue are explained. The rule of law or legal test is applied to



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the facts. Note that the facts are not merely repeated; rather, they are linked to elements of the rule or test as evidence to explain and justify the ultimate conclusion.

The general rule of law to be applied in analyzing the next issue is stated. The rule is applied to the facts. Note that the facts mentioned are those that relate to the definition of apparent authority. Conclusion for the second issue. An overall conclusion is reached as to the issue of liability.

### **Evidence of Success:**

IRAC Analysis have displayed a good success ratio. The students have been participative in this activity. They also introduced certain innovate thinking coupled with detailed research which was expected. Certain students faced difficulties with respect to analytical thinking and in articulating their thoughts because lack of awareness which restricts them to exhibit their complete potential despite having logical reasoning.

### **Problem Encountered and Resources Required:**

The resources required to implement the practice are research articles. The problems encountered were that the students had to limit self to the legal issues only. Since it was the first time that they were attempting IRAC analysis, it was difficult for them to comprehend the consequences of their views which they expressed in the analysis.

## **2) OPINION DRAFTING**

As budding lawyers, students understand the importance of opinion formation pertaining to a specific case as counselling & consultations is part and parcel of legal profession. SLS, Nagpur encourages the students to have opinions on the laws that are taught to them. It further encourages them to critically analyze these laws and to suggest the necessary changes.

**KEYWORDS:** Analytical skills, decision-making, communication skills, far-sightedness, Research skills and writing skills.

### **Objectives of the Practice:**

The primary purpose of a legal opinion is communication of advice to either a lay man or professional client. It is therefore of the utmost importance that it is clear and in plain language which cover all the relevant aspects of the opinion sought.

### **The Context:**

Opinion is a judgment, viewpoint, or statement about matters commonly considered to be subjective and generally is a result of interpretation of law. Opinion may differ from person to person and is purely based on the interpretation of the professional.



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### **The Practice:**

Clients approach the experts for opinion and bank heavily on the same in taking crucial decisions in running their businesses smoothly and with a view to avoid unnecessary litigations in future. A good legal opinion must consist of three essential elements namely facts, questions and reasoned answers.

While drafting a legal opinion, students should always keep in mind that the matters being pointed out in opinion are relevant to the case under consideration. They should always consider additional considerations and foresee the consequences but the opinion should not go irrelevant.

### **Evidence of Success**

The purpose of this practical internal assessment was to develop analytical and research skills, along with the benefits and drawbacks as its integral part, which the assignment was able to cater. The assignments submitted by students are proof for the same. Opinion drafting will develop their skill when they will be dealing in real life situations.

### **Problem Encountered and Resources Required**

As practical knowledge of law is limited for students at this stage they lacked the necessary comprehension. At the initial level they will be needing help through their internships to increase the practical exposure.

### **3) LEGAL ADVICE**

SLS, Nagpur encourages the students to form an opinion on the facts of the case narrated to them by application of the statute which is being taught to them.

**KEYWORDS:** – Analytical skills, decision-making, communication skills, far-sightedness, promptness.

**Objectives of the Practice:** Its core aim is to protect the rights and interests of the people. It helps the students to form an opinion and also makes them aware about the concept of legal aid.

### **The Context:**

The drafting of legal advice as an internal assessment component makes student attain the two-A guide on the framework is mentioned below: -



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- a) Awareness: Students are empowered when they are aware of their rights and learn how to exercise them in a legal manner
- b) Assertion: Encourage those people to assert those rights as a “right” and not as a favour.

### **The Practice:**

Client satisfaction plays a significant role when they approach the legal forums to get their dispute redressed. Whenever a law student works on a particular case, they bring various out-of-the-box ideas and perspectives to the table that can significantly impact the outcomes. Hence, a legal advice internal assessment promotes professionalism and develop skill based learning in the field of law.

### **Evidence of Success:**

The purpose of this practical internal assessment was to develop analytical and research skills, along with the benefits and drawbacks as its integral part, which the assignment was able to cater. The assignments submitted by students are proof for the same. Legal advice mentions both advantages and disadvantages, students got to know that every coin has two sides. In future when they will be dealing in real life situations this base foundation will support them immensely.

### **Problem Encountered and Resources Required:**

Legal Analysis and Advice is a mind-set that helps students develop active legal and logical reasoning so that they can identify problems and find solutions through existing laws. But as practical knowledge of law is limited for students at this stage they lacked the necessary comprehension. At the initial level they will be needing help through their internships to increase the practical exposure.

## **4) APPLICATION BASED OPEN-BOOK EXAM**

SLS, Nagpur encourages the students to enhance their analytical and research skills through open-book exam in internal assessment thereby honing their professional skills.

**KEYWORDS:** Critical thinking, Analytical skills, Decision-making, Research skills, Application oriented.

### **Objectives of the Practice:**

Open book exams are designed in a manner that the questions therein cannot be directly answered based on any text found in the reference materials. Students are allowed to carry sufficient amount of materials to the exam hall. Open book exams are one of the most ideal ways to know where to find knowledge and how to apply it on a given problem which is also one of the main objective of open-book examination. This helps in assess skills of reflection



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and critical thinking.

### **The Context:**

An "open book examination" is that in which students are allowed to refer to either class notes and summaries or a "memory aid", textbooks, or other approved material while answering questions. It requires student to answer in more analytical and critical ways thus encouraging high-order thinking skills in students as compared to closed book or traditional exams.

### **The Practice:**

Open book exams offer an intricate set of tricky, conceptual and case study-based questions. They calibrate the actual problem-solving skills and dynamic memory of students. Such exams trigger critical thinking where students focus on understanding and analyzing concepts which can improve skill based learning.

### **Evidence of Success:**

The students have been. They also introduced certain innovate thinking coupled with detailed research which was expected. Students demonstrated their reasoning skills confidently enhancing their advocacy skills and research proficiency. Certain students faced difficulties with respect to creative thinking and in articulating their thoughts because lack of awareness or confidence which restricts them to exhibit their complete potential despite having logical reasoning. Thus, it indicates that open-book exam help to achieve the aim of enhancing reasoning, far-sightedness abilities to a major extent.

### **Problem Encountered and Resources Required**

Bare Acts, relevant books were required to be brought during open-book exam. The ability to research in a time-bound manner is one of the issues that has been encountered. Students shared a similar viewpoint since they were unfamiliar with the issues that existing laws were facing. For students who struggled with reading, this assignment was a challenge.



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**SYMBIOSIS**  
**LAW SCHOOL, NAGPUR**

**COMPETITION LAW**

**The IRAC Analysis**

**ASSESSMENT 1**

**SUBMITTED TO:**

**Dr. ADITEE GODBHOLE**

**SUBMITTED BY:**

**SAAYA SURESHBABU**

**PRN 21010441025**

**LLM 2021-22**

**SEMESTER: 2nd Semester**

**Issues:**

Is the California Dental Association (CDA), a non-profit professional organization, within the authority of the Federal Trade Commission? Is an abridged rule-of-reason examination sufficient to support the judgment that the CDA's advertising prohibitions infringed on the Sherman and Federal Trade Commission Acts?

**Rule:**

Even in the absence of a thorough market study, a blatant price and output constraint demands some competitive reason. Horizontal agreements among rivals to refuse to discuss pricing or withhold a specific requested service do not require a detailed industry analysis to show their anticompetitive nature. An observer with even a rudimentary grasp of economics may determine that the arrangements in question would have anticompetitive effects on customers and markets based on a simplified or "quick-look" analysis conducted under the rule of reason. When the high probability of anticompetitive consequences can be quickly determined, quick-look analysis wins the day.

**Analysis:**

CDA's strongest document evidence that the advertising constraints are processed by which companies includes evidence that:

- (1) full transparency of prices tries to correct for information asymmetry between dental professionals and health care workers overpricing;
- (2) disclosure of prices allows for easier comparative shopping by price-conscious consumers; and
- (3) the ban on across-the-board discount advertisements prevents dentists from misleading their patients into believing that their services are cheaper.
- (4) Quality advertising limits may make it more difficult for dentists to influence their patients' perceptions of care quality. Expert testimony and anecdotal information from individual dentists operating in California often back up these empirical points.

A review of the data shows that CDA easily surpasses the factual evaluation now at the centre of the debate, if the advertising restrictions are net procompetitive or anticompetitive.

There is no antitrust violation under rule-of-reason analysis since CDA's advertising limits do not damage consumer welfare. In other words, the FTC has not been able to show that there is a net unfair competition effect.



In light of our decision, we must now consider whether the matter should be remanded so that the Commission can hear more evidence as to whether CDA's restrictions are anticompetitive under the rule of reason. In their submissions, both parties argued that the current record is sufficient to assess the constraints under the rule of reason. The FTC, on the other hand, claimed that if we find that the record does not support their judgement that the limits are anticompetitive under the rule of reason, we should remand the case so that the commission can evaluate more empirical evidence.

At oral argument, FTC counsel noted clearly that the complaint counsel who litigated the matter below did not believe it was necessary to complement the existing economic literature mentioned by the FTC with the testimony of an expert economist witness whom the FTC had designated during discovery. The economic literature referenced in the opinion below, according to the FTC, provides us with an adequate record to assess whether significant evidence supports the Commission's finding that CDA's policies are anticompetitive. The CDA counters that the FTC could have entered empirical evidence into the record earlier in the procedures, and therefore letting the FTC a "second bite at the apple" is inequitable.

**Conclusion:**

The FTC exercised its authority over the CDA wisely. Under an abbreviated rule of reason analysis, substantial evidence supports the FTC's determination that the CDA's advertising regulations, as applied to truthful and non-deceptive advertisements, violate Section 1 of the Sherman Act and Section 5 of the FTC Act. As a result, we AFFIRM the FTC's decision and ENFORCE its cease-and-desist order.

I disagree.

The bulk of people have already covered the history and background of this issue, so I won't go over it again.

I disagree because I feel the California Dental Association (CDA) is a non-profit organisation that does not engage in commercial activities. Rather, the CDA makes services that can best be offered through a group available to its members in order to receive the greatest price and service from outside business organisations, such as insurance firms, equipment suppliers, telephone services, auto leasing, and finance. The CDA has nothing to do with the dental profession's rivalry. As a result, the California Dental Association is not subject to the Federal Trade Commission's jurisdiction. 405 F.2d 1011, Community Blood Bank of Kansas City Area, Inc. v. F.T.C. (8th Cir.1969). In the commercial world of the F.T.C., these non-

profit membership organisations have no place. The majority appears to be basing their F.T.C. jurisdictional decision on "pecuniary gains" that do not arise from the Association's business but rather from individual members' actions in group procurement to secure the best price from outside vendors competing for their business. The CDA members are actual consumers of competitive items given by their organisation.

Even if the F.T.C. had jurisdiction to regulate the CDA, the majority's approval of the F.T.C.'s fast look analysis of the Rule of Reason cannot be justified. The CDA provisions as presented to the F.T.C. are not per se anti-competitive in the dentistry profession, nor are they sufficiently anti-competitive on their face to avoid a full-fledged rule of reason investigation.

What the CDA was aiming to achieve with its advertising guidelines was not a price restraint. The CDA was aiming to guard against misleading or unreliable advertising by its members as part of its attempts to self-monitor the dentistry profession in its relationships with the public. The CDA was watching to see if dentists who wanted to offer discounts had to fully disclose the nature of the discounts to the public. Price fixing or a ban on non-deceptive advertising are not part of full disclosure. The advertising rules of the CDA's Code of Ethics do not impact on any member's freedom to advertise as long as the advertisement is not "false or misleading in any material regard." If Section 10 of the Code is applied incorrectly to a member's advertising, the decision can be appealed to the CDA Judicial Council, and then to the courts of the State of California.

The majority agrees that, at the very least, a Rule of Reason inquiry should be conducted into the FTC's anti-competition concerns. They also believe that the Rule of Reason is the "rule," with the rapid look being an exception. Despite this, they strive to satisfy the use of the exception in the absence of any bare constraints. Furthermore, the majority identifies a competitive restriction without the assistance of any of the economic principles that should be applied to a complete market power study.



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**SYMBIOSIS  
LAW SCHOOL, NAGPUR**

**INTERNAL ASSESSMENT- III**

**Legal Opinion Drafting**

**SUBMITTED BY**-AADIT VED

**COURSE**- LLM (criminal and security law) [SEMESTER-2]

**SUBJECT**- Police Law and Administration

**PRN NO.**- 21010441028

**SUBMITTED TO**- Dr.Aarti Kalnawat



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**Privileged and Confidential**

May 18, 2022

To,  
Mr. Kishore Kunal

**Subject: Legal Opinion**

Dear Sir,

Please find below the opinion as to your legal query.

Factual Background-The case relates to a regular happening in India wherein the police are often pressurised by the politicians to sweep the truth under the carpet and hide the truth. The same in case relates to the investigation into Bobby's death and the contradictory factual stories that are coming to light as to her cause of death. The death has contradictory reasons ascertained such as poisoning and cardiac arrest thus the question are raised.

Query -Thus from the factual background the following can be determined to be query at your end-

What should be future course of action for you and your team in light of the political interference?

Rule- Sec 174, 154 Cr.P.C,

Opinion –

The police under sec 174 of the code of criminal procedure have ample powers to investigate the case of unnatural death and exhumed bodies in cases where the cause of death is not established thus the course of action taken by your team is correct and legal. Thus the steps till now are sound and correct in the eyes of law and cannot be called into question. Now moving forward from the reports and contradictory death certificates it can be seen that there have been efforts to hide the cause of death and thus it becomes your duty as an officer of the law to find the truth. The present situation that you and your team find yourself into is where there is no co-operation in the investigation and that the political parties are trying to impede the matter from being investigated. The first step would generally be the power that police have to compel appearance under chapter 6 and 7 of the code of criminal procedure which is the absolute power of the police in such matters.

The next step that as officers that can be taken is that they may approach the courts of law for help by asking them to step in and monitor the investigation when the approach is that the parties of influential people can impede the investigation. As from the facts of the case it can

be ascertained that there is extreme interference by certain individuals and attempts to thwart the investigation, the senior police officer such as you can approach the High Court to monitor the investigation as held in the case of Babubhai Jamnadas Patel v. State of Gujarat<sup>1</sup>. From the above factual background it can also be concluded that there are senior leaders involved who are wanting a CBI inquiry in the present matter due to the political coalition and thus it would be better suited to investigate the matter under High Court supervision as it has long been declared that CBI is parrot held in a political cage<sup>2</sup> and investigation by them would not result in any effective solution. Thus as held in the case of Prakash Singh vs UOI<sup>3</sup> the senior officials should conduct themselves without any fear of political ramifications and no influence or threats should be made to officers to prohibit in their duty.

#### Conclusion-

Thus to conclude the present case is one which has ramification on separation of powers and the structure of the police system and administration. The problems that you are facing amount to criminal acts under IPC specifically relating to the impeding the public official from performing their duties. Thus as an officer of police forces it becomes your duty to conduct the investigation efficiently and in an unbiased manner. This would also be my legal opinion to you in light of the present situation that you find yourself in.

Sd/-

(Adv. Aadit Ved)

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<sup>1</sup> (2009) 9 SCC 610

<sup>2</sup> Ramanathapuram vs State of TN 2021 Scc online Mad 2927

<sup>3</sup> (2006) 8 SCC 1

***Dwivedi***

***Vaishnavi***

***20010421143***

***BA.LLB***

A dialogue between client and advocate Vaishnavi

2. Mr. H, a Hindu male got married to Ms. G, a Hindu female as per the rituals of the Hindu religion. They were blessed with a daughter just after a year of marriage. But soon after the birth of the daughter, things got difficult between them and they started living separately from each other, with the daughter in the custody of her mother. Ms. G filed for divorce following two years of living apart and was permitted divorce by a court of law on the grounds of desertion.. Now, Ms. G wishes to give the daughter in , adoption ,but she is not sure whether she can give the child in adoption without the consent of her husband, who is not even interested in the whereabouts of his daughter

**Legal Advice –**

Ms G as you have approached to me regarding giving your daughter in adoption and wanted to know whether there is need of taking your ex- husband's consent while giving in adoption who is not interested in the whereabouts of his daughter , before going deep into it . I would like to shed some lights on '***THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956***' which deals with provisions regarding adoptions and maintenance among Hindus As this Act deals with provisions which are required for all the valid adoptions , I would like to proceed in a smooth manner by dealing with the sections which are

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relevant under your case Ma'am in detail so as to give you a clear understanding of how to approach for adoption in your case .

**RELEVANT PROVISION 1 - SECTION 5** - which says that ,  
No adoption can be valid adoption which has not been dealt with the provision of the chapter and any kind of adoption in violation of the said provisions '**SHALL BE VOID**' and if adoption is void it will neither generate any rights nor destroy the rights of such person , hence Ma'am this section is relevant in understanding that we can't go ahead simply by our own reasoning rather we have to follow the provisions under "HINDU ADOPTION AND MAINTENANCE ACT" otherwise the adoption will be void .

**RELEVANT PROVISION 2 -- SECTION 6** which says that  
"**NO ADOPTION SHALL BE VALID UNLESS**" , the person adopting has capacity and right to take in adoption which is discussed in detail in (*section 7 and 8*), "the person giving in adoption has the capacity to do so( *SECTION 9*)" i.e here in our case we would delve in detail that whether you have capacity to give in adoption and if not then the adoption would not be a valid adoption also this section says that the person being in taken in adoption must have the capacity to be taken in adoption (*SECTION 10*) and lastly the adoption must be made in compliance of other conditions which are mentioned under (*section 11*) of this Act .

**MOST RELEVANT PROVISION** ----- **SECTION 9** which talks about the capacity of person giving the child in adoption - Sec 9 (1) lays down that no person except the father or mother or the guardian of a child

shall've the capacity to give the child in adoption. Each of them should be a Hindu. As here you are a hindu and mother of the concerned child , Moreover this section specifically mentions that if the father and the mother are alive then they Shall have equal right to give a son or daughter in adoption "**PROVIDED**

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THAT SUCH RIGHT SHALL HAVE NOT BEEN EXERCISED BY EITHER OF THEM WITHOUT EACH OTHER'S CONSENT" hence the father or the mother has right to give in adoption but that giving couldn't take place without consent of the other spouse , However this section further says that consent of other spouse would become irrelevant if has "COMPLETELY AND FINALLY RENOUNCED THE WORLD or HAS CEASED TO BE A HINDU or HAS BEEN DECLARED BY COURT OF COMPETENT JURISDICTION TO BE OF UNSOUND MIND" , so by applying this statutory rule Ma'am you CANNOT GIVE IN ADOPTION THE DAUGHTER WITHOUT HAVING FULL CONSENT OF YOUR EX HUSBAND H , as he is still the father of your daughter irrespective of his ignorance or disinterest because the the Act says the consent will be neglected only in those three cases that are - ceased to be hindu , renunciation and unsound mind declared by court and in this case neither of these three has happened , Hence In no other case, even if the marriage has been dissolved, consent of the other spouse can be dispensed with otherwise the adoption would be void because of contravening the provisions of "HINDU ADOPTION AND MAINTENACE ACT 1956" . **So Ms G I advice you that if you want to give your daughter in adoption you must take consent from your ex husband H** and then further proceed with other conditions laid under the Act .

3. Mr. R, a Hindu male is a testamentary guardian of a minor child, X. There is some immovable property available with X. Mr. R having an understanding that the property will be coming under the flood zone and for the apparent benefit of the minor, exchanged the immovable property with Mr. Z's property. A couple of months later, the rates of the original property of X rose surprisingly and he contacted Mr. R, he was informed that the property has already been exchanged with Mr. Z.

### LEGAL ADVICE –

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**IMPORTANT PROVISION – SECTION 4** which talks about the definition of minor and guardian and tells that under the “HINDU MINORITY AND GAURDIANSHIP ACT , 1956” “MINOR - is a person who has not completed the age of eighteen years” and guardian is a person who has the care of the person of a minor or of his property or both , regarding types there are four kinds of guardians  
1. **NATURAL GAURDIAN** -which is dealt under ( section 6). 2. **TESTAMENTARY GUARDIAN** - which is dealt under section ( section 9 ) . 3. **GUARDIAN APPOINTED BY COURT** . 4. **GUARDIAN APPOINTED UNDER COURT OF WARDS ACT.**

**IMPORTANT PROVISION 2 — SECTION 9** As Sir under your case , Mr.R was appointed as a Testamentary guardian and section 9 talks about guardians appointed by the will of the minor's father or mother , I would like to talk in depth the provisions under this section and would then suggest you regarding what can be done by you for your property. this section says When Any of the biological guardian of a minor appoints by will testamentary guardian , Testamentary guardian can be appointed for minor's person or in respect of the minor's property or for both . It is done to make sure that after the death of the natural guardians there is someone to take care the person or property of the minor , who under law is not capable of taking care himself or herself , However if by will either of the natural guardian has appointed testamentary guardian , he cannot act as a guardian if the natural guardians are alive and present . further this section says that Sec. 9 of HMGA Both parents are given testamentary power to appoint a guardian. The father might designate a testamentary guardian, but if the mother outlives him, the testamentary guardian will be rendered ineffectual because the mother will become the natural guardian. The mother can then choose a testamentary guardian of her choice; if she does not, the father's appointee will take over. She is also obligated to behave as the natural guardian of the minor

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illegitimate offspring and to designate a guardian of such children by will. This privilege does not belong to the father of such children until the mother passes away.

**POWERS OF TESTAMENTARY GUARDIAN** — As per section 9 A testamentary guardian could exercise only the rights of a natural guardian, “subject to the restrictions contained in Sec. 8, and also, subject to the restriction contained in the will appointing him as such guardian. that is to say testamentary guardian” does not have unfettered power to do anything rather he has the same powers mentioned under section 8 for natural guardian with respect to minor's property and adding to it , if the will has restricted him to do certain things then he will have to adhere by the will and can't go beyond the will .

so for understanding the powers with respect to your property MR. X I would like to enlighten you with most important section of HINDU MINORITY AND GUARDIANSHIP ACT which tells what exactly the powers natural guardian or in our case testamentary guardian holds

**SECTION 8** — Prior to the HMGA, a natural guardian of a child had extensive powers, including the ability to sell, mortgage, or otherwise alienate the minor's property without the consent of the court, as long as the alienation was in the minor's best interests. 'The natural guardian has power to conduct any acts necessary or reasonable and proper for the minor's benefit or for the realisation, protection, or profit of the minor's inheritance,' according to Section 8 of the Act. However, in cases where the guardian wishes to mortgage or charge any part of the minor's immovable property, or transfer by sale, gift, exchange, or other means any part of the minor's immovable property; and cases of lease for a term exceeding 5 years or for more than 1 year beyond the date on which the minor would attain majority,

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the court's permission is required.. The court , shall not give permission except in case of necessity or for the evident advantage of the minor. An unnecessary or unreasonable disposal of property is voidable at the minor's instance . Here in your case X thought that the property will be coming under the flood zone

and for the apparent benefit , exchanged the immovable property with Mr. Z's property but has done all this "**WITHOUT COURT'S PRIOR PERMISSION**" which is mandatory requirement for exchanging or doing anything with the immovable property , had X asked for prior court's permission wherein the court would have checked for an evident advantage or dire necessity and then would have granted the permission for exchange but this has not been done by MR. X and due to contravention of this clause that disposal of immovable property is **VOIDABLE AT YOUR INSTANCE** meaning thereby you can make the exchange voidable and get your property back

**some cases ----1. "Duraiswamy v. Balasubramanian, AIR 1977 Mad 304"**- A-testamentary-guardian-cannot sell-minor's property without prior permission of the court

**2. "Naryan Laxman Gilankar v. Uday Kumar Kashinath Kaushik, AIR 1994 Bom 152"**. - Sale transaction by a natural guardian even if beneficial for the minor is voidable and not void ab initio, if it is done without the previous permission of the court. Held that the minor can challenge only after attaining majority and not during his minority

**3. "Richhpal Chand v. R. Singh"**, in case where a natural guardian have acted claiming a legal necessity, he is required to prove the legal necessity and in can't be inferred by mere words.

hence by applying section 8 , the Exchange of property done by MR. R is VOIDABLE at the instance of MR .X because of not having prior permission of court of law and also by applying NARAYAN LAXMAN CASE , Mr X can challenge this after attaining majority and by the rationale of case RICHPAL CHAND , the onus of necessity lies on Mr R , So I advice you Mr X to make this exchange VOIDABLE AND GET THE PROPERTY BACK.



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Founder: Dr. S.B. Mujumdar, M.Sc. Ph.D. (Awarded Padma Bhushan and Padma Shri by President of India)

**Semester: IV**

**Date : 22.03.2022**

**Course : Property law**

**Total Marks: 10**

**Mode : Application Based Open Book Examination**

**Time : 40 Minutes**

### Instructions:

- 1) The Students may either type the answers in 'Word Document' or submit handwritten answers on sheet of paper and share/upload the scanned copy of the answer-sheet into **Google form** through the official email ID only.  
(the link is -<https://forms.gle/YRmomiEzdQCmaPju8> )
- 2) Do not send the answer sheets by email.
- 3) The submission must be named as **Property Law (Assignment-2/ Section/Name.)**
- 4) There will be no consideration of late entries.
- 5) **Identical submission** will be marked **zero**.
- 6) Students are expected to write a well-researched answer which will be evaluated in terms of:

*# Writing Skill in terms of content*

*#Creative and Persuasive arguments*

*# Language and Grammar*

*# The answer should comprise of facts as well as application and interpretation of Law.*

- 1) Ajay takes a loan from Pawan and as security mortgaged his land in favour of Pawan. Ajay failed to repay the loan within the stipulated time. Pawan filed a suit for foreclosure of the mortgage. During the pendency of this suit, Ajay sell the land to Vinay by a registered deed. The court decreed the suit in favour of Pawan. Pawan wants to execute the decree. Will he succeed? Decide and Justify your answer.

(5 Marks)

2) Nilesh has no title to “**Anand Villa**” but by making erroneous representation professes to transfer it to Shailesh for consideration of Rs.2 lakhs. Since Nilesh has no title, Shailesh acquires none from him. Subsequently, Nilesh purchases “**Anand Villa**” from the true owner while the previous contract was subsisting.

Can Nilesh retain the “**Anand Villa**” or is he bound to hand it over to Shailesh?

Discuss the Legal provisions under Transfer of Property Act,1882.

(5 Marks)

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Name:- Vaibhvee Jangid

Section:- D

PRN:- 20010422144

Course:- Property Law

**Q1:-**

Yes, Pawan will succeed because here the rule of **lis pendens** will be applied as during the pendency of the suit, Ajay sold the land to Vinay. So here it will be binding on Ajay as well as Vinay.

As Ajay and Pawan were under the contract of Mortgage and Ajay failed to repay the loan within the stipulated time so Pawan filed the suit for foreclosure. And during the pendency of this suit, Ajay sold the land to Vinay. But the court decreed the suit in favor of Pawan. Therefore due to the application of section 52 of Transfer Property Act 1882 it is binding on not only Ajay but on Vinay as well, as the transfer of property at the instance of Ajay was during the pendency of this litigation. So in this case Pawan does not have to institute a fresh suit against Vinay as the decision of the court would be enforceable against Vinay also.

Lis Pendens means a suit which is pending in the court. Therefore, the property which is in dispute should not either be sold or otherwise dealt in by any party to the dispute during the pendency of the suit or proceeding. This rule helps to avoid the prejudice that is created if it is sold during the pendency, creating more rights in the immovable property.

So yes Pawan can execute the decree as he is the Mortgagee and as Ajay the Mortgager failed to repay the loan, Pawan gets the right to recover the debt out of the sale proceeds of the mortgaged property.

**Q2:-**

In this situation, the first thing will be that as Shailesh has not rescinded the contract between them then according to the section 43 of Transfer of Property Act 1882 i.e. **ownership by estoppel**, he will be required to hand over "Anand Villa" to Shailesh.

The rule incorporated in this section governs transfers where the transferor in the beginning has no capacity to transfer the property, yet has entered into the transaction with a misrepresentation with respect to his title to the property. As in the present case, Nilesh in the beginning had no title to "Anand Villa" and he made Shailesh to act on this erroneous representation, and then acquired a good title to the same property in future. In such cases if the contract is subsisting and the property is available as in the present case Nilesh bought "Anand Villa" from the true owner, then it gives the transferee i.e. Shailesh, the option to either go ahead with the transfer or to rescind the same. If the transferee still wants the transferor to perform his part of the contract, as in the present case the contract is still subsisting then he can exercise his option to validate this transfer that was imperfect to begin with and the transfer shall become valid on the exercise of such option by the transferee (Shailesh).

Thus all the ingredients of section 43 have been fulfilled and the most important was that Nilesh professed to transfer "Anand Villa" for a consideration of Rs. 2 Lakhs.

The other scenario that can be is if Shailesh rescinds the contract, then Nilesh has to pay the damages to the former and section 43 will not be available.

This section is based on the principle of estoppel which is also known as 'feeding the grant by estoppel', where a person having no authority professes to transfer any immovable property, he is estopped from denying the transfer when he subsequently acquires such authority.



## **SYMBIOSIS LAW SCHOOL, NAGPUR**

Constituent of Symbiosis International (DEEMED UNIVERSITY), Pune  
Re-accredited by NAAC with "A++" Grade – Awarded Category – I by UGC

Founder: Dr. S.B. Mujumdar, M.Sc. Ph.D.

**Title of Practice:** Brown Bag Discussion

(Activity with collaborative approach for research work)

### **Background:**

The academician's life is entirely centred around research and lectures. One becomes overwhelmed due to demanding class schedules, administrative duties, and balancing curricular and extra-curricular events, research work, meetings, mentorship, and the like. So a space is needed where it will be recreational as well as providing a base for academic leadership. One such platform that offers a casual meeting space is the brown bag discussion. Its adaptable qualities accommodate a wide range of aims, including fostering a healthy workplace culture that gets stronger over time. Many different official and informal dialogues are the consequence of this, SLS, Nagpur engages in such collaborative discussion with the aim of encouraging qualitative research.

### **Objectives of the Practice:**

The benefits of initiating Brown Bag discussions are manifold. The fundamental responsibility of introducing the faculty to constructive researching, collating data, exchanging ideas for potential research, discussing contemporary issues and its representation by way of effective writing is the objective of Brown Bag discussion.

### **The Context:**

Brown bag discussion tends to convert thoughts of faculties into tangible ideas using legal discussion in order to present them with a new dimension. It also identifies new trends in various academic domains and develop the capacity to converge it for legal enrichment.

### **The Practice:**

This practice has provided a platform for the faculties to discuss and develop original thought, analysis, and creativity, for learning and development. It also facilitates research and publication of the same.

### **Evidence of Success:**

As a result of Brown Bag discussions, a lot of unique ideas in the nascent areas of research created a niche in the research culture of the institution and encouraged academicians to take their research further into a promising research papers. This can also be proved through the enhanced in number of applications.

### **Problem Encountered and Resources Required:**

All the faculties' to be available at a time is a challenge and cultivating research culture in continuation of regular schedules classes is another. Supportive search engines will enhance research, hence, information relating the latest technological & legal advancement is required.





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Founder: Dr. S.B. Mujumdar, M.Sc. Ph.D.



Latitude: 21.12632  
Longitude: 79.158818  
Elevation: 294.42m  
Accuracy: 14.6m  
Time: 09-17-2021 12:16  
Note: SLS Nagpur Conference Hall



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*[Signature]*  
**Director**  
Symbiosis Law School  
Nagpur