

Judicial Administration Training Institute
15, College Road, Dhaka
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**148th Refresher Course for the Senior Assistant
Judges/Equivalent Judicial Officers**
(Duration: 06/05/2023- 10/05/2023)

Oral Presentation on Case Study

All participants will be divided into 11 (Eleven) groups, each consisting of 05 (five) members. Each of the group-members must take part in the presentation since each member will be evaluated on her/his individual performance and presentation skill.

Formation of the Groups

Name of the Group	Roll Number according to the serial number of the class	Assigned Case Study Number according to the Fact Sheet
A	01-05	1
B	06-10	2
C	11-15	3
D	16-20	4
E	21-25	5
F	26-30	6
G	31-35	7
H	36-40	8
I	41-45	9
J	46-50	10
K	51-55	11

[Instructions for the participants: 1) Read the problem carefully, 2) Identify the legal and factual issues in the given circumstances, 3) Do necessary studies to find out relevant statutes, books, commentaries and law reports, 4) Note down arguments for and against, 5) Form your opinion and decide the case, 6) Prepare your presentation in prescribed/standard form (specimen format is attached herewith), 7) Send the soft copy (pdf) of the same to research.publication.jati@gmail.com by 7th

May, 2023- 2.00 pm (sharp noon) to submit the same before the panel during the session. You may have to answer questions on the relevant issues, provisions of law and legal decisions. All participants shall be at liberty to join in the open discussion after presentation. Each Participant will be evaluated out of 50 marks on the criteria mentioned in Article 6 of the Training Evaluation Guidelines. If any participant has any query regarding oral presentation on case study, he/ she is advised to send e-mail to research.publication.jati@gmail.com]

Presentation on Case Study

Problem- 1

Short Facts:

On 01/11/2016 A lodged a complaint against accused R and five other persons in a Judicial Magistrate Court under Section 379 of the Penal Code. Complainant A alleged that he constructed a *Baithakkhana* adjacent to the south of his homestead on the land belonging to him but accused R forcibly demolished those against his wishes and took away the structures belonging to him and out of his possession without his consent causing loss of Tk. 20,000/- thereby committing an offence under Section 379 of the Penal Code. The learned Magistrate took cognizance under section 379 of the Penal Code. After completion of the trial learned Judicial Magistrate by his judgment and order dated 9/4/2017 found the accused R and others guilty for committing theft punishable under section 379 of the Penal Code, convicted and sentenced them thereunder to suffer rigorous imprisonment for 15 days each and to a fine of Taka 500 each, in default imprisonment for 4 days more each. R and other convicted persons preferred an appeal to the Chief Judicial Magistrate contending that the conviction and sentence as passed by the learned Judicial Magistrate was bad in law because the same was without jurisdiction.

Questions:

- a) *Can a Magistrate take cognizance of an offence of theft where value of the stolen property amounts to Tk. 20000/-?*
- b) *How the Magistrate should deal with the petition of complaint when the offence alleged of is triable by the Village Court under 1st part of the schedule to the গ্রাম আদালত আইন, ২০০৬?*

Problem- 2**Short Facts:**

The plaintiff and others instituted Partition Suit No. 250 of 1982 against the defendants and others. The defendants filed written statement denying the material plaint case. During the pendency of the suit, the plaintiffs filed an application under Order XL, Rule 1 of the Code of Civil Procedure, 1908 for appointment of receiver in respect of the suit land alleging that the plaintiffs are entitled to 91 bighas of land and, on the other hand, the defendants and others are entitled to 182 bighas of land. But the defendants sold out more lands than their shares and have been continuing to sell further lands. They sold properties to different persons on different occasions by more than 50 (fifty) deeds of sale. The plaintiffs being poor could not collect more than 04 (four) of such sale deeds. The defendants threatened the laborers of the plaintiffs, who had been ploughing the land of the plaintiffs. Under the circumstances, it is necessary to appoint a receiver in respect of the suit land just to save the suit land from wastage and illegal transfer.

The court allowed the application appointing a receiver in Partition Suit No.250 of 1982 by its order dated 02.11.2002. The court came to a

finding that 27 (twenty seven) years had already been elapsed and that the case was still in rudimentary stage and that it might so happen that to dispose of the suit another twenty seven years might be required. Moreover drawing up of final decree in a suit for partition usually would take long time and as such for the management of the suit property, an Advocate Commissioner should be appointed as receiver.

Question:

Whether selling of suit lands by the admitted co-sharers can be a proper ground for the appointment of receiver in a Partition Suit. What other remedy is open to the plaintiff to get the desired relief?

Problem- 3

Short Facts:

X is an Assistant Superintendent of Police now serving in the Organized Crime Unit (Financial Crime), CID, Dhaka. In February 2021, X lodged an FIR against A, B and C for committing offence under section 4(2)/4(3) of the *Money Laundering Protirodh Ain, 2012*. It was alleged that the accused criminally misappropriated the amount of twenty crore taka and consequently committed offence of Money Laundering. The police arrested the accused and produced them before the Metropolitan Magistrate (MM) concerned. Later, the accused persons made a prayer for bail before the MM, who enlarged them on bail.

The order of granting bail was challenged mainly on the ground that the MM has no jurisdiction to deal with the application for bail of an accused as he has no jurisdiction to take cognizance of an offence

under the *Money Laundering Protirodh Ain*, 2012. Thus, the MM acted illegally in assuming the jurisdiction of a Special Judge and granting bail to the accused. It was further argued that as per section 13 of the *Ain* of 2012 only Special Judge is empowered to deal with the matter of bail.

Question:

Whether the order of granting bail by the learned Metropolitan Magistrate was in accordance with law or not.

Problem- 4

Short Facts:

The heirs and successors of late F, as petitioners, filed a Succession Case in the Court of a Joint District Judge for certificate of succession under the Succession Act, 1925. During pendency of the proceedings X, Y and Z, claiming themselves as the second wife, son and daughter respectively of late F, filed an application praying for being added as parties in that succession case. The Court allowed that application and fixed a date for recording evidence of both sides. As the petitioners' side was absent on the day fixed, the Court recorded the evidence of the Opposite Party No. 1's witness M (original OP in the succession case). Subsequently, the petitioners filed a prayer for cross-examining M, which was allowed by the Court. But, without cross-examining M, the petitioners filed an application under Order XXIII Rule 1 of the Code of Civil Procedure, 1908 praying for withdrawal of the case.

At the same time the added opposite parties i.e. X, Y and Z, also filed an application for transposing them as petitioners. The court after

hearing both the parties and considering the facts and circumstances, allowed the prayer of the added opposite parties to be transposed as petitioners and rejected the petitioners' prayer for withdrawal of the case. Accordingly, the original petitioners were also transposed as Opposite Parties in the succession case.

Questions:

- a) Whether the court committed any illegality in rejecting the petitioners' application for withdrawal of the succession case and allowing the added Opposite Parties' prayer for being transposed as petitioners and also transposing the original petitioners as Opposite Parties in that succession case.
- b) Do you think that a succession case falls within the meaning of 'proceeding' as mentioned in Section 141 of the Code of Civil Procedure, 1908 and hence Order I rule 10 of the Code of Civil procedure is applicable there?

Problem- 5

Short Facts:

S.I. R, while on patrol duty with other constables, raided the house of M on 4.2.2007 under the leadership of Major 'K', the leader of the joint forces. International currencies of several countries including 5000 US dollar and 5 international passports were seized from the accused's house. Thereafter, S.I. R lodged an FIR with the local police station on the allegation that accused M brought those foreign currencies into Bangladesh and kept them in his custody by evading custom duties and thus committed the offence under section 25(B)(1)(a) and (b) of the Special Powers Act, 1974, read with section 23 of the Foreign Exchange Regulation Act, 1947 and column 8 of section 156(I) of the Customs Act, 1969.

After investigation, the police submitted charge sheet under section 25(B)(2) of the Special Powers Act read with Rule 19(Neo) of the Emergency Power Rules, 2007. Then, the case record was transferred to the Metropolitan Special Tribunal No. 1, Dhaka, where it was registered as a Special Tribunal Case. On 18.7.2007, the said Tribunal took cognizance of the case against the accused under section 25(B)(2) of the Special Powers Act, 1974.

Subsequently, the same Tribunal directed the Investigating Officer (I.O.) to submit supplementary charge sheet under appropriate law.

Thereafter on 19.11.2007, the I.O. submitted a supplementary charge sheet under section 23 of the Foreign Exchange Regulation Act, 1947 read with Rule 19(Neo) of the Emergency Power Rules, 2007. It is to be mentioned here that vide a letter dated 19.6.2007, Bangladesh Bank accorded authority to informant S.I. R to lodge complaint which was indeed issued after the lodgment of the FIR on 24.2.2007.

On 27.11.2007, the learned Special Tribunal took cognizance against the accused under section 23 of the Foreign Exchange Regulation Act, 1947 and transferred the case to the Metropolitan Special Tribunal No. 3, Dhaka for trial. The Metropolitan Special Tribunal No. 3 framed charge against the accused under section 23 of the Foreign Exchange Regulation Act, 1947.

Question:

Under the given facts and circumstances of the case, whether the FIR so lodged by informant S.I. 'R', as well as cognizance taken by the Special Tribunal No. 1, under section 23 of the Foreign Exchange Regulation Act, 1947 is in accordance with law. Assign reasons in support of your argument.

Problem- 6

Short Facts:

In a suit for recovery of possession, the plaintiff filed an application under Order XXXIX, rules 1 and 2 of the Code of Civil Procedure, 1908 seeking temporary injunction and the Court passed an order directing the parties to maintain *status quo* in respect of the suit land till final hearing of the petition filed seeking temporary injunction. The order of status quo relates to making construction changing the nature and character of the land in suit and transfer thereof. As against the said order of status quo the defendant moved the High Court Division in revisional jurisdiction.

Question:

Whether the defendant was correct in seeking the revisional jurisdiction of the High Court Division against the order of *status quo*. In this connection, also discuss the nature of *status quo*.

Problem-7

Short Facts:

The respondent X is a Ground Service Engineer Officer of Novoair Corporation and posted at Novo Engineering Hangar, ZIA. On 10.04.2001, while on duty on Novo flight No. NA-033 Doha-Chittagong-Dhaka, he concealed inside his socks and undergarment 25 gold bars weighing 3 kg. He was searched at the Chittagong airport and the gold bars were seized from his possession thereby. Consequently, a police station case under sections 19/32 of the Custom Act, 1969, section 3(1) of Foreign Exchange Regulations Act, 1947 and section 25B of the Special Powers Act, 1974 was filed against him. It was subsequently registered as a Metropolitan Special

Tribunal Case.

X thereafter filed a Criminal Miscellaneous Case under section 561A of the Code of Criminal Procedure, 1898 for quashing the criminal proceeding contending that he was entitled to bring such quantity of goods into Bangladesh on payment of duty.

Question:

Whether X was entitled to bring such quantity of gold bars into Bangladesh. Give reasons keeping in mind the relevant legal provisions.

Problem- 8

Short Facts:

X initiated a CR Case against A under section 138 of the Negotiable Instruments Act, 1881. At the time of pronouncement of judgment, the accused A was absent. The trial Court found the accused guilty of the charge and convicted him under section 138 of the Negotiable instruments Act, 1881 and sentenced him thereunder to suffer simple imprisonment for 1 (one) year and to pay fine of 3 crore in absentia. On receipt of levy warrant, a certificate case under the Public Demands Recovery Act, 1913 was initiated for realization of the fine amounts before a General Certificate Officer.

Questions:

1. Can 'sentence of fine imposed in a criminal court' be termed as a public demand under the Public Demands Recovery Act, 1913?
2. Whether realization of such fines through Certificate case is legally maintainable. Give reasons keeping in mind the relevant

provisions of the Code of Criminal Procedure, 1898.

Problem- 9

Short Facts:

Plaintiff A got the suit land by way of inheritance and transfer. Several defendants contested the suit by filing a joint Written Statement. The learned Senior Assistant Judge decreed the suit and allotted 1.50 acres of land in favor of the plaintiff and directed the contesting defendants to amicably partition the lands within 40 days from the date of the judgment.

The contesting defendants filed an appeal against the judgment and order.

During the pendency of the appeal, the heirs of defendant no. 20 filed an application for being added as opposite parties in the appeal and to allot saham of .67 acres of land on the ground that the defendant no. 20 was a co-sharer in the suit khatian but he was not aware about the institution of the suit.

Question:

Whether the saham petition filed by the heirs of defendant no. 20 is maintainable at this stage of suit. What would be your answer in this regard?

Problem-10

Short Facts:

A First Information Report was lodged against accused A and others under section 323, 307 and 379 of the Penal Code, 1860 read with

section 4 of the Anti-Terrorism Act, 1992 (as was operational during the period at point). The police after investigation submitted charge-sheet against the accused under sections 323 and 379 of the Penal Code. The informant filed a *Naraji* Petition before the Magistrate alleging that some accused persons were excluded from the charge-sheet in spite of evidence against them and further praying that charge-sheet should be submitted under appropriate laws. The Magistrate rejected the Petition refusing to direct further investigation. Against the Order, the informant came to the Sessions Judge with a revisional application under section 439A of the Code of Criminal Procedure, 1898. The learned Session Judge, by an Order, set aside the Magistrate's Order and directed that further investigation be held and charge-sheet be submitted under section 4 of the Anti-Terrorism Act. This Order of the Sessions Judge was challenged by the accused persons before the High Court Division invoking its inherent jurisdiction under section 561A of the Code of Criminal Procedure, 1898 taking the ground that the Sessions Judge got no power, while ordering further investigation, to direct the police to submit charge-sheet as well.

Question:

- a) Whether the High Court Division has got power under section 561A of the Code of Criminal Procedure, 1898 to interfere with a decision given by the Sessions Judge in revision under section 439A of the Code of Criminal Procedure. In this connection, also mention about the maintainability of revisional application under section 439 of the Code of Criminal Procedure from a decision of the Sessions Judge given in revision under section 439A Code of Criminal Procedure.

- b) Can the learned Sessions Judge direct to submit charge-sheet while exercising revisional power under section 439A of the Cr.P.C.

Problem- 11

Short Facts:

In a Company Matter, an application was filed by one director M of a scheduled Bank (the bank) under section 95 read with section 233 of the Companies Act, 1994 for allowing him to attend the meeting of the Board of Directors. It is to be mentioned that two Board Meetings of the Bank were held without giving any notice to M. Upon receiving the information about holding of the Board Meeting, M went to attend the meeting but the Chairman of the Bank did not allow him to attend it. The Bank again called a meeting of the Board of Directors on 25.8.2001 without giving notice to M, though he is entitled to such a notice as director. Being aggrieved, M moved to Company Court in the form of a Company Matter.

The learned Company Judge rejected the application under section 95 read with section 233 of the Companies Act, 1994 with the observation that the Companies Act specifically provided the jurisdiction of the Company Court to be applied under specific provisions. The Court does not have any general, plenary or residuary jurisdiction to deal with other matters and questions arising under the Companies Act. It was further held that Section 95 does not specifically provide jurisdiction to the Company Court. Therefore, the only remedy available to M is the Civil Court and not the Company Court.

Question:

Do you think that any dispute arising out of the provisions under section 95 of the Companies Act, 1994 can be resolved as a civil dispute, resorting to the ordinary civil Court of competent jurisdiction?

Specimen Format for Submission

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(Date: 06/05/2023- 10/05/2023)

Oral Presentation on Case Study
Case Study Number:

Submitted by:

Group Name- A/B/C/D.....

SL.	Name of group members	Designation	Work station	Roll number

Submitted to:

Course Director

**148th Refresher Course for the Senior Assistant
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Short Facts:

(Brevity is an art. Please maintain that by stemming and striking unnecessary fact. Be brief and specific as far as practicable)

Question to be decided:

(Specific question given)

Relevant laws:

The case involves following laws.....

Decision: (with main reasoning)

Reasoning:

(Analysis of the facts, analysis of the law, argument for and against, decision relied)

Reference: (case laws by the AD)

(Case laws by the HCD)

Name & signature of the
trainee judges

- 1.
- 2.
- 3.
- 4.
- 5.